

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1029

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5-17-84
DATE FOR REVIEW 5-25-84
DATE DUE 5-31-84

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 5-31-84 mjc Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 5-31-84 Revisor approved _____ disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 5.14.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 2.27.84 + comments

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
3.29.84 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
4.9.84 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

_____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

_____ Agency's Findings of Fact

_____ LCRAR Report or agency Affidavit

_____ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ARTHUR C. ROEMER
Commissioner of Revenue

DATE: 5/31/84

Attn: LUCI A. MITCHELL

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of The State of Minnesota Department of Revenue Governing the Valuation and Assessment of Electric Gas Distribution and Pipeline Companies (Utility Companies).

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

MJC: sa

AG copy.

Department of Revenue

Property Equalization Division

Adopted Rules Relating to the Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

Rule as Adopted

8100.0300 VALUATION.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Income approach to valuation.** The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40 percent; previous year, 35 percent; and final year, 25 percent. After considering, as far as possible, all conditions that may exist in the future that may affect the present annual return, including risk, life expectancy of the property, and cost of money, the capitalization rates used to compute value for the assessment will be: electric companies, 10.75 percent; gas distribution companies, 11.0 percent; and pipeline companies, 11.25 percent. The income indicator of value computed in accordance with this subpart will be weighted for each class of utility company as follows: electric companies, 15 percent; gas distribution companies, 25 percent; and pipeline companies, 25 percent.

The following example illustrates how the income indicator of value would be computed for a gas distribution company:

	1980	1981	1982
1. Net Operating Income	$ 570,240	$ 467,650	$ 554,400
2. Capitalized Income @ 11%	5,184,000	4,251,400	5,040,000
3. Weighting Factor	25 percent	35 percent	40 percent
4. Weighted Capitalized Income	1,296,000	1,488,000	2,016,000
5. Total Income Indicator of Value			4,800,000

Subp. 5. **Unit value computation.** The unit value of the

utility company will be the total of the weighted indicators of value.

The following is an example of the computation of the unit value for a gas distribution company:

1. Cost Indicator of Value:

$5,000,000 x 75% = $3,750,000

2. Income Indicator of Value:

$4,800,000 x 25% = $1,200,000

3. Unit Value of Gas Distribution Company:

100% $4,950,000

Any company whose cost indicator was modified under subpart 3 to reflect the average cost per kilowatt adjustment of a plant or plants located in Minnesota shall have an alternative unit value computation made without giving effect to the modification in respect of such plant or plants.

Subp. 6. to 8. [Unchanged.]

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 31 1984
Joan Anderson Growe
Secretary of State
9:40 AM

APPROVED AS TO FORM AND LEGALITY
May 31 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J. Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

P.O. Box 64446

St. Paul, Minnesota 55164

Telephone: (612) 296-5134

May 16, 1984

Office of the Attorney General
204 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: Adoption of a Revised Rule Governing the Valuation of Utility Companies

Dear Sir or Madam:

Enclosed please find the documents for your review as required by Minnesota Rules 2000.0400:

A. Order adopting Rule.
B. Notice of Intent to Solicit Outside Opinions and pertinent written material.
C. Notice of Intent to Adopt a Rule Without a Public Hearing.
D. Affidavit of Mailing.
E. Mailing List Certificate.
F. Statement of Need and Reasonableness.
G. Rule as Proposed
H. Copy of the State Register Volume 8, Number 41, in which the rule was published.
I. Written Comments on the rule.
J. Certificate of Compliance with Rulemaking Procedure.

Please note that there were no changes from the rules as proposed to the rules as adopted and that no one requested to be notified when these rules were submitted to the Attorney General for review.

If you have any questions please contact me.

Sincerely yours,

GERALD D. GARSKI, Manager
State Assessed Properties
Property Equalization Division

GDG:ms

A

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies (Utility Companies)	))))	ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on Monday, April 9, 1984 and was sent by the United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on March 29, 1984. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minnesota Rules Chapter 8100.0300 are adopted this 14 day of May 1984 pursuant to authority vested in me by Minnesota Statutes section 270.06 (14).

STATE OF MINNESOTA

Arthur C. Roemer

COMMISSIONER OF REVENUE

Department of Revenue
Property Equalization Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies).

Notice is hereby given that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing to promulgate revised rules governing the valuation and assessment of utility companies. The promulgation of these rules is authorized by Minnesota Statutes section 270.06 (14), which permits the agency to make rules and regulations for the administration and enforcement of the property tax law.

The State Department of Revenue requests information and comments concerning the subject matter of these revised rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Ronald Cook
Property Equalization Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Oral Statements will be received during regular business hours over the telephone at 612-296-5137 and in person at the above address.

All statements of information and comment shall be accepted until March 15, 1984. Any written material received by the State Department of Revenue shall become part of the record in the event that the rules are promulgated.

LYLE H. ASK, Director
Property Equalization Division
February 15, 1984

STATE REGISTER

STATE OF MINNESOTA



VOLUME 8, NUMBER 35

February 27, 1984

Pages 1913-1940

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 8		
36	Friday Feb 17	Monday Feb 27	Monday Mar 5
37	Monday Feb 27	Monday Mar 5	Monday Mar 12
38	Monday Mar 5	Monday Mar 12	Monday Mar 19
39	Monday Mar 12	Monday Mar 19	Monday Mar 26

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $3.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

Rudy Perpich
Governor

Sandra J. Hale
Commissioner
Department of Administration

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State Register and
Public Documents Division

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How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
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EXECUTIVE ORDERS

Executive Order No. 84-2

Providing for the Establishment of a Governor's Council on Environmental Resources Development; Amending Executive Order No. 83-38

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, Minnesotans take pride in their state and have an active concern for maintaining and improving its ecological and economic environment; and

WHEREAS, it is recognized that quality environment and a genuine commitment to sound resource utilization will provide a more favorable climate for business enterprise in the state; and

WHEREAS, there is an increasing awareness on the part of individuals and organizations of the need to take greater responsibility for their environment; and

WHEREAS, an organized program of resource recycling and community revitalization would greatly enhance efforts already underway that emphasize our quality of life; and

WHEREAS, efforts to facilitate and encourage public and private initiatives in these areas are both promising and beneficial; and

WHEREAS, many of the activities dealing with the environment by the Governor's Quality Environment Program are directly or indirectly related with the goals of the Department of Energy and Economic Development;

NOW, THEREFORE, I order:

1. The transfer of the personnel and activities of the Governor's Quality Environment Program to the Department of Energy and Economic Development, pursuant to Minnesota Statutes 15.0593 and other applicable statutes.

2. The establishment of the Governor's Council on Environmental Resources Development, pursuant to Minnesota Statutes 15.0593 and other applicable statutes.

a. The Council shall be composed of fifteen (15) members appointed by the Governor who shall be experienced or interested in resource recycling, community revitalization, or any other activities compatible with the aims of this Executive Order.

b. The chairperson of the Council shall be appointed by the Governor from among the members.

c. The Commissioners of Agriculture, Education, Natural Resources, Transportation, Energy and Economic Development, and State Planning, and the Executive Director of the Pollution Control Agency, or their designees, are hereby instructed to work with the Council to accomplish its aims set forth below.

d. Members of the Council shall not receive per diem, but may be reimbursed for travel and other ordinary and necessary expenses.

2. The appointment of an Executive Director, to serve at the pleasure of the Governor, to coordinate the activities of this Council.

3. The Executive Director, with the Council as advisors, is charged as follows:

a. To identify and find ways to coordinate and make more effective existing and proposed programs for recycling.

b. To identify and find ways to coordinate and make more effective existing and proposed programs for community revitalization.

c. To identify and find ways to coordinate and make more effective existing and proposed programs of public information and awareness in these areas.

d. Where necessary to meet identified needs in these areas, to recommend additional programs to augment those already existing or proposed.

e. To coordinate and encourage efforts in both the public and private sector to plant trees, for aesthetic enjoyment and for economic benefit, by maintaining and increasing the urban forest.

f. To plan, organize, coordinate, and direct a Keep Minnesota Beautiful Program, and to recommend steps to make this program a continuing effort.

g. To implement the recommendations in the Report to the Governor and Legislature issued February 1, 1984.

4. The Executive Director, with the Council as advisors, is authorized to solicit, receive, and disburse, on behalf of the state, funds to further the purposes for which it is established. These funds shall be transferred to the State Department of Energy and Economic Development's Gift Fund Account and/or Seminar Account.

5. The Executive Director and/or chairperson, may appoint advisory committees composed of individuals who have interest or expertise to assist in its work. Such appointees shall receive no reimbursement.

6. The Executive Director may, subject to the availability of funds, contract with such individuals and organizations as may be able to assist in carrying out the duties of the Council.

Pursuant to Minnesota Statutes 1982, Section 4.035, this Order shall be effective 15 days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF I have set my hand this 3rd day of February, 1984.



PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Revenue
Income Tax Division

Proposed Rules Relating to Income Tax; Reciprocity with Michigan

Notice of Intent to Amend a Rule without a Public Hearing

Notice is hereby given that the Department of Revenue proposes to amend 13 MCAR Section 1.6004, Minnesota Gross Income for Individuals Who Are Part-Year Residents or Nonresidents of Minnesota (Federal Adjusted Gross Income), without

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

a public hearing. The commissioner of revenue has determined that the proposed amendment of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21 to 14.28.

13 MCAR Section 1.6004 deals with Minnesota gross income for individuals who are part-year residents or nonresidents of Minnesota. Minnesota Statutes, Section 290.081(a) excludes from gross income the compensation received for the performance of personal or professional services within this state by an individual who resides and has his place of abode and place to which he customarily returns at least once a month in another state to the extent such compensation is subject to an income tax imposed by the state of his residence; provided that such state allows a similar exclusion of compensation received by residents of Minnesota for services performed in that other state. Under Minnesota Statutes, Section 290.081(c) the commissioner of revenue of the State of Minnesota has entered into a reciprocal tax agreement with the commissioner of revenue of the State of Michigan. This agreement was made applicable with respect to the taxation of net income for taxable years beginning on or after January 1, 1984 and with respect to withholding tax, effective January 1, 1984. Pursuant to the agreement, Michigan will forego taxation of compensation from personal services performed in Michigan, by natural persons domiciled in Minnesota who customarily return to their place of abode in Minnesota at least once a month and Minnesota will forego taxation of compensation from personal services performed in Minnesota, by natural persons domiciled in Michigan who customarily return to their place of abode in Michigan at least once a month. The commissioner is therefore proposing an amendment to 13 MCAR Section 1.6004 F. to include the State of Michigan.

Persons interested in this amended rule shall have 30 days to submit comments on the proposed amended rule. The proposed amended rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed amended rule.

Unless seven or more persons submit written requests for a public hearing on the proposed amended rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, Sections 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Mr. John P. Malach, Jr.
Attorney, Income Tax Administration
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
(612) 296-3439

Authority for the amending of this rule is contained in Minnesota Statutes, Sections 290.52 and 290.081(c). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of the amended rule and identifies the data and information relied upon, to support the proposed amended rule, has been prepared and is available from Mr. Malach upon request.

Upon adoption of the final rule without public hearing, the proposed amended rule, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final amended Rule as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the final amended rule, as proposed for adoption, should submit a written statement of such request to Mr. Malach.

The entire text of the proposed amended rule is attached to this Notice.

February 13, 1984

Arthur C. Roemer
Commissioner of Revenue

Rules as Proposed

13 MCAR § 1.6004 Minnesota gross income for individuals who are part-year residents or nonresidents of Minnesota (Federal Adjusted Gross Income).

A.-E. [Unchanged.]

F. Minnesota gross income does not include personal or professional service income earned in Minnesota by a resident of Wisconsin ~~or~~, North Dakota ~~who~~, or Michigan. A resident of North Dakota or Michigan can use this provision only if the resident customarily returns at least once a month to their residence in that state. Wisconsin ~~and~~, North Dakota, and Michigan are the only ~~two~~ three states that have reciprocity exclusion agreements with the State of Minnesota. The income subject to

reciprocity exclusion is compensation for the performance of personal or professional services which the taxpayer personally renders. It is not enough to employ others to render these services.

1.-e. [Unchanged.]

G.-H. [Unchanged.]

Effective date. This rule is effective for taxable years beginning after December 31, 1983.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified . Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Department of Natural Resources Fish and Wildlife Division

Adopted Rules Designating Species of Wild Animals and Plants as Endangered, Threatened or of Special Concern

The rules proposed and published at *State Register*, Volume 8, Number 18, pages 995-1004, October 31, 1983 (8 S.R. 995) are adopted as proposed.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Commerce
Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Notice of Special Meeting of Board

The Board of Architecture, Engineering, Land Surveying and Landscape Architecture will meet Friday, March 2, 1984 at 9:30 A.M. in Hearing Room A, Department of Commerce, Fifth Floor, Metro Square, St. Paul.

State Board of Investment
Investment Advisory Council

Notice of Regular Meeting

The State Board of Investment will meet on Wednesday, March 7, 1984 at 9:00 A.M. in Room 118, State Capitol.

The Investment Advisory Council will meet at 7:30 A.M. on Tuesday, March 6, 1984 in the MEA Building Conference Room, 41 Sherburne, Saint Paul.

County Law Libraries

Joint Notice of Filing Fees

Pursuant to Minn. Stat. 140.422 (140.421 for Hennepin and Ramsey Counties) the following County Law Libraries announce the Law Library fees to be collected in the district, county, municipal, probate and conciliation courts of their respective counties.

Pursuant to Minn. Stat. 140.422 subd. 4, for counties other than Hennepin and Ramsey, fees shall be in effect until July 1, 1985.

	Civil Suits		Probate	Conciliation		Criminal	Misd./Traffic
COUNTY	Pl.	Def.	Petitioner	Pet.	Resp.	Conviction	Conviction
Aitkin	$ 5	$ 5	$ 5	$ 5	$ 5	$—	$—
Beltrami	5	5	5[1]	5	5	3	3
Big Stone	5	5	—	—	—	5	5
Brown	5	5	5	5	5	—	—
Cass	5	5	5	5	5	—	—
Clay	10	10	10	5	5	10	5
Clearwater	5	5	5	1	1	3	3
Cook	5	5	5	5	5	2	2
Cottonwood	5	5	5	5	5	—	—
Crow Wing	5	5	5	5	5	—	—
Dakota	5	5	5	—	—	—	—
Fillmore	5	5	5	5	5	—	—
Freeborn	10	10	10	5	5	10	10
Goodhue	5	5	5	5	5	—	—
Grant	5	5	5	5	5	5	5

COUNTY	Civil Suits Pl.	Civil Suits Def.	Probate Petitioner	Conciliation Pet.	Conciliation Resp.	Criminal Conviction	Misd./Traffic Conviction
Hubbard	$ 5	$ 5	$ 5	$ 5	$ 5	$ 5	$ 5
Isanti	5	5	5	3	3	—	—
Jackson	5	5	5	5	5	—	—
Kittson	5	5	5	5	5	5	5
Koochiching	5	5	5	5	5	5	5
Lake of the Woods	5	5	5	5	5	—	—
Lyon	5	5	5	5	5	—	—
Mahnomen	5	5	5	1	1	—	—
Martin	5	5	5	5	5	—	—
Mille Lacs	7	7	7	2	2	2	2
Mower	5	5	5	5	5	—	—
Nicollet	5	5	5	5	5	1	1
Nobles	5	5	5	1	1	1	1
Norman	5	5	5	—	—	—	—
Otter Tail	5	5	5	—	—	—	—
Pennington	5	5	5	5	5	5	5
Pipestone	5	5	5	1	1	—	—
Ramsey[2]	7	7	7[3]	—	—	—	—
Red Lake	5	5	5	5	5	5[4]	5[4]
Scott	5	5	5	—	—	—	—
Sherburne	5	5	5	3	3	—	—
Sibley	7	7	7	7	7	—	—
Swift	7	7	7	7	7	2	2
Todd	10	10	10	5	5	10[5] 5[6]	3[7]
Traverse	5	5	—	—	—	5	5
Washington	5	5	5	—	—	—	—
Watonwan	5	5	5	—	—	—	—
Wilkin	5	5	5	1	1	5	5
Wright	5	5	5	3	3	—	—

NOTES: [1] Beltrami County Law Library probate fees are charged only on formal proceedings and determination of descent.
[2] Ramsey County Law Library fees were increased effective January 1, 1984.
[3] No Ramsey County Law Library fee on guardianship or conservatorship petitions.
[4] Red Lake County Law Library fees do not apply to petty misdemeanors.
[5] Todd County Law Library fee for gross misdemeanors and felonies.
[6] Todd County Law Library fee for misdemeanors.
[7] Todd County Law Library fee for petty misdemeanors.

Department of Education
Division of Instruction

Availability of Federal Funds for Adult Education

The Minnesota Department of Education announces the availability of funds to conduct Adult Education under Public Law 91-230, as amended.

The purpose of Public Law 91-230 is to expand educational opportunities for adults and to encourage the establishment of programs of adult education that will:

"(1) enable all adults to acquire basic skills necessary to function in society,

(2) enable adults who so desire to continue their education to at least the level of completion of secondary school, and

(3) to make available to adults the means to secure training that will enable them to become more employable, productive, and responsible citizens."

Applications for grants to carry out the purposes of this Act may be submitted by local educational agencies and by public or private non-profit agencies, organizations and institutions.

Application procedures and forms may be obtained after March 1, 1984 by writing to: Community and Adult Education Section, State of Minnesota, 639 Capitol Square Building, St. Paul, MN 55101.

All applications must be delivered to the Department of Education, Community Education Section, or be postmarked, on or before June 1, 1984.

Department of Education
Division of Instruction

Availability of Federal Funds for Adult Education Special Experimental Demonstration Projects and Teacher Training

The Minnesota Department of Education announces the availability of funds to conduct Special Experimental Demonstration Projects and Teacher Training under Section 310 of Public Law 91-230, whose purpose is to provide funds for:

"(1) Special projects which will be carried out in furtherance of the title and which:

(A) Involve the use of innovative methods, including methods of teaching persons of limited English speaking ability, systems, materials, or programs which may have national significance or be of special value in promoting effective programs under this title; or,

(B) Involve programs of adult education, including education of persons of limited English speaking ability, which are part of community school programs, carried out in cooperation with other federal, federally assisted, state, or local programs which have unusual promise in promoting a comprehensive or coordinated approach to the problems or people with educational deficiencies; and

(2) Training persons engaged, or preparing to engage, as personnel in program designed to carry out the purpose of this title."

Applications for grants to carry out the purposes of this Act may be submitted by local education agencies and by public or private non-profit agencies, organizations and institutions.

Application procedures and forms may be obtained after March 1, 1984 by writing to: Community and Adult Education Section, State of Minnesota, 639 Capitol Square Building, St. Paul, MN 55101.

All applications must be delivered to the Department of Education, Community Education Section, or be postmarked, on or before June 1, 1984.

Department of Labor and Industry
Workers' Compensation Division

Outside Opinion Sought on New Rules Governing Independent Contractor Status Criteria

Notice is hereby given that the Minnesota Department of Labor and Industry, Workers' Compensation Division, is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the criteria to be used by the division in the determination of independent contractor status. The promulgation of these rules is authorized by Minn. Stat. §§ 176.012 (e), 176.041, subd. 1, and 176.83 (j) (Supp. 1983) which permit the agency to adopt rules defining independent contractors.

The Minnesota Department of Labor and Industry, Workers' Compensation Division, requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit written or oral information. Written statements should be addressed to:

Steve Keefe, Commissioner
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101

Any written material received by the Minnesota Department of Labor and Industry, Workers' Compensation Division, shall become part of the record in the event that the rules are promulgated.

Oral statements will be received during regular business hours over the telephone at (612) 296-2342 and in person at the above address.

Information will be accepted until April 15, 1984.

Steve Keefe
Commissioner of Labor and Industry

Department of Public Welfare
Income Maintenance Bureau

Notice of Hospital Cost Index

Pursuant to 12 MCAR § 2.05401, D. 1. (Temporary) hospitals participating in the Medical Assistance and General Assistance Medical Care programs are subject to a Health Cost Index (HCI) that is to be used in the calculation of prospective inpatient hospital rates. Each hospital whose fiscal year starts during a given calendar quarter shall be notified of the HCI to be used 30 days prior to the start of that quarter. It has been determined that the HCI is 7.1% according to an independent source, Data Resources, Inc. for Health Care Costs. However, pursuant to Senate File 1234, Article 5, Section 9 (1983), the HCI is subjected to the legislatively imposed limit of 5%. Consequently the HCI is 5% for hospitals whose fiscal years begin during the calendar quarter beginning April 1, 1984.

Department of Public Welfare
Division of Services for the Blind

Outside Opinion Sought Concerning the Provision of Rehabilitation Services to Blind Persons

Notice is hereby given that the Minnesota Department of Public Welfare is considering a draft rule governing the provision of rehabilitation services to blind persons, 12 MCAR § 2.176. Authority for this rule is contained in Minnesota Statute 248.07.

The rule will govern the provision of direct rehabilitative services to blind and visually handicapped persons, including program eligibility requirements, services provided, financial eligibility participation, the provision of Communication Center services, minimum standards for the completion of services, and hearings. The Business Enterprise Program is governed by rule 12 MCAR § 2.079 and is not covered by this action.

The purpose of this notice is to provide the opportunity for input from all organizations and individuals regarding this proposed draft of 12 MCAR § 2.176. Statements of information, suggestions or comments may be made orally or in writing.

Copies of the draft of the proposed rule may be obtained from and written statements of information and comment may be addressed to:

Karl W. Nitardy
Services for the Blind
1745 University Ave.
St. Paul, MN 55104

Oral statements of information and comment will be received over the telephone at (612) 296-6086 between 9:00 a.m. and 4:00 p.m. Monday through Fridays.

Statements of information and comment will be accepted until May 15, 1984. Any written material received by the Department shall become part of the hearing record. Oral statements will be considered but will not become part of the hearing record.

Department of Revenue
Property Equalization Division

Outside Opinion Sought Regarding Proposed Rules Governing Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

Notice is hereby given that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing to promulgate revised rules governing the valuation and assessment of utility companies. The promulgation of these rules is authorized by Minnesota Statutes section 270.06 (14), which permits the agency to make rules and regulations for the administration and enforcement of the property tax law.

The State Department of Revenue requests information and comments concerning the subject matter of these revised rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Ronald Cook
Property Equalization Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Oral statements will be received during regular business hours over the telephone at 612-296-5137 and in person at the above address.

All statements of information and comment shall be accepted until March 15, 1984. Any written material received by the State Department of Revenue shall become part of the record in the event that the rules are promulgated.

February 15, 1984

Lyle H. Ask, Director
Property Equalization Division

Department of Transportation

Petition of Cottonwood County for a Variance from State Aid Standards for Street Width

Notice is hereby given that the County Board of Cottonwood County has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width for a reconstruction project on CSAH 13 (13th Street) from River Road to Fourth Avenue in Windom.

The request is for a variance from 14 MCAR § 1.5032. H., 1., c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a minimum street width of 36 feet with parking on one side instead of 46 feet with parking on two sides.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 17, 1984

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the County of Clay for a Variance from State Aid Standards for Bridge Width

Notice is hereby given that the County Board of Clay County has made a written request to the Commissioner of Transportation for a variance from minimum design standards for bridge width on CSAH 22 over the Red River of the North approximately 4.0 miles north of Moorhead.

The request is for a variance from 14 MCAR § 1.5032. H.. 1.. a.. Rules for State Aid Operations under Minnesota Statutes, Chapters 161 and 162 (1978) as amended, so as to permit a minimum bridge width of 28 feet instead of a bridge width of 30 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 17, 1984

Richard P. Braun
Commissioner of Transportation

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Commodities contracts with an estimated value of $5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers at the indicated phone numbers as soon as possible. If the specific buyer is not available, contact Barbara Jolly or Harvey Leach at 296-3779.

Department of Administration

Request for Proposals for Rental of Office Space

The Department of Administration desires proposals for the rental of approximately 8,200 usable square feet of space comprising 2,000 square feet of office space, 3,400 square feet of lab space, 2,800 square feet of shipping, receiving, garage and storage space for the Department of Public Service; Weights and Measures Division, to be located within a designated part of the Metro area.

Contact:

Department of Administration
Real Estate Management Division
50 Sherburne Avenue, Room G-22
St. Paul, Minnesota 55155
Telephone: (612) 296-6674

Proposals must be submitted by 4:30 p.m. (CST) on Thursday, March 22, 1984.

Department of Administration Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

Contract #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount	Contact Person
26-071-13730	Power Amplifier	Mankato Univ.	Mankato MN	Contact buyer	Don 296-3777
07-200-29166	Dosimeters	Public Safety	St. Paul MN	Contact buyer	Don 296-3777
79-600-B	Hot Plant Bituminous—Rochester	Transportation	Rochester	Contact buyer	Jim Kinzie 296-3778

Contract #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount	Contact Person
79-800-B	Hot Plant Bituminous—Willmar	Transportation	Willmar	Contact buyer	Jim Kinzie 296-3778
	Nursery Stock	Various	DOT	Contact buyer	Cy 296-2621
Contract	Wheel Bolts	MCF	Stillwater MN	15,000-20,000	Maurie 296-3772
SCH.95	Bituminous Road Materials	Dept. of Transportation	Various	Contact buyer	Jim Kinzie 296-3778
Contract					
02-307-43346	Air Compressor	Admin-Plant Mgmt	St. Paul MN	Contact buyer	Dale 296-3773
79-000-41020-41013	Landscape Rakes & Disks	Transportation	Various	Contact buyer	Dale 296-3773
27-143-39712	Purchase of Word Processing System	Hibbing CC	Hibbing MN	Contact buyer	Bernadette 296-2546
Contract	Air Conditioners, Window Mounted	Various	Various	40,000-45,000	Maurie 296-3772
79-000-41307	Traffic Signal Pedestal Bases	Transportation	St. Paul MN	Contact buyer	Jim Kinzie 296-3778
79-100-B	Plant Mix Bituminous	Transportation	Duluth	Contact buyer	Jim Kinzie 296-3778
29-003-07044	Seeds	Natural Res.	Akeley MN 56433	Contact buyer	Cy 296-2621
Price Contract	Film Transparencies	Various	Various	49,000-50,000	Bernadette 296-2546
78-550-04360 #775269	Bldg Materials	MCF	Lino Lakes MN	Contact buyer	Jim Kinzie 296-3778
07-700-29152 775417	Title App.	Public Safety	St. Paul MN	Contact buyer	Art 296-3742
29-000-35431 775418	1984 Summer State Park Maps	Natural Resources	St. Paul MN	Contact buyer	Art 296-3742
29-000-35430	Law Enforcement Manual	Natural Resources	St. Paul MN	Contact buyer	Art 296-3742
79-000-39751	Addendum #1 Soil Drilling Machine	Dept. of Transportation	St. Paul MN	Contact buyer	Dale 296-3773
79-000-41306	Fiberoptic Traffic Sign	Dept. of Transportation	St. Paul MN	Contact buyer	Jim Kinzie 296-3778
55-000-87321-11-23	Snack Shop showcase, can pop vender, Bill changer	Dept. of Public Welfare–Services for the Blind	St. Cloud MN	Contact buyer	Cy 296-3778
Contract	Cont. Data Processing Forms	Various	Various	830,000-850,000	Bernadette 296-2546
Contract	Brake Shoes, Drums & other Supplies	Prison & Transportation Dept.	Various	20,000-25,000	Dale 296-3773
79-650-B	Plant Mix Bituminous	Transportation Dept.	Owatonna	Contact buyer	Jim Kinzie 296-3778
79-250-B	Hot Mix Bituminous	Transportation Dept. Mn DOT Crookston	Crookston	Contact buyer	Jim Kinzie 296-3778
Contract	TOLUOL	Transportation	Various	23,000-25,000	Harvey 296-3779
79-200-B	Hot Mix Bituminous	Transportation	Bemidji	Contact buyer	Jim Kinzie 296-3778
79-400-B	Plant Mix Bituminous	Transportation	Detroit Lakes	Contact buyer	Jim Kinzie 296-3778
79-150-B	Plant Mix Bituminous	Transportation	Virginia	Contact buyer	Jim Kinzie 296-3778
79-450-B	Plant Mix Bituminous	Transportation	Morris	Contact buyer	Jim Kinzie 297-3778
79-300-B	Plant Mix Bituminous	Transportation	Brainerd	Contact buyer	Jim Kinzie 296-3778
Contract	Joint Sealer	Transportation	Various	15,000-20,000	Jim Kinzie 296-3778
SCH.-95A	Crackfiller	Transportation	Various	Contact buyer	Jim Kinzie 296-3778
79-750-B	Plant Mix Bituminous	Transportation	Windom	Contact buyer	Jim Kinzie 297-3778

Hennepin County

Request for Proposals for Comprehensive Recycling Study

Hennepin County requests qualifications and proposals from source-separation consultants to conduct a comprehensive recycling study. Statements of qualifications and proposals are due on March 16, 1984. The RFQ/RFP is available from: David G. Winter, Senior Planner, Dept. of Environment and Energy, 320 Washington Avenue South, Hopkins MN 55343 (612) 935-3381.

Department of Public Welfare
Chemical Dependency Program Division

Request for Proposals for Chemical Abuse and Dependency Services in Jails

The Chemical Dependency Program Division (CDPD) of the Department of Public Welfare is soliciting proposals for the provision of demonstration programs in jails approved to hold prisoners up to one year that will offer chemical abuse and dependency services to incarcerated individuals. A total of $45,000 is available for three (3) or more grantees; no more than $20,000 will be granted to any one individual or county. There will be no continuation or second year funding. The funded programs will begin on or about July 1, 1984 and continue for a maximum of 18 months.

All requests for further information or copies of the complete RFP form can be obtained by contacting Dorrie Hennagir at 612/296-4617.

Proposals in response to this RFP must be submitted on the CDPD grant application form. A copy of the application form can be obtained by contacting Dorrie Hennagir at the above phone number. Six copies of the proposal must be in the CDPD office, 4th Floor, Centennial Office Building, 658 Cedar, St. Paul, MN 55155, no later than 4:20PM on March 26, 1984.

Department of Transportation
Aeronautics Division
Enforcement, Inspection, Safety—Weather Observation Program

Request for Proposals for Weather Observation Training

This is a contract whereby the selected vendor provides aviation weather observer training to 30-35 individuals to prepare them to pass the National Weather Service exam and to make aviation weather observations at Minnesota airports. Training class dates will be at the direction of the department. A maximum of three classes will be held. Vendors must be experienced and certified aviation weather observers or meteorologists and be familiar with all aspects of the operation of Supplementary Aviation Weather Reporting Stations.

The estimated contract value is $4,500.00.

The contact person is Roman Buettner. The telephone number is 612-296-8057.

The response deadline is March 9, 1984.

February 17, 1984

Richard B. Keinz
Assistant Commissioner
Minnesota Dept. of Transportation
Aeronautics Division

SUPREME COURT

Decisions of the Court of Appeals Filed Wednesday, February 15, 1984

Compiled by Wayne O. Tschimperle, Clerk

C9-83-1386 Gordon Petrick, Respondent, v. Transport Insurance Company, Appellant. District Court, Hennepin County.

An injury sustained by a truck driver when he slipped on oil on the trailer floor while entering the trailer to unload it resulted from the use of the truck as a motor vehicle within the meaning of Minn. Stat. § 65B.43, subd. 3 (1982), and is therefore compensable within the no-fault statute.

Affirmed. Lansing, J.

C1-83-1169 Bruce Wohlfeil and Gail Wohlfeil, Plaintiffs-Appellants, v. Murray Machinery, Inc., Defendant, Third-Party Plaintiff-Respondent. District Court, Hennepin County.

1. Viewing the evidence in the light most favorable to plaintiff, the trial court erred in directing a verdict and dismissing the action at the end of plaintiff's case since there was sufficient evidence to create a jury question on the cause of his injuries.

2. Given the broad discretion afforded trial courts on questions of expert testimony, the opinion of plaintiff's expert could be excluded for lack of foundation but not because it addressed the ultimate issue.

Reversed and remanded for a new trial on all issues.

Popovich, C.J.

C3-83-1612 Irene Fillmore and Richard Fillmore; City of St. Paul, a municipal corporation; Joan C. O'Brien, Special Representative of the Estate of John J. O'Brien, deceased; and Shelly Ann Woller, Appellants, v. Iowa National Mutual Ins. Co., Respondent. District Court, Ramsey County.

There is no duty under a homeowner's policy to defend or indemnify victims of an automobile accident, based upon negligent entrustment, supervision, or control of the driver, a minor son of the insureds.

Claims of negligent supervision and negligent entrustment are all within the ambit of the language "arising out of the use" of a motor vehicle and therefore fall within the exclusionary language of the policy.

Negligent entrustment is part of the tort of negligent use and operation of the entrusted automobile, and in this case there is no independent act that was not auto-related.

Affirmed. Wozniak, J.

C5-83-1367 Verdell Gulbranson, Respondent, v. Keith Gulbranson, Appellant. District Court, Hubbard County.

The trial court's division of the marital property was not an abuse of discretion. The record fully supported the property valuation of the trial court and its transfer of stock in a closely held corporation to the wife.

Affirmed. Lansing, J.

C5-83-1479 Frederick Marvin Hanson, petitioner, Appellant, v. State of Minnesota, Respondent. District Court, Becker County.

1. The affidavit supporting the search warrant enabled the reviewing judge to make the practical, common sense decision that there was a fair probability that the articles sought would be found in defendant's house and car.

2. Circumstantial evidence was sufficient to corroborate accomplice's testimony.

3. Where defense counsel initiates questioning concerning a prior trial of defendant, he is barred from asserting prejudice from state's questions about the trial.

Affirmed. Sedgwick, J.

Decisions of the Supreme Court Filed Friday, February 17, 1984

Compiled by Wayne O. Tschimperle, Clerk

C9-82-1507 State of Minnesota, Respondent, v. Richard Dean Wiplinger, Appellant. District Court, Crow Wing County.

Unauthorized implied admission of defendant's guilt by his trial counsel, which defendant objected to at trial, requires granting defendant a new trial.

Reversed and remanded for new trial. Amdahl, C.J.

Dissenting: Kelley, J., Peterson, J., Yetka, J., Wahl, J.

C0-83-207 County of Hennepin, Respondent, v. Leonard Levine, etc., Petitioner, and Cora Sheppo, et al., Respondents. District Court, Hennepin County.

Department of Public Welfare pass program for patients committed as mentally ill and dangerous to the public is a method of treatment rather than a type of commitment status.

Reversed. Amdahl, C.J.

C1-83-975 Mark Kayo Bixby, petitioner, Appellant, v. State of Minnesota, Respondent. District Court, Nobles County.

1. Court sentencing petitioner in 1982 for offense of receiving stolen property erred in refusing to decide whether two 1977 convictions for criminal sexual conduct in the third degree, for which petitioner was given two criminal history points, were based on a single behavioral incident; post-conviction court also erred in refusing to decide the issue.

2. Petitioner's two 1977 convictions were based on a single behavioral incident, and therefore sentencing court erred in computing petitioner's criminal history score and post-conviction court erred in refusing to correct the error.

Reversed. Amdahl, C.J.

C0-83-384 State of Minnesota, Respondent, v. David Zane Dietz, Appellant. District Court, Cottonwood County.

Trial court properly decided that aggravating circumstances were present justifying a departure as to consecutive service.

Affirmed. Amdahl, C.J.

C9-83-853 State of Minnesota, Respondent, v. Jay Wentz, Appellant. District Court, Brown County.

Trial court, in sentencing defendant for theft, had to choose between imprisoning defendant and placing him on probation; since the court chose to imprison defendant, court could not order restitution, absent an agreement by defendant to make restitution, but court could impose a fine.

Affirmed as modified. Amdahl, C.J.

C1-82-478 State of Minnesota, Respondent, v. John Cermak, Appellant. District Court, Olmsted County.

Trial court did not err in departing durationally in sentencing defendant to a total of 480 months or 40 years in prison for six convictions of criminal sexual conduct in the first degree committed on six different children.

Affirmed. Amdahl, C.J.

C2-82-361, C0-83-112 Terry Joseph Kilcoyne, petitioner, Appellant, v. State of Minnesota, Respondent. District Court, Dakota County.

Sentencing court did not err in departing durationally from the presumptive sentence.

Affirmed. Amdahl, C.J.

C4-83-646 Robin Kay Updegraff, petitioner, Respondent, v. Commissioner of Public Safety, Appellant. District Court, Hennepin County.

At hearing on petition seeking rescission of order revoking driver's license for violating Implied Consent Law, municipal court did not err in concluding that state met its burden of establishing that arrest was lawful.

Reversed and remanded. Todd, J.

C5-82-1648 James S. Krause and Stuart Krause, Respondents, v. James A. Merickel, Respondent, Clarence R. Paulson, Respondent, Otto Leader and James Davis, Respondents, James E. Ahlfs, Respondent, Mildren R. Thompson, et al., Defendants, Arthur E. Noot, Commissioner of Public Welfare, intervenor, Appellant. District Court, Otter Tail County.

1. A medical assistance lien filed by a county welfare department pursuant to Minn. Stat. § 393.10 (1982) was validly executed and filed.

2. Medical assistance payments made prior to August 1, 1975, the effective date of Act of June 2, 1975, ch. 247, § 5, 1975 Minn. Laws 699, 700, were not recoverable by the county under a lien filed in 1977.

3. In allocating the proceeds of the settlement of a tort case between joint plaintiffs, when one plaintiff's recovery is subject to a medical assistance lien, the court is required to examine the proposed allocation on an ad hoc basis and consider all of the facts and circumstances existing to determine whether the proposed allocation is unreasonable or patently arbitrary, or whether it is designed to defeat a lien for medical assistance, or whether under all of the circumstances it is reasonable and fair to all parties.

Affirmed. Kelley, J.

SUPREME COURT

C9-82-1488 State of Minnesota, Respondent, v. Ben Gissendanner, Appellant. District Court, Ramsey County.

1. Trial court did not err in refusing to let defendant represent himself, in denying motion to bar use of defendant's prior conviction to impeach him if he testified, or in refusing to submit the lesser included offense of criminal sexual conduct in the third degree.

2. Trial court was justified in departing from presumptive sentence but scope of departure was excessive.

Affirmed as modified. Scott, J.

C9-83-125 Norman Perl, Richard Hunegs, and DeParcq, Anderson, Perl, Hunegs & Rudquist, P.A., Respondents, v. St. Paul Fire and Marine Insurance Company, Appellant, and Cecelia E. Rice and Margaret R. Dunlevy, Defendants. District Court, Hennepin County.

1. Forfeiture of attorney fees to a client is an award of "money damages" against the attorney within the meaning of the attorney's liability policy.

2. A coverage exclusion in an attorney's liability policy for a "fraudulent" act or omission of the attorney does not apply to constructive fraud for breach of a fiduciary duty.

3. A coverage exclusion in an attorney's liability policy for "exemplary or punitive damages" does not apply to forfeiture of attorney fees for breach of a fiduciary duty.

4. Provisions of an attorney's liability policy, to the extent they purport to insure an attorney for forfeiture of his or her attorney fees for breach of a fiduciary duty, are contrary to public policy and of no validity; however, insofar as they afford coverage to the offending attorney's employer or partnership for vicarious liability, such provisions are not contrary to public policy and do afford valid coverage for the vicarious liability.

Affirmed in part and reversed in part. Simonett, J.

Took no part, Kelley, J., and Coyne, J.

C6-82-315 In the Matter of the Petition for Disciplinary Action against Duane Franke, a Minnesota Lawyer. Supreme Court.

Disbarred. Per Curiam.

Took no part, Coyne, J.

C2-75-46057 In the Matter of the Application of Carl Sigurd Swanson for Reinstatement as a Member of the Bar of the State of Minnesota. Supreme Court.

Petition denied. Per Curiam.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota, Tax Court

Howard & Patricia Saaski, Appellants, v. the Commissioner of Revenue, Appellee, Docket No. 3896

Findings of Fact, Conclusions of Law, and Order

The above entitled matter was submitted to the Honorable Carl Jensen, Judge of the Minnesota Tax Court, on a Stipulation of Facts filed on November 10, 1983. The issue in this case is whether the Appellants were entitled to claim Anselm Saaski as their

dependent and to deduct their payments of Anselm Saaski's nursing home and medical expenses on their Minnesota income tax returns for the tax years 1978, 1979, 1980 and 1981.

Donna M. Gustafson, attorney at law, appeared for Appellants.

Michele M. Mielke, Special Assistant Attorney General, appeared for Appellee.

SYLLABUS

A taxpayer cannot claim a parent as a dependent when the parent has income and assets sufficient to support himself.

FINDINGS OF FACT

1. The Appellants, Howard and Patricia Saaski, were cash-basis, calendar year taxpayers and residents of Minnesota for the 1978, 1979, 1980 and 1981 tax years.

2. On their 1978, 1979, 1980 and 1981 Minnesota income tax returns, the Appellants, Howard and Patricia Saaski, claimed dependent status and deducted medical expenses for Appellant Howard Saaski's aged father, Anselm J. Saaski. True and correct copies of Appellants' 1978, 1979, 1980 and 1981 Minnesota income tax returns are contained in the Commissioner of Revenue's return and answer on file with the Court in this case.

3. Anselm Saaski was born on April 23, 1906. He died on April 21, 1982, in Duluth, Minnesota.

4. Anselm Saaski suffered a stroke and heart attack in August, 1977. For the period from August, 1977 through April, 1982, Anselm Saaski resided at the Surf and Sands Nursing Home in Duluth, Minnesota.

5. During the year 1978 Anselm Saaski incurred nursing home and medical expenses of $13,517.73.

6. During the year 1979 Anselm Saaski incurred nursing home and medical expenses of $16,030.99.

7. During the year 1980 Anselm Saaski incurred nursing home and medical expenses of $15,689.56.

8. During the year 1981 Anselm Saaski incurred nursing home and medical expenses of $20,436.98.

9. During the years 1978 through 1981 the above nursing home and medical expenses incurred by Anselm Saaski were paid by the Appellants Howard and Patricia Saaski.

10. Anselm Saaski incurred some personal living expenses for items such as clothing or haircuts during the years 1978 through 1981 which amounted to no more than $1,000.00 a year. These expenses were paid by Anselm Saaski.

11. Anselm Saaski's 1978 Minnesota gross income as reported on line 1 of his Minnesota income tax return was $10,388.96.

12. Anselm Saaski's 1979 Minnesota gross income as reported on line 1 of his Minnesota income tax return was $11,276.85.

13. Anselm Saaski's 1980 Minnesota gross income as reported on line 1 of his Minnesota income tax return was $11,204.04.

14. Anselm Saaski's 1981 Minnesota gross income as reported on line 1 of his Minnesota income tax return was $11,337.21.

15. During the years 1978, 1979, 1980 and 1981, Anselm Saaski made several cash loans to Appellant Howard Saaski on the following dates and in the following amounts:

Date	Amount Loaned	Interest Rate
April 1, 1978	$14,100.00	8%
April 1, 1978	18,000.00	8%
April 1, 1978	20,000.00	8%
August 1, 1978	10,000.00	8%
January 1, 1979	5,000.00	8%
February 15, 1979	10,000.00	8%
March 1, 1979	1,500.00	8%
December 1, 1979	4,000.00	8%
March 1, 1980	4,000.00	8%

16. The above loans (listed in paragraph 15) from Anselm Saaski to Appellant Howard Saaski were evidenced by demand notes. Interest payments on all the notes were made at least on a yearly basis. The income listed on Anselm Saaski's 1978, 1979, 1980 and 1981 Minnesota income tax returns includes the interest payments received by him from Appellant Howard Saaski. All of these loans were made to help Appellants Howard and Patricia Saaski build a new home.

17. During the years from 1978 through 1981, Anselm Saaski made the following cash gifts to the following persons:

Amount of Gift	Recipient	Year Gift Given	Relationship of Recipient to Anselm Saaski
$3,000.00	Bruce Saaski	1978	grandson
$3,000.00	Lynn Saaski	1978	granddaughter
$3,000.00	Judy Saaski	1978	granddaughter
$3,000.00	Bruce Saaski	1979	grandson
$3,000.00	Lynn Saaski	1979	granddaughter
$3,000.00	Judy Saaski	1979	granddaughter
$3,000.00	Bruce Saaski	1980	grandson
$2,000.00	Lynn Saaski	1980	granddaughter
$3,000.00	Judy Saaski	1980	granddaughter
$3,000.00	Bruce Saaski	1981	grandson
$2,000.00	Lynn Saaski	1981	granddaughter
$3,000.00	Judy Saaski	1981	granddaughter

18. Bruce Saaski, Appellants Howard and Patricia Saaski's son, lived rent-free in a house jointly owned by Anselm Saaski and Appellant Howard Saaski located at 913 East Sixth Street, Duluth, Minnesota, during 1978 through 1981 with Anselm Saaski's knowledge and consent.

19. Edwin and Esther Dahlberg, Appellant Patricia Saaski's parents, lived rent-free in a house jointly owned by Anselm Saaski and Appellant Howard Saaski located at 913 East Sixth Street, Duluth, Minnesota, during 1978 through 1981 with Anselm Saaski's knowledge and consent.

20. By orders dated April 15, 1983, the Minnesota Commissioner of Revenue disallowed the dependent status for Anselm Saaski claimed by Appellants Howard and Patricia Saaski on their 1978 through 1981 Minnesota income tax returns. By the same orders, the Commissioner of Revenue also disallowed the medical expense deductions taken by Appellants Howard and Patricia Saaski on their 1978 through 1981 Minnesota income tax returns based on their payment of Anselm Saaski's nursing home and medical expenses for those years. True and correct copies of these orders are contained in the Commissioner of Revenue's return and answer on file with the Court in this case.

21. Anselm J. Saaski was not dependent upon Appellants for the taxable years in question.

CONCLUSIONS OF LAW

1. Appellants are not entitled to claim dependent status for Anselm J. Saaski for taxable years 1978 through 1981.

2. Appellants are not entitled to a medical expense deduction for the nursing home and medical expenses of Anselm J. Saaski for the taxable years 1978 through 1981.

3. The Commissioner of Revenue's Order dated April 15, 1983, relating to taxable years 1978, 1979, 1980 and 1981 is affirmed in all respects.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

February 14, 1984

By the Court,

Carl A. Jensen, Judge
Minnesota Tax Court

State of Minnesota, Tax Court
County of Stearns, Regular Division

Gary Messer, Appellant, v. Commissioner of Revenue, Appellee, Docket Nos. 3887, 3921

Findings of Fact, Conclusions of Law, and Order

Appeal in docket number 3887 is an appeal from the order of the Commissioner dated March 28, 1983 assessing income tax against the appellant for the years 1979 and 1981. Appeal in docket number 3921 is an appeal of the order of the Commissioner dated June 7, 1983 assessing additional income tax for 1980. The appeals in docket numbers 3887 and 3921 were consolidated for

hearing and held before the Honorable John Knapp, Chief Judge of Minnesota Tax Court on October 31, 1983 at the Stearns County Courthouse in St. Cloud, Minnesota.

Gary Messer, appeared pro se.

Neil F. Scott, Special Assistant Attorney General, appeared for the appellee.

SYLLABUS

The issue is whether payments received by the appellant in exchange for his labor or personal services is includable in Minnesota gross income under Minn. Stat. 290.01 subd. 20 and subject to Minnesota income tax.

FINDINGS OF FACT

1. The appellant is a cash basis calendar year taxpayer who resided in Minnesota during 1979 through 1981, the years in question.

2. During the years 1979 through 1981 the appellant was paid for performing personal services for Modern Farm Equipment, Inc. as follows:

1979	$11,500
1980	$13,021
1981	$11,568

3. Modern Farm Equipment supplied form 1099 "non-employee compensation" to the appellant and the Commissioner of Revenue verifying the income recited in paragraph 2 above.

4. Modern Farm Equipment, Inc. withheld $36.64 state income tax for the appellant in 1979. No state income tax was withheld in 1980 or 1981.

5. The appellant failed to file state income tax returns for 1979 through 1981.

6. On February 3, 1983 the Department of Revenue demanded the appellant file 1979 and 1981 income tax returns within 30 days. On March 28, 1983 the Department of Revenue demanded the appellant file a 1980 income tax return within 30 days.

7. The appellant failed to file his returns and on March 28, 1983 an assessment of income taxes was made for 1979 and 1981 and a return filed on his behalf under Minn. Stat. 290.47. On June 7, 1983 an assessment was made for 1980 and a return filed on behalf of the appellant under Minn. Stat. 290.47.

8. The tax assessed by the Commissioner of Revenue was as follows:

	TAX	PENALTY	INTEREST	TOTAL
1979	752.00	188.00	360.18	1300.18
1980	908.00	227.00	375.26	1510.26
1981	709.00	177.25	176.71	1062.96

9. At the hearing the appellant presented no evidence to dispute the assessment and presented no evidence of allowable deductions.

CONCLUSIONS OF LAW

1. The compensation earned by the appellant in exchange for his personal services or labor performed from Modern Farm Equipment Inc. during the years 1979 through 1981 is Minnesota gross income under Minn. Stat. 290.01 subd. 20 and subject to Minnesota income tax.

2. The Commissioner's order dated June 7, 1983 assessing income tax, penalty and interest for 1980 is hereby affirmed in all respects.

3. The Commissioner's order dated March 28, 1983 assessing income tax, penalty and interest for 1979 and 1981 is hereby affirmed in all respects except that the appellant shall be allowed a credit against tax for the $36.64 withheld by his employer in 1979.

4. Judgment shall be entered by the Clerk of District Court based upon the Order of the court together with an affidavit of the Commissioner reciting the correct tax, penalty and statutory interest computed through the date of the entry of judgment.

LET JUDGMENT BE ENTERED ACCORDINGLY.

By the Court,

February 13, 1984

John Knapp, Chief Judge
Minnesota Tax Court

State of Minnesota, Tax Court
County of Hennepin, Regular Division

James A. McGinley, Appellant, v. Commissioner of Revenue, Appellee, Docket No. 3882

Findings of Fact, Conclusions of Law, and Order

This is an appeal from an Order of the Commissioner dated March 21, 1983 assessing income tax for 1981. The hearing was held November 2, 1983 before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court at the Space Center in St. Paul.

James A. McGinley appeared pro se.

Neil F. Scott, Special Assistant Attorney General appeared for the appellee.

SYLLABUS

The issue in this case is whether payments received by the appellant in exchange for his labor or personal services is includable in Minnesota gross income under Minn. Stat. 290.01 subd. 20 and subject to Minnesota income tax.

FINDINGS OF FACT

1. Appellant is a cash basis calendar year taxpayer who resided in Minnesota during 1981.

2. During the year 1981 appellant was an employee of CPT Corporation. By reason of his employment appellant was paid $26,205.00 in compensation for the taxable year 1981.

3. The appellant did not timely file a state income tax return for 1981 or apply for an extension.

4. The Department of Revenue conducted a program called "fair share" to determine the names of individuals with Minnesota addresses who had filed federal returns, but not state returns. The appellant's name appeared on the list and he was contacted in writing on February 11, 1983.

5. On March 11, 1983 appellant then filed an unsigned tax return form showing zero tax due. He also attached a letter stating that he did not believe he was subject to tax.

6. On March 21, 1983 the Department of Revenue filed a 1981 individual income tax return on behalf of the appellant showing $1802.00 tax, $450.50 penalty and $441.86 interest through March 21, 1983.

7. The tax assessed by the Commissioner was based on information from the federal government and has since been verified by reviewing the W-2 statement from the appellant's employer.

8. Appellant's W-2 statement also indicates that $1511.31 was withheld from the appellant's wages in 1981 for state income tax.

9. At the hearing the appellant did not present any evidence of itemized deductions or other changes to the assessment.

CONCLUSIONS OF LAW

1. The compensation earned by the appellant in exchange for his personal services or labor performed for CPT Corporation during 1981 is includable gross income in Minnesota under Minn. Stat. 290.01, subd. 20 and subject to Minnesota income tax law.

2. The Commissioner's order is validly computed in light of both the evidence presented at trial and the failure of appellant to introduce any proof that the assessment was incorrect.

3. The Commissioner's order herein dated March 21, 1983 is correct and proper and is affirmed in all respects, except that appellant is entitled to credit for the $1511.31 state income tax withheld by his employer in 1981.

4. Judgment shall be entered against the appellant on the basis of this Order together with an affidavit of the Commissioner of the correct tax, penalty and interest due after allowing credit for the $1511.31 state income tax withheld by the appellant's employer in 1981.

LET JUDGMENT BE ENTERED ACCORDINGLY.

February 13, 1984

By the Court,

John Knapp, Chief Judge
Minnesota Tax Court

STATE OF MINNESOTA

State Register and Public Documents Division
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297-3000

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B1

2223 Dodge Street
Omaha, Nebraska 68102
Telephone (402) 633-4000

INTERNORTH

January 17, 1984

Mr. Ronald K. Cook
Utility Valuation Examiner
State Assessed Properties
Property Equalization Division
Minnesota Department of Revenue
Centennial Building
St. Paul, Minnesota 55145

Dear Mr. Cook:

You have requested input from the utility companies for topics of discussion at the Utility Advisory Committee meeting on January 18, 1984. We appreciate this opportunity and would like to take this opportunity to again set forth what we believe are needed changes in the rules.

13 MCAR S 1.0003 Valuation

C. Cost Approach

We ask that the valuation rules be changed to recognize original cost of utility plant less depreciation allowed by the regulatory agency as the cost indicator of value.

Regulated companies, such as Northern and Peoples have their earnings limited to an allowed rate of return based principally on net utility plant investment. If net book investment is recognized by the regulatory agency, this should be a clear indicator of the value of the property. In fact, net book is the upper limit of the cost indicator of value. The Department has created an artificial value when it has disallowed depreciation in excess of 47½%.

D. Income Approach to Valuation

In 1983 the Department increased the capitalization rate to be used in determining a capitalized income value for utility companies. The rate for gas distribution companies was set at 10% and for pipeline companies, 10.25%. We believe these capitalization rates are inadequate and ask that they be increased to 12% and 12.25% respectively.

INTERNORTH

13 MCAR S 1.0003 Valuation (Cont'd)

D. Income Approach to Valuation (Cont'd)

The Department's own computation in 1983 used a 10 year study for common equity and preferred stock rates of return but used 15 years to arrive at a rate to be applied to debt. If a consistent use of 10 years had been used in all three areas of capitalization the Department's study would have justified a rate of 11% as the basic indicator for capitalization.

It is our belief that the Department should use a rate of return for equity of at least 15% to reflect the demand of the market place. This is a conservative estimate of what can be supported from market indicators.

This adjustment in the Department's bond of investment computation indicates that the basic capitalization rate for the gas distribution companies should be 12% and the pipeline companies should be 12.25%.

13 MCAR S 1.0004 Allocation

C. Gas Distribution Companies, and,

D. Pipeline Companies.

As we have in the past, we again wish to comment on what we believe is an unfair allocation used by Minnesota. The rules state that in allocating the system value of the company to Minnesota, a gross revenue factor will be used and weighted 25% in the case of gas distribution companies and 20% for pipeline companies.

Gross revenue has no relation to the property being valued and should not be used in allocation of value. The Department has stated that the unit value is based partly on an income indicator, therefore revenue is a legitimate factor to be included. Gross Revenue, as required in the rules, again has little relevance to net operating income, which is the basis of the income indicator.

INTERNORTH

13 MCAR S 1.0004 Allocation (Cont'd)

C. Gas Distribution Companies, and,

D. Pipeline Companies. (Cont'd)

Northern's gross revenue in Minnesota is high since this is one of our primary market areas. The gross revenues reflect the cost of transporting gas from Texas, Oklahoma, and Kansas to this area for resale. These gross revenues also reflect the higher cost of imported Canadian gas which is sold primarily in this market area. A ratio of Minnesota gross revenue divided by system gross revenue results in the importing of value into Minnesota from the other states on our system. Also, the use of gross revenue in the allocation scheme clearly provides preferential treatment to those companies that do not provide a product or service to the citizens of Minnesota.

We recommend a change in the valuation rules so that allocation of the unit value to the State of Minnesota is based on the factor of gross plant investment only.

We urge a change in the utility valuation rules for 1984 to include the above recommendations.

Sincerely,

Bob Foster

R. M. Foster
Director, Property Tax

RMF/cjs

cc: Mr. Jerry Garski

B2

Northern States Power Company

414 Nicollet Mall
Minneapolis, Minnesota 55401
Telephone (612) 330-5500

REVENUE
MAILROOM
MAR 9 1984

March 8, 1984

Mr Ronald Cook
Property Equalization Division
Department of Revenue
Centennial Building
St Paul, MN 55145

Dear Ron,

In accordance with the notice published in the State Register, I wish to submit the recommendations of Northern States Power Company relative to adjustments in the rules and regulations for utility valuations.

While we feel the unit value method of establishing market value for utility property is the most equitable approach, there are some areas that need refinement. Two such areas are the rate for capitalizing Net Operating Income and the rate for depreciation. At the present time, we feel that both rates are inadequate and the values produced are inconsistent with our perceived value.

The current formula utilizes a standard statewide cap rate and depreciation rate. While these schedules have been supported in the past, they fail to tell the whole story. A standard depreciation rate, although uniform, does not produce uniform results within the industry because a particular rate may favor one company with a lower market value in terms of the ratio of market to taxable property and it may penalize another company by producing a higher market value in those same terms. The use of a standard cap rate is not objectionable, if it were high enough; however, we feel that the current rate is unrealistically low. Therefore, it is our recommendation that the cap rate be increased to 13% and the depreciation rate be the rate used by the individual company in setting its depreciation reserve. In this manner, each company's financial structure is considered and its effect on the market value is recognized.

Very truly yours,

Bob

Robert J Dolan
Manager Property Tax

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Rules of the State Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies (Utility Companies)

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 30th day of March, 1984, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Revenue for that purpose and be published in the State Register.

STATE OF MINNESOTA

Arthur C. Roemer

COMMISSIONER OF REVENUE

STATE REGISTER

STATE OF MINNESOTA



VOLUME 8, NUMBER 41

April 9, 1984

Pages 2205-2240

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 8		
42	Monday Apr 2	Monday Apr 9	Monday Apr 16
43	Monday Apr 9	Monday Apr 16	Monday Apr 23
44	Monday Apr 16	Monday Apr 23	Monday Apr 30
45	Monday Apr 23	Monday Apr 30	Monday May 7

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NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
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MINNESOTA RULES

Office of the Revisor of Statutes
State Register and Public Documents Division

Announcement of New Minnesota Rules Format

Beginning with the March 19 issue of the *State Register*, proposed rules published in the *State Register* will be drafted in a new format and will use a new numbering system. This format and numbering system change was made by the Revisor of Statutes as part of the Revisor's recompilation of state administrative rules. This recompilation has been published and is known as *Minnesota Rules*.

The MCAR format will still appear when agencies publish changes to proposed rules that were published in the MCAR format. The changes will follow the MCAR format so that readers can easily compare the proposed and adopted rules. Also, rules that began at the proposal stage in the MCAR format before the changeover will still appear in the MCAR format in the *State Register*. After the rules have been adopted, the revisor will recompile them in the new format for inclusion in *Minnesota Rules*.

Copies of the *Minnesota Rules Drafting Manual*, which explains the new format, can be purchased from the State Register and Public Documents Division of the Department of Administration. The cost is $11.00 plus 6% sales tax (Minnesota residents only) and $1.50 handling charge (handling charge applicable to mail orders only). Prepayment is required.

Concordance tables for converting MCAR numbers into MR numbers and vice versa is also available. It is included in Volume 6 of the new set of *Minnesota Rules*, 1983. The entire six-volume set is available for $115.00 plus tax (all orders prepaid; the seventh volume will be mailed out later). A limited number of individual volumes is available. The cost of Volume 6 of *Minnesota Rules* is $17.00 plus sales tax and handling charge ($1.50 for mail orders), and is available from the State Register and Public Documents. For questions about specific MCAR-MR conversions, call Barbara Moehrle, Revisor's Office, at 297-2958.

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

State Board of Education
Department of Education
Operations Division

Proposed Rules Governing Required Three-Year and Four-Year Senior Secondary School Curriculum Offerings, 3500.2010 and 3500.2110

Notice of Hearing

A public hearing concerning the proposed rules will be held at William Mitchell College of Law, Room 111, 875 Summit Avenue, St. Paul, Minnesota 55105 on May 14, 1984, commencing at 9:00 a.m. and continuing until all interested persons have had an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearings process.

Following the Board's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, MN 55415, telephone (612) 341-7645, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 14.02 to 14.56, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules to be codified MN Rules 1400.0200-1400.6600). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Board and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include all the evidence and argument which the Board anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing.

The proposed rules require specific subject courses and credits to be available to all senior secondary school students. These rules include specific required subjects and credits as well as a minimum comprehensive array of elective subjects from which each student would be able to select elective subjects and credits.

The Board's statutory authority to promulgate the proposed rules is provided by Laws of Minnesota 1983, Ch. 314, Art. 8, § 23 and Minn. Stat. § 121.11, subd. 7.

It is estimated that the cost of the total rules proposal will range from $2,000,000 to $4,000,000 depending on the implementation decisions made by the local school districts. See fiscal statement attached.

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to Dr. Donald A. Johansen, Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rules, contact Dr. Donald A. Johansen, (612) 296-4055.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Board may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Board. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the Board (in the case of the Board's submission or resubmission to the Attorney General).

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any one month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, telephone (612) 296-5615.

February 14, 1984

Ruth E. Randall, Secretary
State Board of Education

FISCAL STATEMENT

The State Board of Education estimates that there will be some cost to local school districts in the state in order to implement the proposed rule for the first two years immediately following its adoption within the meaning of Minnesota Statute Section 14.11, subdivision 1. However, because costs vary from school to school depending on staff, licensure, local courses currently being offered, it is not possible to project an accurate cost estimate. We can estimate that the full time equivalent of 120 teachers would be necessary if the only option school districts elected was to hire additional teachers. These 120 teachers at an average salary of $24,000 would amount to $2,880,000 per year and this would not include textbooks, equipment, support services, and other extra costs. There is the very real possibility that many of these courses will be taught by teachers already employed by the schools and licensed in the subject area. They may very well be reassigned from other subject areas which are not required to be offered.

Other options are sharing of teachers with other districts, sharing of students with other districts, alternating course offerings on a yearly basis, and utilizing the emerging technology such as interactive TV or computer assisted interactive video tape. All of these options have start-up costs but varying and undetermined continuing costs.

In determining the estimate of costs, some of the factors in determining the estimated costs which must be considered are:

- The number of districts which can add required courses by reassignment.
- The number of schools currently without the required elective program. I.E.: It is estimated that 200 districts in Minnesota do not presently offer secondary modern and classical foreign language study. It is estimated that other proposed required programs in the rule are being provided in all but the smallest schools.
- The number of districts which will be able to share students and/or teachers.
- The number of districts which will elect to provide options through technology.

The Department of Education estimates that the total cost to the state will range from $2,000,000 to $4,000,000 annually.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Rules as Proposed (all new material)

3500.2010 REQUIRED CURRICULUM OFFERINGS FOR THREE-YEAR SENIOR SECONDARY SCHOOLS.

Subpart 1. Required during grades 10-12 program. The subjects listed in subpart 2 are required to be offered to students in a secondary school having grades 10 to 12. Except for physical education, each of the listed subjects must be made available over the three-year period for the minimum number of clock hours shown in subpart 2. Physical education must be offered for a minimum of 60 clock hours in grade 10. One credit/hour is equal to 120 clock hours. The minimum requirements may be expressed in clock hours or credit/hours.

Subp. 2. Schedule.

Subjects	Minimum Clock Hours	Credit/Hours
Communication skills	480	4
Mathematics	360	3
Science	360	3
Social studies	360	3
One modern-classical foreign language	240	2
Music	240	2
Visual arts	240	2
Industrial arts	120	1
Health	60	1/2
Physical education in grade 10	60	1/2
Electives, local district choice in five subject areas	1,200	10

Subp. 3. Required offerings without minimum hours. The programs in A and B must be offered to students. The number of clock hours to be devoted to each is up to the local school board. Satisfactory completion will be based on locally determined learner outcomes which are defined as knowledge, skills, or understandings that an individual student derives from a learning experience.

A. A school district must provide a career education program developed by involving parents or guardians and the community. The program must be designed to assist pupils in making career decisions including course selections.

B. A school district must provide an information technology program to meet individual student needs.

3500.2110 REQUIRED CURRICULUM OFFERINGS FOR FOUR-YEAR SENIOR SECONDARY SCHOOLS.

Subpart 1. Required during grades 9-12 program. The subjects listed in subpart 2 are required to be offered to students in a secondary school having grades 9 to 12. Except for physical education, each of the listed subjects must be made available over the four-year period for the minimum number of clock hours shown in subpart 2. Physical education must be offered for a minimum of 80 clock hours in grade 9, and 60 clock hours in grade 10. One credit/hour is equal to 120 clock hours. The minimum requirements may be expressed in clock hours or credit/hours.

Subp. 2. Schedule.

Subjects	Minimum Clock Hours	Credit/Hours
Communication skills	600	5
Mathematics	480	4
Science	480	4
Social studies	480	4
One modern-classical foreign language	240	2
Music	240	2
Visual arts	240	2
Industrial arts	120	1
Health	60	1/2
Physical education		
in grade 9	80	2/3
in grade 10	60	1/2
Electives, local district choice in five subject areas	1,200	10

Subp. 3. Required offerings without minimum hours. The programs in A and B must be offered to students. The number of clock hours to be devoted to each is up to the local school board. Satisfactory completion will be based on locally determined learner outcomes which are defined as knowledge, skills, or understandings that an individual student derives from a learning experience.

A. A school district must provide a career education program developed by involving parents or guardians and the community. The program must be designed to assist pupils in making career decisions including course selections.

B. A school district must provide an information technology program to meet individual student needs.

Housing Finance Agency

Proposed Rules Relating to Local Participation Home Improvement Loans

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules within the 30-day comment period. The rule may be modified as the result of comments received if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.13 *et. seq.* If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Kathleen J. Johnson
Legal Division
Minnesota Housing Finance Agency
Suite 200
333 Sibley Street
St. Paul, Minnesota 55101
Telephone: 612/296-9793

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, and Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Kathleen J. Johnson.

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

April 6, 1984

James J. Solem
Executive Director

Rules as Proposed (all new material)

4900.0550 FUNDS.

Subpart 1. Request for funds. A local government that wishes to receive an allocation of funds to make local participation home improvement loans shall submit a request for funds that includes the following items, which may be further described by the agency:

A. a description of the proposed program;

B. a description of the program requirements to be imposed by the local government that are not set forth in parts 4900.0510 to 4900.0570;

C. an analysis of the need for the proposed program in the community;

D. a demonstration of financial feasibility of the proposed program;

E. evidence that an adequate delivery mechanism is available for the proposed program; and

F. the specific funding amount requested and the time period, that is within the maximum time period set by the agency, during which the funds will be expended.

Subp. 2. Deadline for requests for funds. The agency shall give notice that it will accept requests for funds to make local participation home improvement loans from local governments for the period specified by the agency. This period may not be less than 30 days.

4900.0560 ELIGIBLE APPLICATIONS.

An application for a local participation home improvement loan must meet all of the requirements of part 4900.0510.

4900.0570 ELIGIBLE IMPROVEMENTS.

An improvement financed with the proceeds of a local participation home improvement loan must meet all of the requirements of part 4900.0520.

4900.0580 DEFINITION: PERSONS AND FAMILIES OF LOW AND MODERATE INCOME.

For local participation home improvement loans, "persons and families of low and moderate income" means those persons and families whose adjusted income does not exceed 125 percent of the median income for the county in which these projects are located, as determined and adjusted from time to time by the United States Department of Housing and Urban Development, or the income limit for home improvement loans under parts 4900.0510 and 4900.0520, whichever is greater; provided, however, that the maximum adjusted income may not exceed 100 percent of the median income for the county in Minnesota that has the highest median income, as determined and adjusted from time to time by the United States Department of Housing and Urban Development.

Public Utilities Commission

Proposed Rules Governing Automatic Adjustment of Charges

Notice and Order for Hearing

Notice is hereby given that public hearings in the above entitled matter will be held by the Minnesota Public Utilities Commission (the Commission) pursuant to Minn. Stat. § 14.14, Subd. 1, at the following times and locations:

Monday, May 14, 1984, 7:00 p.m., County Service Building, Meeting Room #1, Laurel Street, Brainerd, MN 56401.

Tuesday, May 15, 1984, 7:00 p.m., 715/Large Hearing Room, 7th Floor, American Center Building, St. Paul, MN 55101.

Wednesday, May 16, 1984, 7:00 p.m., Rochester Community College, Cube Room, Highway 14E, Rochester, MN 55904.

The hearing will commence at the designated times and continue until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning adoption of the proposed amendments to the rules by submitting either oral or written data, statements or arguments.

Authority for the adoption of these amendments is contained in Minn. Stat. §§ 216B.16, Subd. 7 and 216B.08.

The Commission estimates that there will be no cost to local public bodies in the State in connection with implementation of these proposed amendments for the two years immediately following their adoption within the meaning of Minn. Stat. § 14.11, since the rules do not apply to municipal utilities. The Commission has considered pursuant to Minn. Stat. § 14.115 whether these amendments may have an impact on small businesses and has determined that they will not.

The Commission first adopted the above-captioned rules on January 21, 1978. A Notice of Intent to Solicit Outside Opinion regarding this rulemaking was published on December 27, 1982.

The purpose of the proceeding is to determine the need for and reasonableness of the proposed amendments as well as allowing the Commission the opportunity to obtain additional public input on the form and content of the proposed amendments to the rules.

The hearings will be held before Hearing Examiner Phyllis Reha, Office of Administrative Hearings, 400 Summit Bank Building, 310 South 4th Avenue, Minneapolis, Minnesota 55415, telephone 612/341-7611, a hearing examiner appointed by the chief hearing examiner of the State of Minnesota. All parties have the right to be represented by legal counsel, by themselves, or any other representative of their choice, if not otherwise prohibited as the unauthorized practice of law. The hearing will be conducted in accordance with the applicable laws relating to the Commission, the Administrative Procedures Act (Minn. Stat. §§ 14.13-14.20), the Rules of the Office of Administrative Hearings (9 MCAR §§ 2.101-2.113), and the Rules of Practice of the Commission (Minn. Reg. PSC 500-521), to the extent that they have not been superseded by the Rules of the Office of Administrative Hearings.

The above-cited procedural rules are available for inspection at the Office of Administrative Hearings and the Commission, or may be purchased from the State Register and Public Documents Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, telephone 612/297-3000.

The cited procedural rules provide generally for the procedural rights and obligations including the right to present evidence and cross examine witnesses, the right to purchase a record or transcript, and the obligation to meet certain time limits.

A copy of the proposed amendments to the rules is attached to this notice and order.

Any interested person will be provided with one copy of the proposed amendments to the rules without charge upon request to Randall D. Young, telephone 612/296-7526. Additional copies will be available at the hearing.

In the interest of efficiency, the Commission requests that any person having comments on or objections to any part of the proposed amendments to the rules submit their comments or objections to the Commission (attention Randall D. Young, Executive Secretary, Docket No. G,E-999/R-83-467) and to Hearing Examiner Reha as soon as possible and preferably prior to May 9, 1984. Any such comments or objections should:

—state concisely and with particularity each portion of the proposed amendments to the rules that the author supports or objects;

—state the basis for the author's support or objection; and

—state any proposed modifications to the proposed amendments to the rules, the author's reasons for those modifications and the basis for those modifications.

Failure to submit such comments or objections prior to the hearings will not prohibit any person from submitting written or oral statements on the record at the hearing.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the Commission's offices and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and argument which the Commission anticipates presenting at the hearing justifying both the need

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for and the reasonableness of the proposed amendments to the rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

All persons are advised that no factual information or evidence which is not part of the hearing record shall be considered by the Hearing Examiner or by the Commission in the determination of the above-cited matter. Persons attending the hearings should bring all factual information and evidence bearing on the case which they wish to have included in the record.

At the hearings, the Commission will, through its staffs' written and oral testimony, explain the proposed amendments to the rules and the Commission's reasons for proposing them. Copies of any written testimony and the statement of need and reasonableness will be available at the hearings.

Upon completion of the Commission's presentation, interested persons will be given an opportunity to address questions to the Commission's staff and to submit written and oral statements. It is the Commission's intent and desire that after its staff has completed its presentation, comments and statements be received from interested persons before proceeding to questioning. An opportunity to question the Commission's staff will be afforded all persons upon completion of the exchange of information and comments.

Interested persons who wish to make statements may do so by responding to the Commission's presentation or by offering new information. In addition, interested persons may request the Commission's staff to provide further explanations of any portion of the proposed amendments to the rules if the persons are unclear about the Commission's reasons. All persons making oral statements are subject to questioning by the Commission's staff.

The Commission will respond, in so far as possible, at the hearings to objections and questions presented at the hearing by interested persons. Interested persons may respond with oral or written statements to any new information presented by the Commission. The Commission may also respond to objections or comments in writing after the close of the hearings.

Written material may be submitted and recorded in the hearing record for five working days after the conclusion of the public hearings. Such a comment period may be extended for a period not to exceed 20 calendar days if so ordered by the Hearing Examiner.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Commission may not take any final action on the rules for a period of five working days. Any persons may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Commission. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or the Commission (in the case of the Commission's submission or resubmission to the Attorney General).

All persons are advised that the proposed amendments to the rules may be modified as a result of the hearing process.

Questions concerning the content or form of the above-entitled amendments to the rules should be directed to Randall D. Young, 780 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone 612/296-7526. Any questions concerning the conduct of the hearing should be directed to the assigned Hearing Examiner.

M.S. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in M.S. § 10A.01, subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone 612/296-5615.

ORDER

1. Hearings shall be held in this proceeding as listed herein.
2. A copy of this Order shall be mailed to all persons who have registered their names with the Commission for that purpose.

3. A copy of this Order and of the proposed amendments to the rules shall be published in the *State Register*.

4. This order shall become effective immediately.

March 26, 1984

By Order of the Commission,
Randall D. Young
Executive Secretary

On February 29, 1984, the Minnesota Public Utilities Commission met and adopted the following resolution:

The Minnesota Public Utilities Commission resolves that Randall D. Young, Executive Secretary of the Commission, is hereby authorized and directed to call a hearing to promulgate amendments to the Commission rules governing automatic adjustment of charges. He is further authorized to perform any acts incidental to promulgating these amendments including signing an Order for Hearing and Notice for Hearing as well as acting or designating other members of the Commission's staff to represent the Commission at all hearings.

Rules as Proposed

7825.2390 PURPOSE.

The purpose of parts 7825.2390 to 7825.3000 is to allow a means by which regulated gas and electric utilities may adjust for increases and decreases in the cost of energy delivered to customers that are different from those costs authorized by the commission in the utility's most recent general rate case. Energy costs included in rate schedules are subject to evidentiary hearings in general rate cases filed by the utility. Proposed energy cost adjustments must be evaluated before billing by the Department of Public Service. Annual evaluation of energy cost adjustments must be made by the Department of Public Service and others as provided for in parts 7825.2390 to 7825.3000.

7825.2400 DEFINITIONS.

Subpart 1. Scope. For the purpose of parts ~~7825.2400~~ 7825.2390 to 7825.3000, the following definitions ~~shall~~ apply.

Subp. 2. Annual sales volume. "Annual sales volume" is the sum of the Mcf ~~or~~, Ccf, or Btu of gas delivered during the most recent 12 months of the 14-month period preceding a change in the city gate rate or end of the heating season for which actual data is available.

Subp. 3. [Unchanged.]

Subp. 4. Base cost. "Base cost" is the peak shaving gas volumes or the cost of fuel consumed in the manufacture of gas or generation of electricity and purchased gas or purchased power in the base period expressed as a cost per kilowatt-hour sold or cost per Mcf ~~or~~, Ccf, or Btu sold.

Subp. 5 to 9. [Unchanged.]

Subp. 10. Cost of fuel consumed in ~~the~~ manufacture of gas; peak shaving gas volumes. "Cost of fuel consumed in the manufacture of gas" or "peak shaving gas volumes" is the withdrawals, during the heating season, from account 151 as defined by the Minnesota uniform system of accounts, class A and B gas utilities. All gas public utilities shall use this definition regardless of class.

Subp. 11. and 12. [Unchanged.]

Subp. 13. Current period. "Current period" is the most recent two-month moving average used by electric utilities in computing an automatic adjustment of charges. Upon approval of the commission, a self-billing utility may use a longer period, not to exceed 12 months, provided that the provision contains a settlement procedure. ~~All electric utilities shall use this definition.~~

Subp. 14. to 17. [Unchanged.]

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7825.2500 APPLICABILITY AND TYPES OF AUTOMATIC ADJUSTMENT OF CHARGES.

The commission shall permit the filing of rate schedules containing provisions for the automatic adjustment of charges provided ~~such~~ the provisions conform to parts 7825.2600 to 7825.3000. Parts ~~7825.2400~~ 7825.2390 to 7825.3000 ~~shall be~~ are applicable to all classes of public utilities.

Provisions for automatic adjustment of charges ~~shall~~ must encompass:

A. [Unchanged.]

B. Changes in cost resulting from changes in the federally regulated wholesale rate for purchased gas and changes in the cost of fuel consumed in the manufacture of gas or peak shaving gas volumes. This provision is entitled purchased gas adjustment.

7825.2600 ELECTRIC ENERGY ADJUSTMENT.

The computations of the automatic adjustment to charges ~~shall~~ must conform to the procedures set forth below.

The amount of the billing period adjustment to charges ~~shall~~ must be determined by extending Kwh of sales in the billing period by an adjustment per Kwh. The adjustment per Kwh or the amount of the adjustment ~~shall~~ must be stated on the customer's bill to comply with parts 7820.3500 and 7820.3600.

The adjustment per Kwh ~~shall be~~ is the sum of the current period cost of energy purchased and cost of fuel consumed per Kwh less the base cost per Kwh; except that upon commission approval, a utility that purchases at least 75 percent of its annual total Kwh sales may also separately add an additional adjustment per Kwh equal to the difference between the purchased demand cost and the base cost of purchased demand. This purchased demand cost adjustment is to be computed annually for the previous year less the demand base cost per Kwh.

The adjustment to charges ~~shall~~ must be made in the next complete billing period succeeding the determination of the adjustment per Kwh provided the adjustment has been filed as defined by part 7825.2900, subpart 1. The adjustment factor ~~shall~~ must be calculated monthly. Except, upon commission approval, a self-billing utility may calculate the adjustment less frequently but at least annually and ~~must~~ shall provide for a settlement procedure. The adjustment must be applied each month. The adjustment amount ~~shall~~ must be rounded such that the projected recovery is within two percent of the change in total cost.

7825.2700 PURCHASE GAS ADJUSTMENT PROVISION.

The computation of the automatic adjustment to charges ~~shall~~ must conform to the procedures set forth below.

The amount of the billing period adjustment to charges ~~shall~~ must be determined by extending Mcf ~~or~~, Ccf, or Btu sales in the billing period by an adjustment per Mcf ~~or~~, Ccf, or Btu. The adjustment per Mcf ~~or~~, Ccf, or Btu or the amount of the adjustment ~~shall~~ must be stated on the customer's bill to comply with parts 7820.3500 and 7820.3600.

The adjustment per Mcf ~~or~~, Ccf, or Btu is the sum of the commodity adjustment, demand adjustment, peak shaving gas adjustment, and manufactured gas adjustment as computed below:

A. The commodity adjustment is the difference between the commodity cost which results from a change in the city gate rate and the commodity base cost. To properly reflect adjustment per Mcf ~~or~~, Ccf, or Btu billed, the divisor for a particular class of customer must include total sales volume delivered to that class of customer. The adjustment ~~shall~~ must be applied to billings after the effective date of the commodity rate change provided the adjustment has been filed as defined by part 7825.2900, subpart 1.

B. The demand adjustment is the difference between the annual demand cost which results from a change in the city gate rate and the demand base cost. In the event the demand city gate rate does not change, the demand adjustment ~~shall~~ must be recalculated for each 12-month period from the date of the last change. The adjustment ~~shall~~ must be computed on the basis of annual demand sales volume and applied to billings after the effective date of the demand rate change provided the adjustment has been filed as defined by part 7825.2900, subpart 1.

C. The peak shaving adjustment or the manufactured gas adjustment is the difference between the cost of propane ~~and other~~ or fuel consumed in the manufacture of gas during the heating season and the peak shaving or manufactured gas base cost. The peak shaving or manufactured gas adjustment ~~shall~~ must be computed annually for the heating season ending April 30 of each year on the basis of firm annual sales volume adjusted to the extent peak shaving gas or manufactured gas is used to serve interruptible customers. The cost of peak shaving gas or manufactured gas ~~shall~~ must be applied to interruptible customers. The adjustment ~~shall~~ must be applied to billings during the next 12-month period commencing on June 1 of each year provided the adjustment has been filed as defined by part 7825.2900, subpart 1.

Refunds and interest thereon received from the suppliers of purchased gas ~~which~~ that are attributable to the cost of gas previously sold ~~shall~~ must be refunded by credits to bills or check within a period not to exceed 90 days from the date the refund is received from a supplier, provided the refund amount per customer is equal to or greater than five cents. Upon approval of the commission, refunds of less than five cents per customer may be retained by the utility and separately accounted for until such time as the balance, together with additional supplier refunds, produces a refund of five cents or more per customer. Refunds must be made to each customer class on the same basis as previously charged to customers. If a supplier refund cannot be accurately distributed to customers because of seasonal usage patterns, then upon commission approval, refunding may be delayed for a period of up to 12 months. The utility shall add interest to the unrefunded balance at the prime interest rate.

7825.2800 ~~FILING REQUIREMENTS AND APPROVALS FOR ELECTRIC ENERGY AND PURCHASE GAS ADJUSTMENTS~~ ANNUAL REPORTS; POLICIES AND ACTIONS.

All public utilities shall file annually on ~~October 31~~ September 1 of each year the procurement policies for selecting sources of fuel and energy purchased ~~and~~, dispatching policies, if applicable, and a summary of actions taken to minimize cost.

7825.2810 ANNUAL REPORT; AUTOMATIC ADJUSTMENT CHARGES.

By September 1 of each year, all gas and electric utilities shall submit to the commission an annual reporting by month of all automatic adjustment charges for each customer class for the prior year commencing July 1 and ending June 30. This report must include:

A. the commission-approved base cost of fuel or gas as defined by part 7825.2400, subpart 4;

B. billing adjustment amounts, such as Kwh, Mcf, Ccf, or Btu, charged customers for each type of energy cost, such as nuclear, coal, purchased power, purchased gas, peak shaving gas, or manufactured gas;

C. billing adjustment amounts, by gas supplier, that were used to bill the utiltiy during the reporting period;

D. the total cost of fuel or gas delivered to customers;

E. the revenues collected from customers for energy delivered;

F. the amount of supplier refunds received as defined by part 7825.2700; and

G. the amount of refunds credited to customers.

7825.2820 ANNUAL AUDITOR'S REPORT.

By September 1 of each year, all gas and electric utilities shall submit to the commission an independent auditor's report evaluating accounting for automatic adjustments for the prior year commencing July 1 and ending June 30.

7825.30 ANNUAL FIVE-YEAR PROJECTION.

By September 1 of each year, all gas and electric utilities shall submit to the commission a five-year projection of fuel and gas costs by energy source by month for the first two years and on an annual basis thereafter.

7825.2840 ANNUAL NOTICE OF REPORTS AVAILABILITY.

By September 1 of each year, all gas and electric utilities shall provide notice of the availability of the reports defined in parts 7825.2800 to 7825.2830 to all intervenors in the previous two general rate cases.

7825.2850 ANNUAL COMMISSION MEETING.

The commission shall annually conduct a separate meeting to review the automatic adjustment of charges reported herein.

7825.3000 IMPLEMENTATION.

Existing automatic adjustment provisions in effect on the effective date of these rules ~~which~~ that will not result in adjustment amounts materially greater than those determined by parts ~~7825.2400~~ 7825.2390 to 7825.3000 ~~shall~~ continue in effect until the

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commission, upon its own motion or upon complaint~~,~~ and after appropriate notice and hearing, ~~shall order~~ orders otherwise. Adjustments made pursuant to automatic adjustment provisions in effect on the effective date of these rules which may result in adjustment amounts materially greater than those determined by parts ~~7825.2400~~ 7825.2390 to 7825.3000 ~~shall~~ must be frozen by the utility at the level of charges in effect at the effective date of parts ~~7825.2400~~ 7825.2390 to 7825.3000. The existing level of any such automatic adjustments ~~shall~~, on the effective date of parts ~~7825.2400~~ 7825.2390 to 7825.3000, must be submitted to the Department of Public Service within 30 days.

If existing automatic adjustments of charges are continued under the provision above, then the filing requirements of part 7825.2900, subpart 1 ~~shall~~ apply.

When a utility proposes new or revised electric energy or purchased gas adjustment provisions, the proposal ~~shall be~~ is deemed a change in rates and must be reviewed according to commission rules and practices relating to utility rate changes.

Department of Revenue
Property Equalization Division

Proposed Rules Relating to Certificate of Real Estate Value

Notice of Hearing

Notice is hereby given that on Friday, May 11, 1984, a public hearing on the proposed adoption of rules to be codified as 8110.0100, 8110.0200, 8110.0300, 8110.0400, and 8110.0500 in Minnesota Rules will commence at 9:30 a.m. in the second floor conference room of the Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota. The hearing will continue on additional days, if necessary, at times and places determined during the hearing.

The hearing will be conducted by Hearing Examiner Jon Lunde, Office of Administrative Hearings, 400 Summit Bank Building, 3105 Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7645.

The proposed rules will provide the required data elements which must be included on the revised certificate of real estate value. Each certificate must include buyer's and seller's names and addresses, property description and location, along with a statement by the buyer that the information is correct and complete. The Department has proposed that the form must be signed by the buyer, buyer's agent, or buyer's attorney. The present form is not as restrictive in the signature requirements.

Inclusion of financing data will not be required if the property transfer was between related parties, a partial transfer, a trade, a transfer to certain exempt organizations, a forced sale, a transfer to add or delete the name of a co-owner, a gift or inheritance, or to complete a purchase agreement dated more than two years before recording.

Information regarding type of property and future use of the property may be required. Unless the transfer meets certain stated criteria listed in the rules, data regarding total sales price, down payment, new and assumed financing, and personal property must be provided to the Commissioner on the certificate. The rules further provide audit authority and the criteria that county auditors shall use at time of filing.

A free copy of the proposed rules is available by contacting Dorothy McClung, Director of Legal Research, Department of Revenue, Centennial Office Building, St. Paul, Minnesota 55145, telephone (612) 296-1022.

The Department's authority to promulgate these rules is found in Minn. Stat. § 272.115, subd. 1 (1983).

The Department has determined, pursuant to Minn. Stat. § 14.11, subd. 1 (1982), that the new rules will not require local governmental bodies to incur additional expenses.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the Department and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and argument which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

At the hearing the Department will introduce its statement of need and reasonableness and its exhibits. The statement of need and reasonableness and the exhibits will constitute the Department's affirmative presentation in support of the proposed rules. All interested or affected persons will then have an opportunity to participate by asking questions about the rules or the statement of need and reasonableness and by presenting oral and written comments about the proposed rules. Comments are most helpful if the comments identify with particularity each provision of the proposed rules that is supported or objected to and if the comments suggest specific alternative language to what is proposed and provide the reasons and data that support the proposed modifications.

Written comments may be submitted to the hearing examiner at any time up to five working days after the hearing ends, or for a longer period not to exceed twenty days after the hearing ends if ordered by the hearing examiner. Copies of the comments should also be submitted to the Department.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the Department may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Department. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the Department (in the case of the Department's submission or resubmission to the Attorney General).

This proceeding is governed by Minn. Stat. §§ 14.04-14.20 and 14.50 (1982) and by the rules of the Office of Administrative Hearings 9 MCAR §§ 2.101-2.113. Any person who has any questions about procedure to be followed may contact the Hearing Examiner.

Please be advised that the items proposed for rules are subject to change as a result of the rule hearing process. The Department urges those who are interested to any extent in the proposed rules, including those who support the rules as proposed and do not want to see changes made, to participate in the hearing and make their views known.

Please be further advised that Minn. Stat. ch. 10A. requires each lobbyist to register with the State Ethical Practices Board within five working days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his or her own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his or her own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota, (612) 296-5615.

George W. Winter
Deputy Commissioner

March 23, 1984

Rules as Proposed (all new material)

8110.0100 MANDATORY INFORMATION.

In order to be accepted for filing a certificate of real estate value must contain the following data:

A. Buyer's name and address.

B. Seller's name and address.

C. Legal description of all parcels involved in the transaction. The property identification number assigned by the county for administration of the property tax system is not sufficient.

D. Location of property described such as street address.

E. A statement signed by the buyer that the information provided on the certificate is correct and complete under penalty of the law. "Buyer" for the purpose of this rule means the individual or one of the individuals who will get title to the property, or a partner if a partnership will get title, or an officer if a corporation will get title.

"Buyer" may also include an attorney or agent of the buyer.

The form must also require the telephone number of the buyer or the buyer's agent or attorney.

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8110.0200 ADDITIONAL INFORMATION REQUIRED.

Subpart 1. Type of transfer. The certificate of value must include data regarding the type of purchase or transfer and must require the buyer to indicate if:

A. the buyer and seller are natural persons related to each other or are related business operations;

B. the transfer or purchase was of a partial interest in the property;

C. the property was transferred as part of a trade of properties;

D. the property was transferred or conveyed to a government, school, church, or charitable organization;

E. the transfer or conveyance was intended only to add or remove a co-owner's name from the title of the property;

F. the property was transferred or conveyed as part of a forced sale such as foreclosure or condemnation;

G. the transfer was a result of a gift or inheritance; or

H. the property was transferred or conveyed in fulfillment of a contract for deed or other purchase price agreement dated more than two years before the transfer.

Subp. 2. Type of property; financing. If none of the variables in subpart 1 apply, the buyer must provide the data required by items A to H.

A. Type of property transferred or conveyed, such as: land only; land with buildings; buildings only; and information relating to any new construction, demolition, or additions to buildings which occurred between January 1 of the year of sale and date of the original agreement.

B. Principal intended use of the property:

(1) residential containing no more than three units;

(2) apartments containing four or more units;

(3) seasonal, recreational property with a residential unit but not used for commercial purposes;

(4) agricultural;

(5) commercial or industrial;

(6) other than uses listed above with a brief description of intended use.

C. Date of original agreement establishing the sales price of the property being transferred. Usually this will be the date of the earnest money agreement or other similar agreement requiring performance at an agreed price.

D. Total purchase price of all real, personal, or intangible property being transferred or conveyed as established by the original agreement.

E. Total down payment paid by buyer to include amounts paid prior to and at the time of closing.

F. Information regarding any pre-existing financing for which the buyer will assume responsibility from the seller for repayment of the debt:

(1) unpaid balance on contract for deed, mortgage, and/or other financing assumed;

(2) current interest rate on assumed balance;

(3) remaining period over which the assumed loan balance is to be amortized;

(4) amount of monthly payment for reduction of principal and interest;

(5) if scheduled payments are not on a monthly basis, a description of the payment schedule including frequency and amount of each payment;

(6) if the interest rate is subject to change during the repayment period, a description of the anticipated change;

(7) date of any lump sum payments required at or before the end of the amortization period.

If the buyer is assuming the seller's obligation to repay on more than one debt, the certificate must include full details on each debt.

G. Information regarding any new loans obtained by the buyer, including:

(1) principal amount being financed;

(2) interest rate;

(3) amortization period;

(4) amount of monthly payment for reduction of principal and interest;

(5) if scheduled payments are not on a monthly basis, a description of the payment schedule including frequency and amount of each payment;

(6) if the interest rate is subject to change during the repayment period, a description of the anticipated change;

(7) points paid and whether paid by the seller or the buyer (but not to include origination fees); and

(8) date of any lump sum payments required at or before the end of the amortization period.

If the buyer is financing the purchase of the property through more than one debt, full details will be required on each debt.

H. Value of all personal or intangible property included in total sales price such as:

(1) personal property such as stoves, refrigerators, other appliances, drapes, tools, and accessories, as part of the transfer of residential property;

(2) personal property such as crops, livestock, tools, machinery, equipment as part of the transfer, or agricultural property;

(3) personal property such as inventory, equipment, or fixtures as part of the transfer of commercial property;

(4) intangible property such as goodwill, licenses, franchises, patents, or business name, as part of the transfer of a business operation.

8110.0300 SUPPLEMENTAL DOCUMENTS.

The buyer when completing the certificate may attach supplemental documents if the buyer needs to expand on any of the requested data. For example, in the case of a lengthy legal description of the property being transferred or conveyed, a copy of the deed may be attached. Any supplemental documents accompanying the certificate should be attached to the Department of Revenue's copy of the certificate.

8110.0400 COMMISSIONER'S AUDIT.

The certificates of value are subject to audit by the commissioner. The commissioner shall require additional documentation from the buyer, the buyer's agent or attorney, or the seller in order to verify the accuracy of any information required on the certificate. The commissioner shall determine the certificates subject to audit.

8110.0500 FORM TO BE COMPLETE AND SIGNED.

The county auditor shall not accept a certificate for filing unless the form is complete and contains the buyer's signature.

Department of Revenue
Property Equalization Division

Proposed Rules Relating to the Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State of Minnesota Department of Revenue proposes to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

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Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivision 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Ronald K. Cook
Property Equalization Division
Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
(612) 296-5137

Authority for the adoption of these rules is contained in Minnesota Statutes, sections: 270.06 (14); 270.11, Subd. 1 and 6; 273.33, Subd. 2; 273.37, Subd. 2; and 273.38. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the date and information relied upon to support the proposed rules has been prepared and is available from Ronald Cook at the above-mentioned address upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Ronald Cook at the above-mentioned address.

The proposed rules if adopted will effectively amend the current rules of the Department of Revenue relating to ad valorem (property) taxes imposed on utilities. The present rules deal generally with the valuation, allocation and apportionment of property of electric, gas distribution, pipelines and cooperative electric companies. The proposed rules if adopted would: modify the income approach to value by increasing the capitalization rate by 1%.

Copies of the Notice and the proposed rules are available and may be obtained by contacting Ronald Cook at the above-mentioned address.

March 20, 1984

Arthur C. Roemer
Commissioner of Revenue

Rule as Proposed

8100.0300 VALUATION.

Subpart 1. to 3. [Unchanged.]

Subp. 4. Income approach to valuation. The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40 percent; previous year, 35 percent; and final year, 25 percent. After considering, as far as possible, all conditions that may exist in the future that may affect the present annual return, including risk, life expectancy of the property, and cost of money, the capitalization rates used to compute value for the assessment will be: electric companies, ~~9.75~~ 10.75 percent; gas distribution companies, ~~10.0~~ 11.0 percent; and pipeline companies, ~~10.25~~ 11.25 percent. The income indicator of value computed in accordance with this subpart will be weighted for each class of utility company as follows: electric companies, 15 percent; gas distribution companies, 25 percent; and pipeline companies, 25 percent.

The following example illustrates how the income indicator of value would be computed for a gas distribution company:

	~~1980~~	~~1981~~	~~1982~~
~~1. Net Operating Income~~	~~$ 468,000~~	~~$ 385,700~~	~~$ 450,000~~
~~2. Capitalized Income @ 10%~~	~~4,680,000~~	~~3,857,000~~	~~4,500,000~~
~~3. Weighting Factor~~	~~25 percent~~	~~35 percent~~	~~40 percent~~
~~4. Weighted Capitalized Income~~	~~1,170,000~~	~~1,349,950~~	~~1,800,000~~
~~5. Total Income Indicator of Value~~			~~4,319,950~~

	1980	1981	1982
1. Net Operating Income	$ 570,240	$ 467,650	$ 554,400
2. Capitalized Income @ 11%	5,184,000	4,251,400	5,040,000
3. Weighting Factor	25 percent	35 percent	40 percent
4. Weighted Capitalized Income	1,296,000	1,488,000	2,016,000
5. Total Income Indicator of Value			4,800,000

Subp. 5. Unit value computation. The unit value of the utility company will be the total of the weighted indicators of value. The following is an example of the computation of the unit value for a gas distribution company:

1. Cost Indicator of Value:

$$\$5{,}000{,}000 \times 75\% = \$3{,}750{,}000$$

2. Income Indicator of Value:

~~$4,319,950~~ $4,800,000 × 25% = ~~$1,079,987~~ $1,200,000

3. Unit Value of Gas Distribution Company:

100% ~~$4,829,987~~ $4,950,000

Any company whose cost indicator was modified under subpart 3 to reflect the average cost per kilowatt adjustment of a plant or plants located in Minnesota shall have an alternative unit value computation made without giving effect to the modification in respect of such plant or plants.

Subp. 6. to 8. [Unchanged.]

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OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture

Notice of Special Local Need Registration for "Lorox Weed Killer" and "Lorox L Weed Killer"

Special Local Need Registrations (24c) for "Lorox Weed Killer" and "Lorox L Weed Killer" have been issued. They are manufactured by E. I. Du Pont De Nemours and Company, Bio Chemicals Department, Wilmington, Delaware. The State Registration Numbers assigned are MN84-0001 and MN84-0002, respectively. This notice is issued pursuant to Minn. Stat. Sec. 18A.23 and 3 MCAR § 1.0338 B.

In addition to the uses prescribed on the product labels, these special local need registrations permit the use of these products for preemergence and postemergence general weed control in direct seeded, newly planted, and established asparagus.

Questions may be directed to:

Larry P. Palmer
Pesticide Control Specialist
Agronomy Services Division
Department of Agriculture

Department of Agriculture
Food Inspection Division

Outside Opinion Sought Regarding Proposed Amendments to the Rules Governing Dyeing of Fish and Fish Products (Minnesota Rules 1545.2050)

Notice is hereby given that the Department is seeking information or opinions from sources outside the agency in preparing to amend the existing rules governing the dyeing of fish and fish products. The promulgation of these rules is authorized by Minnesota Statutes section 29.27, which permits the Department to adopt and enforce such rules as are necessary to carry out the provisions of Minnesota Statutes sections 29.021-29.091.

The Department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Gerald Heil
Planning Division
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements will be received during regular business hours over the telephone at (612) 296-1486 and in person at the above address.

All statements of information and comment shall be accepted until April 23, 1984. Any written material received by the Department shall become part of the record in the event that the rules are promulgated.

April 2, 1984

Jim Nichols
Commissioner
Department of Agriculture

Department of Agriculture
Planning Division

Outside Opinion Sought Regarding Proposed Amendments to the Rules Governing Pesticide Control (Minnesota Rules §§ 1505.0830-1505.1290)

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing to amend existing rules governing pesticide control. The promulgation of these rules is authorized by Minnesota Statutes, section 18A.43, which permits the department to adopt and enforce such rules as are necessary to carry out the provisions of Minnesota Statutes sections 18A.21-18A.48.

The Department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Mr. Gerald Heil
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by April 25, 1984. Any written material received by the Department shall become part of the hearing record.

April 2, 1984

Jim Nichols
Commissioner

Health Department
Emergency Medical Services Section

Emergency Medical Services Licensure Application for Stillwater, Minnesota

As of April 9, 1984, a complete application for a basic life support transportation service was submitted by Lakeview Memorial Hospital Association, Inc. (i.e., Lakeview Emergency Medical Services), to operate a base of operation at 919 West Anderson Street, Stillwater, Minnesota.

This notice is given pursuant to Minnesota Statutes 1979, Section 144.802, which requires in part that the Commissioner of Health shall publish the notice in the *State Register* at the applicant's expense; and in a newspaper in the municipality in which the service will be provided.

Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Metropolitan Health Board, 300 Metro Square Building, 7th and Robert, St. Paul, MN. 55101, Attn: Tom Chapel, 612/291-6357. The comments must reach the Health Systems Agency before May 9, 1984, or be submitted at the public hearing which will be held in Stillwater.

After a public hearing has been held, the Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the recommendation to the Commissioner of Health, the Commissioner shall grant or deny the license to this applicant.

Department of Labor and Industry
Workers' Compensation Division

Outside Opinion Sought on Rules Governing Reimbursement for Workers' Compensation Medical Services Fees

Notice is hereby given that the Minnesota Department of Labor and Industry, Workers' Compensation Division, is seeking information or opinions from sources outside the agency in preparing to promulgate new permanent rules governing reimbursement for workers' compensation medical services fees. The promulgation of these rules is authorized by Minn. Stat. § 176.136 (Supp. 1983) and 176.83(c) (Supp. 1983). These provisions require the department to promulgate rules which establish procedures for determining whether or not the charge for a health service is excessive and which limit charges for health care services to the 75th percentile of usual and customary fees or charges based upon billings for the previous calendar year.

The Minnesota Department of Labor and Industry, Workers' Compensation Division, requests information or opinions concerning the subject matter of these rules. Interested persons or groups may submit written or oral information or opinions. Written statements should be addressed to:

Steve Keefe, Commissioner
Department of Labor and Industry
Fifth Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minnesota 55101

Any written material received by the Minnesota Department of Labor and Industry, Workers' Compensation Division, shall become part of the record in the event that the rules are promulgated.

Oral statements will be received during regular business hours over the telephone at (612) 296-2342 and in person at the above address.

Information or opinions will be accepted until May 15, 1984.

March 30, 1984

Steve Keefe, Commissioner
Department of Labor and Industry

Department of Transportation

Petition of Mille Lacs County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Mille Lacs County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a resurfacing project on CSAH 25 from TH 27 to Vineland Road.

The request is for a variance from 14 MCAR § 1.5032, H.,1.,d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 40 miles per hour instead of the required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

March 26, 1984

Richard P. Braun
Commissioner of Transportation

Water Resources Board

Notice of Cancellation of Regular Board Meeting

The regular meeting of the Water Resources Board scheduled for April 13, 1984 has been cancelled.

The Water Resources Board will resume its regular meeting scheduled on May 11, 1984.

Mel Sinn
Executive Director

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Commodities contracts with an estimated value of $5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-2513. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration
Intergovernmental Information Systems Advisory Council (IISAC)

Request for Proposals for a Study to Determine Possible Areas of Cooperation Between Two Minnesota County Computer Cooperatives

The IISAC, in conjunction with a grant awarded to the Minnesota Counties Computer Cooperative (MCCC), is assisting with the issuance of the Request for Proposal (RFP) which delineates the requirements for a study which will examine the organization of each Cooperative. This study will include: 1) the existing base of hardware and software applications, 2) software development approaches; and 3) staffing as well as other areas of potential which may surface during the study. The final report will develop the possible avenues of cooperation bewteen the two cooperatives which may prove to be of mutual benefit.

The deadline for receipt of submitted proposals is May 7, 1984. The maximum amount of funds available for this effort is $5,000.00.

The RFP can be obtained from Joel Oliver, Executive Director of MCCC (612/224-2933). If you have any general questions concerning this effort you may contact Joel or Roger Sell, Executive Director of IISAC at 612/297-2172.

Department of Administration
Procurement Division

Commodities Contracts Currently Open for Bidding

Contract #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
79-000-41399	Airfield Runway Marking Paint	DOT Aeronautics	Various	Contact office
79-000-41390	Wallpack Luminaire	Transportation	St. Paul	Contact office
776329	1984 Small Game Hunting and	Natural Resources	St. Paul	Contact office
29-000-35552	Trapping Regulations			
Sch. 170-CA	Abrasive Coated Cloth & Paper	Various	Various	30,000-35,000
Contract	(Sandpaper)			

Contract #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
Contract	Biological Specimens (live)	Various	Various	Contact office
Contract	School Supplies	Various	Various	15,000
Contract	Transportation of Fuel Peat	Natural Resources	St. Paul	75,000-120,000
37-001-93654-55	Furnish and Install Draperies	Braille & Sight Sav. School	Faribault	Contact office
78 630 05709	Landscaping	MN Correctional Facility	Oak Park Heights	Contact office
27 156 40502	Lawn Care	Normandale Comm. College	Bloomington	Contact office
Contract	Rubbish Disposal-Mn Zoological Garden	Zoo	Zoo	Contact office
26-071-13863	Track Lighting System	Mankato State University	Mankato	Contact office

Contact the receptionist at 296-2513 for referral to specific buyers.

Department of Energy and Economic Development Office of Science and Technology Division

Request for Proposals for Development of a High Technology Data Base and High Technology Business Climate Information Booklet

The Office of Science and Technology Division, Department of Energy and Economic Development, is seeking individuals or firms to provide a high technology data base and information booklet on the high technology business climate in the state of Minnesota. These services which will be provided under contract, are outlined in detail in the Request for Proposals (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to:

Jayne B. Khalifa
Office of Science and Technology
Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

It is anticipated that the activities to accomplish the completion of the data base and information booklet will not exceed a total cost to the state of $10,000. The deadline for the submission of completed proposals will be the close of the working day April 30, 1984.

April 2, 1984

Jayne B. Khalifa

Department of Energy and Economic Development Office of Science and Technology Division

Request for Proposals for Development of a Research Proposal Review Process

The Office of Science and Technology Division, Department of Energy and Economic Development is seeking individuals or firms to establish a procedure of Peer Review analogous to the National Science Foundation or National Institute of Health, to evaluate research projects with the potential to become the basis of technological industrial growth in Minnesota and desire funding from Minnesota state funding sources for research. These procedures, which will be provided under contract, are

outlined in detail in the Request for Proposals (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to:

Jayne B. Khalifa
Office of Science and Technology
Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

It is anticipated that the activities to accomplish the completion of the Review Process will not exceed a total cost to the state of $10,000-12,000. The deadline for the submission of completed proposals will be the close of the working day April 30, 1984.

April 2, 1984

Jayne B. Khalifa

Department of Energy and Economic Development Energy Division

Request for Proposals for Development of the State Plan Implementing the Commercial and Apartment Conservation Service Program

Notice is hereby given that the Department of Energy and Economic Development, Energy Division intends to engage the services of a contractor to develop the state plan implementing the federally mandated Commercial and Apartment Conservation Service Program. CACS is a program in which major gas and electric utilities offer energy audits to their large residential and small commercial customers. The Request for Proposals will include detailed tasks to be performed under this contract. The Energy Division does not expect this contract to exceed $12,000. All work must be performed between May 1, and June 30, 1984.

The full Request for Proposals is available upon request. Inquiries and requests should be directed to:

Greg Hubinger
Manager of Residential Programs
Department of Energy and Economic Development
Energy Division
900 American Center Building
150 East Kellogg Blvd.
St. Paul, MN 55101

Proposals must be received by the Department of Energy and Economic Development, Energy Division, no later than 4:00 p.m. on April 25, 1984.

Department of Energy and Economic Development Energy Finance Division

Request for Proposals for District Heating Grant Program

The Energy Finance Division of the Department of Energy and Economic Development solicits applications from municipalities for its district heating grant program which provides funding for district heating planning studies. The maximum award for a Phase I study is $20,000 and the maximum award for a Phase II study is $50,000. A 10% local match is required for both types of grants.

Between $15,240 and $115,240 will be available to fund additional grants. The exact amount will be known in late April pending decisions regarding certain grants awarded with contingencies in an earlier funding cycle. The Department will accept both Phase I and Phase II applications or an application for a combined grant.

Applications will be due May 18, 1984. The grant appropriation expires June 30, 1984 and any funds not awarded will return to the State's General Fund.

Further information and an application package containing the formal Request for Proposals, application forms and program rules can be obtained from Mary Lesch-Gormley, District Heating Program Coordinator, Department of Energy and Economic Development, 900 American Center Building, 150 East Kellogg Blvd., St. Paul, MN 55105 Phone (612) 297-2324.

SUPREME COURT

Decisions of the Court of Appeals Filed Wednesday, March 28, 1984

Compiled by Wayne O. Tschimperle, Clerk

C8-83-1797 Kahnke Bros., Inc., Relator, v. Mark V. Darnall, Commissioner of Economic Security. Department of Economic Security.

Employer's docking of employee-respondent's wages in violation of Minn. Stat. § 181.99 gave the employee good cause attributable to the employer to discontinue his employment and employee is not disqualified from receiving unemployment benefits.

Affirmed. Popovich, Chief Judge.

C8-83-1377 In Re: the Marriage of: Laura A. Benson, petitioner, v. Philip C. Benson, Appellant. St. Louis County.

Trial court's finding that appellant did not present a prima facie case against respondent's proposed removal of their children from the state was clearly erroneous.

Reversed and remanded. Popovich, Chief Judge.

C1-83-1804 Safeco Insurance Company of America v. Dorothy Stariha. Hennepin County.

Existence of unrelated and remote attorney-client relationship between a neutral arbitrator and counsel for a party to the arbitration proceedings is not evidence of undue means or evident partiality under Minn. Stat. § 572.19.

Affirmed. Popovich, Chief Judge.

C9-83-1906 State of Minnesota, Appellant v. Kevin Scott Larson. Swift County.

Officers voluntarily admitted into a home may seize stolen property in plain view.

A *Miranda* warning is not required for non-custodial questioning of a crime suspect at his home.

Reversed. Foley, J.

C2-83-1827 T.B.M. Properties, a partnership of William Fitzgerald et al., v. Arcon Corporation. Olmstead County.

The trial court did not err in finding an accord and satisfaction where landlord, with knowledge of all circumstances, accepted and negotiated a check tendered by tenant conditioned on payment in full, after scratching out the words "Final Payment for Rent Owed T.B.M. Now and Forever" without consent of tenant.

Affirmed. Wozniak, J.

C1-83-1639 LaVerne Hefner v. Estate of Myrtle Ingvoldson and Arthur Espeland, as Personal Representative of the Estate of Myrtle Ingvoldson, and individually, and Stanford Lenhart, and Perham National Bank and First National Bank of Fergus Falls. Otter Tail County.

A joint or co-owner who contributed nothing toward the purchase of federal savings bonds and certificates which were in the sole possession and control of the contributing owner has only an inchoate interest in the bonds and certificates during the lifetime of the contributing co-owner. The non-contributing co-owner suffers no actionable loss if the bonds are improperly cashed but the contributing co-owner realizes the proceeds.

Affirmed. Wozniak, J.

Decisions of the Supreme Court Filed Friday, March 30, 1984

C3-83-881 State of Minnesota v. John Kisch, Appellant, Ramsey County.

Trial court properly departed durationally from the presumptive sentence in sentencing defendant for felony murder.

Affirmed. Amdahl, C.J.

C6-83-308 James E. Klapmeier, Appellant, v. Town of Center of Crow Wing County et al., Crow Wing County.

Notice of a reassessment hearing which failed to include a statement of appeal rights as required by Minn. Stat. § 429.061, Subd. 1 (1978) was defective and rendered the town board without jurisdiction to make the assessment.

Landowner did not waive his right to object to defective notice where he did not commit any overt act inconsistent with asserting his right of objection.

Landowner's claim of defective notice was not barred by laches where there is no evidence in the record supporting the trial court's conclusion that the town was prejudiced by the delay.

Reversed and remanded. Yetka, J.

Took no part, Peterson and Simonett, J.J.

C5-83-199 Guyen Hamilton, Relator, v. International Dairy Queen, Inc., and Commissioner of Economic Security. Department of Economic Security.

Reversed. Scott, J.

Dissenting, Peterson, J., Amdahl, C.J. Kelley J. and Coyne J.

C4-82-1687 Linda Windsperger, Relator, v. Broadway Liquor Outlet, and Commissioner of Economic Security. Department of Economic Security.

An isolated hotheaded incident by an employee which does not adversely affect an employer's business is not "misconduct" which disqualifies an employee from unemployment compensation benefits under Minn. Stat. § 268.09, subd. 1 (2) (1982).

Reversed and remanded. Scott, J.

Dissenting, Peterson, J. Kelley, J., Simonett, J. and Coyne, J.

C4-83-517 Diana Sticha, Relator, v. McDonald's #291, and Commissioner of Economic Security, Department of Economic Security.

The evidence, upon the entire record, is insufficient to establish "misconduct" under Minn. Stat. § 268.09, subd. 1 (2) (1982) where employee's conduct evinced a good-faith error in judgment in an isolated instance during her 10 years of employment and did not adversely affect the employer's business.

Reversed. Whal, J.

Dissenting, Peterson, J. Kelley, J. and Coyne, J.

C5-83-87 State of Minnesota, v. Norman L. Jackson, Appellant, Hennepin County.

Evidence that defendant killed the victim during the course of an assault justified defendant's conviction of felony murder.

Any error resulting from state's failure to obtain and provide defense counsel with criminal record of a key prosecution witness was not prejudicial.

Sentencing court erred in computing defendant's criminal history score.

Remanded for resentencing. Simonett, J.

C5-82-1102 Mary Jo Burgraff, v. Aetna Life & Casualty Company. Appellant. Hennepin County.

The definition of "insured" contained in Minn. Stat. § 65B.43, subd. 5 (1982), applies to uninsured and underinsured coverage.

An insurance policy provision, which excludes from coverage a relative who owns a car and is residing with the insured, is overbroad and in conflict with the statutory definition of "insured," which excludes from coverage a relative who is a named insured in a care insurunce policy and is residing with the insured; the policy provision, therefore, is invalid.

Affirmed. Simonett, J.

Dissenting, Kelley, J. Amdahl, C.J., Peterson, J. and Coyne, J.

C8-83-374 James Terrell, v. State Farm Insurance Co., Appellant, Stearns County.

An automobile insurer is absolved from liability to pay basic economic loss benefits under a policy of no-fault insurance when the insured fails to give the insurer notice of the automobile accident giving rise to the claim within the time period provided in the policy authorized to contain such a time period under the No-fault Automobile Insurance Act, notwithstanding the absence of prejudice to the insurer because of the late notice of accident.

Reversed. Kelley, J.

Dissenting, Wahl, J. Todd, J., Yetka, J. and Scott, J.

C7-83-57 Gerald Laird, Petitioner, Appellant, V. Independent School District No. 317, Deer River, Minnesota. Itasca County.

A substantial reduction in enrollment affords an adequate basis for placing a teacher on unrequested leave of absence because of lack of pupils whether enrollment has declined gradually over a number of years or dropped precipitously in a single year.

SUPREME COURT

A determination by a school board in a matter within its statutory jurisdiction, made in good faith and in conformity with the law, will not be reversed unless the decision is capricious, arbitrary, or unreasonable.

Affirmed, Coyne, J.

C7-82-839 William J. Crolley and Nelson Development Corporation etc., v. O'Hare International Bank, Appellant, and Dorothy K. Bouthilet, personal representative of the Estate of John G. Bouthilet, and John E. Daubney and Seldon, K. Caswell. Sherburne County.

When a prior decision, summarily affirmed by this court, determined that a creditor of contract-for-deed vendors did not have a lien either against the real property which was the subject of the contract or the balance due thereon, the creditor is barred by that decision from again asserting a lien against such balance in a subsequent proceeding to establish attorney's liens.

An attorney may assert a statutory charging lien pursuant to Minn. Stat. § 481.13 (1982) only for services relating to the action in which the lien is sought.

Because the probate court has exclusive original jurisdiction to determine the persons to whom property descends by statutory inheritance, the district court could not direct that attorney's liens be paid from the widow's share of the balance due under the contract for deed and that the remainder of the proceeds be paid to the decedent vendor's children.

Affirmed in part, reversed in part, and remanded. Coyne, J.

C5-83-414 Ellen M. Colburn, Relator, v. Pine Portage Madden Brothers Inc. and Commissioner of Economic Security. Department of Economic Security.

Claimant for unemployment compensation was disqualified for statutory misconduct connected with her work as a waitress. Minn. Stat. § 268.09, subd. 1 (2) (1982); *Tilseth v. Midwest Lumber Co.*, 295 Minn. 372, 204 N.W. 2d 644 (1973).

Affirmed. Per Curiam.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota Tax Court

Elks B.P.O.E. #2261, Appellant, v. Commissioner of Revenue, Appellee, Docket No. 3909

Findings of Fact, Conclusions of Law, and Order for Judgement

This is an appeal from an Order of the Commissioner of Revenue dated February 18, 1983, determining the sales and use tax liability of the Appellant. The Order assessed additional sales taxes, interest and penalty on gross receipts from tip board games operated by Appellant for the period July 1, 1978, through March 31, 1982. The matter came on for trial before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, in the Becker County Courthouse at Detroit Lakes, Minnesota, on September 1 and 2 of 1983. Briefs were subsequently submitted by both parties.

John H. Daniels, Jr., Esq., of the law firm of Willeke and Daniels, Suite 330, 1201 Marquette Ave., Minneapolis, Minnesota 55403, and John C. Quam, Esq., of the law firm of Irvine, Ramstad, Quam and Briggs, P.A., 114 West Holms, P. O. Box 683, Detroit Lakes, Minnesota, appeared for the Appellant.

Thomas K. Overton, Esq., Special Assistant Attorney General, appeared for the Appellee.

SYLLABUS

The issue is whether or not "free plays", where an optional cash award is available to the customer, should be taxed as a cash sale. We hold that where a customer elects to take "free plays" instead of cash, it is not a cash sale and, therefore, not includable in the gross receipts for tax purposes.

From the evidence adduced at trial and from the files and records herein, the Court now makes the following:

FINDINGS OF FACT

1. The Appellant, Elks B.P.O.E. #2261 (hereinafter referred to as the Appellant) is incorporated as a nonprofit corporation and is licensed to engage in the sale of gambling tickets pursuant to Minn. Stat. § 349.26 (1982), the profits from which are used to support charitable and civic activities and organizations, as well as the betterment of its Club facilities located in Detroit Lakes, Minnesota.

2. Charitable gambling has long been employed by nonprofit organizations in Minnesota for fund-raising purposes. Charitable gambling law was clarified during the 1978 Legislative Session with the enactment of Minn. Stat. § 349.26 (1982). Section 349.26 establishes the proper scope of nonprofit gambling in Minnesota.

3. There are several vendors who sell gambling devices to organizations such as the Appellant. All of them operate in similar fashion. Pull-tab tickets with concealed numbers are stapled in packets. The packets contain three, four or five tickets depending on the game. A participant pays a consideration to the operator for the opportunity to obtain a folded or banded ticket or card. The participant then uncovers the numbers or symbols on the ticket or card with the hope of finding a prize ticket. In a traditional game, a winner is entitled to cash, but in the game used by the Appellant, a winner is entitled to a number of "free plays". In substance, however, the participants know in advance that winners of more than five "free plays" will have the option to take cash rather than "free plays".

4. In 1978, the Appellant began using the Minnesota Tipboard game after some of its members attended a seminar in Bloomington, Minnesota. The game was operated throughout the audit period appealed from. Chances were offered for sale at $1.00 each. Each chance contained four tickets. Tickets were drawn from a complete game or "bag" of tickets. Bags contained 700 chances. Of those 700 chances, six tickets awarded 50 "free plays", 24 tickets awarded five "free plays", and 60 tickets awarded two "free plays". Names of winners of 50 "free play" tickets were listed on a "seal card" and stood a chance to win a $60 to $150 "seal award" pre-selected on each seal card. Seal winners were determined by the removal of the seal, exposing a winning number.

5. Although the game used by the Appellant is denominated as the Minnesota Tipboard game, it is in essence a pull-tab game as defined by Minnesota Statutes § 349.26, subd. 5a, as follows:

"Subd. 5a. "Pull-tabs" (or ticket jars") means a single folded or banded ticket or a card, the face of which is initially covered, or otherwise hidden from view, to conceal a number or set of numbers or a symbol or set of symbols. A few of the numbers or symbols out of every set of pull-tabs (or ticket jars) will have been designated in advance and at random as prizewinners. A participant pays a consideration to an operator for the opportunity to obtain a folded or banded ticket or a card, view the numbers or symbols on it and possibly obtain a prizewinning pull-tab (or ticket jar)."

6. The Appellant gave "free play" winners the option to take cash rather than "free plays" in certain circumstances. Uncontradicted testimony of the Elks Club's secretary and gambling manager was that Appellant's policy allowed the holder of 50 "free play" winning tickets to take cash rather than tickets. Such a "cash option" was not generally granted winners of two and five "free plays". The Appellant's gambling manager testified that occasionally, to avoid a "fuss", some two and five "free play" winners were allowed to take cash—but that this practice was not condoned by the management and was not common.

7. Because the names of the winners of "free plays" are constantly posted on the seal card, customers know in advance how many "free plays" are left in each bag and also know in advance how many of the major winners are still in the bag. Once all six of the 50 "free play" winners have gone out, customers are no longer enticed to purchase tickets from that bag and the remainder of that bag has to be discarded. The Appellee concedes that 11% of all tickets are discarded in that manner and 11% is, therefore, automatically deducted from the total number of tickets in each bag in calculating the sales tax.

8. A sampling of the winners shows that 88% of the major prizes, those winning 20, 50 or 100 "free plays", elect to take cash, but practically all of the minor winners (2 or 5 "free plays") take the "free plays".

9. The Appellant prepared and filed sales tax returns during the audit period and remitted tax based upon its calculations. The Appellant erroneously calculated its sales tax liability by deducting the cost of cash prizes awarded from its gross receipts. With this exception, however, the remittances of the Appellant from 1978 to the commencement of these proceedings reflect the Appellant's actual sales.

10. Prior to the publication of the January 1983 Sales Tax Newsletter, considerable confusion existed in the Department of Revenue and elsewhere regarding the Commissioner's position as to what constituted gross receipts from gambling operations where tip board chances or pull-tab tickets are sold which state that the winner is entitled to a number of "free plays".

11. The January 1979 Sales Tax Newsletter contained the following relevant information:

"NEW LAW—PADDLEWHEELS, TIPBOARDS AND RAFFLES

"Chapter 507, Laws of Minnesota 1978 authorized the operation by licensed organization of gambling devices commonly known as paddlewheels, tipboards or apparatus used in conducting raffles.

* * *

"The gross receipts derived by licensed organization from the operation of gambling devices is subject to the Minnesota sales tax. The sales tax is computed on the full amount of gross receipts with no deduction for funds paid to game winners."

12. From 1978 until January of 1983, the Commissioner's personnel issued unclear and confusing statements leading the Appellant to believe that "free plays" were not to be included in calculating gross receipts.

13. Mr. Robert Finnerty, one of the promoters of the Minnesota Tipboard Game, was very interested in and involved in getting an interpretation of the sales tax law from the Commissioner. On October 12, 1978, he wrote a letter to the Commissioner of Revenue requesting an interpretation of the gross receipts issue. The letter was referred to Mr. J. E. Streiff, Division Attorney of the Sales and Use Tax Division. His reply to Mr. Finnerty read in pertinent part as follows:

"The amounts paid by players to participate in these gambling games are taxable sales; and are subject to Minnesota sales tax. The sales tax is computed on the full amount of gross receipts, with no deduction for funds paid to game winners. Each licensed nonprofit organization is a retailer and must have a Minnesota Sales and Use Tax Permit, and is obligated to charge, collect, and remit the Minnesota sales tax."

14. Not satisfied with the answer, Mr. Finnerty wrote to Mr. Streiff directly on October 19, 1978, asking, " . . . whether the gross amount of receipts must include funds that were not received by the nonprofit organization. For example, if all the tickets for a tipboard were not sold or if some of the tickets were given away free."

15. In response Mr. Streiff sent Mr. Finnerty copies of two Minnesota Tax Court decisions relating to the operation of bingo game.

16. Not satisfied with the answer, Mr. Finnerty again wrote Mr. Streiff on October 23, 1978, and the reply from Mr. Streiff dated October 27, 1978, after acknowledging the inquiry, was as follows:

"M.S.A. 297A.01, Subd. 9, defines "gross receipts" as follows: "Gross receipts means the total amount received, in money or otherwise, for all sales at retail as measured by the sales price. . . . " Consequently, tickets for a tipboard, that were not sold, involves no gross proceeds which are taxable or reportable by the non-profit organization. The same is true for tickets which are given away free by the non-profit organization."

17. Still not satisfied with the answer, Mr. Finnerty personally contacted Mr. Perry Middlemist, a tax examiner of the Sales and Use Tax Division on February 7, 1979, and requested an answer to the following question:

"Will you please tell me if free plays are taxable?" It is quite obvious that Mr. Middlemist in his reply to Mr. Finnerty dated February 23, 1979, did not understand the question about "free plays" as posed by Mr. Finnerty, and hence, gave Mr. Finnerty a confusing answer.

18. Mr. Finnerty was still not satisfied with the answer so on January 18, 1980, he wrote another long letter to Mr. J. E. Streiff, the Division Attorney. Mr. Streiff in his reply to Mr. Finnerty dated January 28, 1980, did nothing to clear up the confusion. He simply sent Mr. Finnerty a copy of the Sales Tax Newsletter dated January 1979. That letter made no reference to "free plays". It simply stated that gross receipts derived from the operation of gambling devices are subject to sales tax.

19. The Commissioner's position was first publicly set forth in his January 1983 Sales Tax Newsletter. It contained the following information:

"TAXABLE TIPBOARD RECEIPTS

"Tipboard receipts are subject to sales tax. On winning tipboard tickets which give the player a certain number of "free plays", the player is usually offered a cash prize option in lieu of the "free plays". The cash prize option may be printed on the tickets or the tipboard, or simply offered by the game operator.

"When the "free plays" are taken, the player has, in effect, exchanged the optional cash prize for the extra plays. The cash prize amount, forfeited by the player for extra plays, is considered part of the game's total taxable receipts and must be included in gross sales on line 1B of the sales tax return.

"No deductions from gross receipts are allowed for prizes, charitable contributions, or other expenses. The games entire receipts are taxable. If, however, your gross receipts include the sales tax collected, you may use the "alternate method of computing gross sales," as explained in your sales tax instruction booklet."

20. The Commissioner's "cash option" theory has been inconsistently applied by State personnel. Testimony at trial revealed that at least three other nonprofit organizations engaged in the sale of the same type of "free play" tickets, granted "cash options" and were audited in 1982 without exception or assessment by the Revenue Department, despite close scrutiny of their ticket sales operations.

21. The fact that there was inconsistent and unequal enforcement of the law as is evidenced by a letter dated January 28, 1983, written by Mr. Edmund M. Blascyk, a field representative of the Minnesota Department of Revenue to Mr. Henry Frechette of Aurora, Minnesota, regarding the Aurora Legion Club. The pertinent part of that letter reads as follows:

" . . . We allowed your club to report on the game's net profit only because of the extraordinary efforts made by Mr. Frank Scheuring to get precise clarification from the Department of Revenue. Schedule A-1, although that answer was technically correct, it could have gone into much more depth."

22. On the final day of the trial of this matter, the Commissioner introduced a previously undisclosed memorandum, drafted in 1981, which contended that "free plays" are taxable where an option to receive cash exists. This document was not made public and had not been brought to the attention of the Appellant. Only one Department witness testifying at the hearing appeared familiar with the memorandum.

23. From the outset of these proceedings, Appellant has conceded those assessments set forth in the Audit Report underlying the Commissioner's Order of February 18, 1983, and represented by Schedule B attached thereto pertaining to the purchase of various supplies and materials by Appellant.

24. The Memorandum attached hereto is made a part of these Findings of Fact.

CONCLUSIONS OF LAW

1. Gross receipts received from the sale of tipboard gambling tickets are subject to sales tax pursuant to Minn. Stat. §§ 297A.01-.02 and 349.26 (1982).

2. Cash awards paid to winners of tipboard games are not deductible from gross receipts in computing the amount of sales tax due.

3. The issuance of "free plays" where an optional cash award is available does not constitute a taxable sale as no new consideration is paid for the "free play".

4. The issuance of "free plays" to the holders of winning gambling tickets, where an optional cash award is available, constitutes the award of winnings, which are not includable in the calculation of gross receipts.

5. That part of the Order disallowing a deduction for cash prizes awarded shall be affirmed.

6. That part of the Order disallowing a deduction for "free plays" shall be reversed.

7. That part of the Order assessing a tax for the items admitted by the Appellant shall be affirmed.

8. In view of the fact that there was so much uncertainty about the method of calculating gross sales, no interest or penalty shall be assessed against the Appellant.

9. The Commissioner shall recalculate the amount of sales tax due consistent with the above conclusions.

JUDGMENT SHALL BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

March 23, 1984

By the Court,
John Knapp, Chief Judge
Minnesota Tax Court

State of Minnesota Tax Court
County of Meeker, Regular Division

Lucille M. and Harold C. Carlson, Appellants, v. The Commissioner of Revenue, Appellee, Docket No. 3889

Findings of Fact, Conclusions of Law, and Order

The above-entitled matter came before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, on October 13, 1983, in Litchfield, Minnesota. At issue is the characterization of a transfer of property between the two Appellants as a gift. Briefs were submitted by both sides.

Wendell Nelson of the law firm of Olson, Nelson, Nagel and Drange, attorneys at law, appeared for Appellants.

James W. Neher, Special Assistant Attorney General, appeared for Appellee.

From the Stipulated Facts, the evidence adduced at the trial and the files, we make the following:

FINDINGS OF FACT

1. By warranty deed dated September 11, 1944, the grantors of that instrument conveyed to Harold C. Carlson as grantee the full ownership of 120 acres of land.

2. On March 26, 1945, by appropriate conduit deeds the title to said 120 acres was placed in the names of Harold C. Carlson and Lucille M. Carlson as joint tenants.

3. That by warranty deed dated February 25, 1947, title to an adjoining tract was conveyed to Harold C. Carlson and Lucille M. Carlson as joint tenants.

4. By warranty deed dated March 6, 1961, title to an adjoining farm was conveyed to Harold C. Carlson and Lucille M. Carlson as joint tenants.

5. By appropriate conduit deeds the real estate involved in the prior deeds was placed in the name of Harold C. Carlson on May 2, 1979.

6. That Harold C. Carlson and Lucille M. Carlson, Appellants, are husband and wife, and for thirty-eight (38) years have been engaged in a farming operation on all or part of the lands referred to herein.

7. That Harold C. Carlson was the owner of an undivided interest in the lands conveyed to him in the 1945 transaction, having acquired an undivided interest therein by virtue of the Final Decree of Distribution in his father's estate. The remaining interest in said 120 acres was acquired by the warranty deed in the 1945 transaction and that Harold C. Carlson furnished the consideration therefore. This farm was later placed in joint tenancy in the names of Harold C. Carlson and Lucille M. Carlson in the 1946 transaction.

8. That in the 1947 transaction whereby additional land was added to the farm by purchase from an adjoining neighbor, Harold C. Carlson furnished the consideration for the purchase of said adjoining land.

9. That in 1961 Harold C. Carlson purchased an adjoining farm from a neighbor and that although Harold C. Carlson furnished all of the consideration for the purchase of said farm, title was placed in the names of Harold C. Carlson and Lucille M. Carlson as joint tenants and that in December of 1978, Appellants sold said adjoining farm under a Contract for Deed and have not conducted farming operations on said farm since that date.

10. That farming operations conducted on the lands herein described have at all times been conducted by said Harold C. Carlson and that Lucille M. Carlson has not been a participant nor partner nor joint venturer in said farming operations and all of the personal property, including farm machinery, dairy cattle and livestock used in said farming operations have been the property of Harold C. Carlson and that all of the earnings from said farming operations have been the earnings of Harold C. Carlson and have been reported for income tax purposes as such.

11. That in updating their Wills in 1979, Appellants contacted their attorney and were advised that they were over-maritalized and that in order to take advantage of the full tax advantages under the Tax Reform Act of 1976 it was advisable to place the property back in the name of Harold C. Carlson in order to qualify for the full marital deduction and the specific marital exemptions under the Federal Estate Tax law. That on May 2, 1979, at the request of Harold C. Carlson and upon the advice of their counsel, the joint tenancy in the real estate in question was severed by appropriate conduit deeds and the property was reconveyed back to Harold C. Carlson.

12. The sole reason for the transfer of Lucille M. Carlson's joint tenancy interest in 1979 was for estate planning purposes. There was no other consideration for the transfer.

13. The Memorandum is made a part of these findings.

CONCLUSIONS OF LAW

1. The 1944 and 1945 transfers of real property into joint tenancy, Mr. Carlson having provided all of the consideration therefor, were gifts from him to his wife.

2. The reconveyance to Mr. Carlson in 1979 of his wife's one-half interest in the same properties likewise constituted gifts under Minnesota law, upon which tax has been properly assessed pursuant to Minn. Stat. §§ 292.01, subd. 1, and 292.03 (1979).

3. The Order of the Commissioner of Revenue dated May 31, 1983, is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

March 26, 1984

By the Court,
John Knapp, Chief Judge
Minnesota Tax Court

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D

In the Matter of the Proposed Adoption
of Rules of the State of Minnesota
Governing the Valuation and Assessment
of Electric, Gas Distribution and
Pipeline Companies (Utilities)

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Ronald K. Cook, being first duly sworn deposes and says:

That on the 29th day of March, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by this Department.

Ronald K. Cook

Subscribed and sworn to before me
this 29th day of March, 1984.

Patricia Zentzis

PATRICIA ZENTZIS
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES APRIL 19, 1989

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

PROPERTY EQUALIZATION DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF REVISIONS TO RULES GOVERNING THE VALUATION AND ASSESSMENT OF ELECTRIC, GAS DISTRIBUTION, AND PIPELINE COMPANIES, (UTILITY COMPANIES)

CERTIFICATE OF COMPLETENESS AND ACCURACY

I hereby certify that the attached pages numbered 1 through 29 consisting of 342 typewritten names and addresses constitute the complete list of persons, associations and other interested groups who, as of 8 o'clock a.m., this 21st day of February, 1984, have requested pursuant to Minn. Stat. § 14.14, subd. 1, that their names be placed on file with the Department of Revenue for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

STATE OF MINNESOTA
ARTHUR C. ROEMER
COMMISSIONER OF REVENUE

By: Donna L. Walbridge
Donna Walbridge
Commissioner's Staff

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Mora, MN 55051

County Auditor
Kandiyohi County-P.O. Box 936
Willmar, MN 56201

County Auditor
Kittson County Courthouse
Hallock, MN 56728

County Auditor
Koochiching County Courthouse
International Falls, MN 5664

County Auditor
Lac Qui Parle County Courthou
Madison, MN 56256

County Auditor
Lake County Courthouse
Two Harbors, MN 55616

County Auditor
Lk of the Wds Cty Courthouse
Baudette, MN 56623

County Auditor
LeSueur County Courthouse
LeCenter, MN 56057

County Auditor
Lincoln County Courthouse
Ivanhoe, MN 56142

AUDITORS

(Continued)

County Auditor
Lyon County Courthouse
Marshall, MN 56258

County Auditor
McLeod County Courthouse
Glencoe, MN 55336

County Auditor
Mahnomen County Courthouse
Mahnomen, MN 56557

County Auditor
Marshall County Courthouse
Warren, MN 56762

County Auditor
Martin County Courthouse
Fairmont, MN 56031

County Auditor
Meeker County Courthouse
Litchfield, MN 55355

County Auditor
Mille Lacs County Courthouse
Milaca, MN 56353

County Auditor
Morrison County Courthouse
Little Falls, MN 56345

County Auditor
Mower County Courthouse
Austin, MN 55912

County Auditor
Murray County Courthouse
Slayton, MN 56172

County Auditor
Nicollet County - Box 99
St. Peter, MN 56082

County Auditor
Nobles County Courthouse
Worthington, MN 56187

County Auditor
Norman County Courthouse
Ada, MN 56510

County Auditor
Olmsted County Courthouse
Rochester, MN 55901

County Auditor
Ottertail County Courthouse
Fergus Falls, MN 56537

County Auditor
Pennington County Courthouse
Thief River Falls, MN 56701

County Auditor
Pine County Courthouse
Pine City, MN 55063

County Auditor
Pipestone County Courthouse
Pipestone, MN 56164

County Auditor
Polk County Courthouse
Crookston, MN 56716

County Auditor
Pope County Courthouse
Glenwood, MN 56334

County Auditor
Ramsey County Courthouse
St. Paul, MN 55102

County Auditor
Red Lake County Courthouse
Red Lake Falls, MN 56750

County Auditor
Redwood County - P.O. Box 41
Redwood Falls, MN 563283

County Auditor
Renville County Courthouse
Olivia, MN 56277

County Auditor
Rice County Courthouse
Faribault, MN 55021

County Auditor
Rock County Courthouse
Luverne, MN 56156

County Auditor
Roseau County Courthouse
Roseau, MN 56751

County Auditor
St. Louis County Courthouse
Duluth, MN 55802

County Auditor
Scott County Courthouse
Shakopee, MN 55379

County Auditor
Sherburne County Courthouse
Elk River, MN 55330

County Auditor
Sibley County Courthouse
Gaylord, MN 55334

County Auditor
Stearns County Courthouse
St. Cloud, MN 56301

County Auditor
Steele County Courthouse
Owatonna, MN 55060

County Auditor
Stevens County Courthouse
Morris, MN 56267

County Auditor
Swift County Courthouse
Benson, MN 56215

County Auditor
Todd County Courthouse
Long Prairie, MN 56347

County Auditor
Traverse County Courthouse
Wheaton, MN 56296

County Auditor
Wabasha County Courthouse
Wabasha, MN 55981

County Auditor
Wadena County Courthouse
Wadena, MN 56482

County Auditor
Waseca County Courthouse
Waseca, MN 56093

County Auditor
Washington County Courthouse
Stillwater, MN 55082

County Auditor
Watonwan County Courthouse
St. James, MN 56081

ASSESSOR

MAILING LIST

Anoka County Assessor
County Court House
Anoka, Minnesota 55303

Becker County Assessor
County Court House
Detroit Lakes, Minnesota 56501

Beltrami County Assessor
County Court House
Bemidji, Minnesota 56601

Carlton County Assessor
County Court House
Carlton, Minnesota 55718

Brown County Assessor
P.O. Box 393
New Ulm, Minnesota 56073

Blue Earth County Assessor
P. O. Box 608
Mankato, Minnesota 56001

Big Stone County Assessor
County Court House
Ortonville, Minnesota 56278

Benton County Assessor
County Court House
Foley, Minnesota 56329

Cass County Assessor
County Court House
Walker, Minnesota 56484

Chippewa County Assessor
County Court House
Montevideo, Minnesota 56265

Chisago County Assessor
County Court House
Center City, Minnesota 55012

Clay County Assessor
County Court House
Moorhead, Minnesota 56560

Clearwater County Assessor
County Court House
Bagley, Minnesota 56621

Cook County Assessor
330 - 4th Avenue West
Grand Marais, Minnesota 55604

Cottonwood County Assessor
Room 10 - County Court House
Windom, Minnesota 56101

Crow Wing County Assessor
County Court House
Brainerd, Minnesota 56401

Dakota County Assessor
County Court House
Hastings, Minnesota 55033

Aitkin County Assessor
County Court House
Aitkin, Minnesota 56431

Douglas County Assessor
County Court House
Alexandria, Minnesota 56308

Faribault County Assessor
County Court House
Blue Earth, Minnesota 56013

Fillmore County Assessor
County Court House
Preston, Minnesota 55965

Freeborn County Assessor
County Court House
Albert Lea, Minnesota 56007

Goodhue County Assessor
Room 206 - Court House
Red Wing, Minnesota 55066

Grant County Assessor
County Court House
Elbow Lake, Minnesota 56531

Hennepin County Assessor
Hennepin Co. Gov. Ctr.
Rm. A - 2103
Minneapolis, Minnesota 55487

Houston County Assessor
County Court House
Caledonia, Minnesota 55921

Hubbard County Assessor
County Court House
Park Rapids, Minnesota 5647(

Carver County Assessor
County Court House
Chaska, Minnesota 55318

Itasca County Assessor
County Court House
Grand Rapids, MN 55744

Jackson County Assessor
County Court House
Jackson, Minnesota 56143

Kanabec County Assessor
County Court House
Mora, Minnesota 55051

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Willmar, Minnesota 56201

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County Court House
Madison, Minnesota 56256

Lake County Assessor
County Court House
Two Harbors, Minnesota 55616

Lake of the Woods County Ass
County Court House
Baudette, Minnesota 56623

Dodge County Assessor
County Court House
Mantorville, Minnesota 55955

Lincoln County Assessor
County Court House
Ivanhoe, Minnesota 56142

ASSESSOR

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Lyon County Assessor
607 West Main
Marshall, Minnesota 56258

Mahnomen County Assessor
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Mahnomen, Minnesota 56557

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Box 511
Pipestone, Minnesota 56164

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Le Center, Minnesota 56057

Polk County Assessor
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St. James, Minnesota 56081

Wilkin County Assessor
County Court House
Breckenridge, Minnesota 56520

Winona County Assessor
County Court House
Winona, Minnesota 55987

Wright County Assessor
County Court House
Buffalo, Minnesota 55313

Yellow Medicine County Assessor
County Court House
Granite Falls, Minnesota 56241

UTILITIES

Mark F. Dahlberg, Vice President
Northwestern Wisconsin Electric
Grantsburg, Wisconsin 54840

John H. Murray, Sec'y/Treasurer
Great Plains Natural Gas Company
8404 Indian Hills Drive
Omaha, Nebraska 68114

Pat McInerney, Tax Agent
Great Lakes Gas Transmission
2100 Buhl Building
Detroit, Michigan 48226

Jim Weston, Tax Agent
Dome Exp. & Prod. Pipeline
P. O. 200
Calgary, Alberta, Canada T2 P2 H8

Bigfork Valley Electric Service
Olson Thielen & Company
223 Little Canada Road
St. Paul, MN 55117

Minnesota Association of Electric Coop
4901 West 77th Street
Minneapolis, MN 55435

Lloyd Crum
Community Utilities Company
Racine, MN 55967

AUDITORS

County Auditor
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Breckenridge, MN 56520

County Auditor
Winona County Courthouse
Winona, MN 55987

County Auditor
Wright County Courthouse
Buffalo, MN 55313

County Auditor
Yellow Medicine County Courthouse
Granite Falls, MN 56241

F

State of Minnesota
Department of Revenue

In the Matter of the Proposed Rules of the Department of Revenue Governing the Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies (Utility Companies)

Statement of Need and Reasonableness

The above-captioned rules are being proposed in order to update and revise the current Rules and Regulations of the Department of Revenue Relating to Ad Valorem (Property) Taxes. The current rules have been in effect since 1975. They have been revised four times. Once in 1976, 1979, 1982 and again in 1983; however, it is the announced intention of the Department of Revenue to revise the rules whenever conditions, economic or otherwise, dictate a need for revision. This intention is clearly expressed in 13MCAR § 1.0001, Introduction, of the current rules, "The methods, procedures, indicators of value, capitalization rates, weighting percents, and allocation factors will be used as described in 13MCAR §§ 1.0003 - 1.0007 for 1982 and subsequent years, or until, in the opinion of the Commissioner of Revenue, different conditions justify a change." (emphasis supplied) It is now the opinion of the Commissioner of Revenue that the rules should be revised.

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed new rules. It is submitted pursuant to 9MCAR § 2.104 requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Information or Opinions in the preparation of these proposed rules was published in the State Register on February 27, 1984, Volume 8, Number 35, page 1926 (8 S.R. 1926). An open forum type discussion meeting was held on January 18, 1984. This meeting was attended by members of the Department of Revenue together with city and county assessors and representatives of various utility companies. A list of those in attendance, the agenda, meeting notes, and correspondence received relative to this meeting is available in the Department of Revenue. Various suggestions and comments made at these meetings were received and duly considered by the agency.

Authority to Adopt Rules

Minn. Stat. § 270.06 (14) states that the ..."Commissioner of Revenue may promulgate rules and regulations for the administration and enforcement of the property tax. Such rules and regulations shall have the force and effect of law..." The above captioned rules are encompassed within this authority.

Further, Minn. Stat. § 270.11, Subd. 1 and 6 gives the Commissioner of Revenue the authority to review, modify, revise, raise or lower the assessed valuation of any real or personal property of any individual, copartnership, company, association or corporation. The Commissioner of Revenue is also charged with the responsibility under Minn. Stat. §§ 273.33, Subd. 2; 273.37, Subd. 2; and 273.38 of assessing the... "personal property, consisting of the pipeline system of mains, pipes and equipment attached thereto, of pipeline companies and others engaged in the operations or business of transporting natural gas, gasoline or other petroleum products by pipelines... transmission lines of less than 69kv, transmission lines of 69kv and above

located in an unorganized township and distribution lines, (of electric companies) and equipment attached thereto, having a fixed situs outside the corporate limits of cities... the distribution lines, and the attachments and appurtenances thereto, (of electric companies) used primarily for supplying electricity to farmers at retail...". Such assessments are best discharged through the promulgation of such rules as are being proposed here.

Adoption of Proposed Rules
Need and Reasonableness

The agency is currently proposing only one revision to the existing body of the valorem rules for utility property. That revision concerns 13MCAR § 1.0003 Valuation D. Income approach to valuation.

This approach utilizes the capitalization of income in a mathematical process in an attempt to derive a value which represents the present worth of the future earnings of the property. The capitalization process has two major factors: 1) the income to be capitalized and 2) the captialization rate. We propose to change one of these factors to more accurately reflect current economic conditions.

We currently use three years of net utility operating income as the income to be capitalized. This is the income after expenses, depreciation and taxes, but before interest expense. This level of income is usually referred to as the income developed by the regulatory agency. It excludes all income from operations and investments that are not directly related to the operation of the company. This particular income stream is preferred by most utility appraisers, and has the most acceptance throughout the country.

The agency uses three years of these net utility operating earnings in order to level out the peaks and valleys inherent in income determination. This leveling out provides for a relatively stable value, rather than a value which would vary widely from year to year. At present the three years are weighted 40% for the first year's income, 35% for the second and 25% for the third. This weighting of income provides for the most attention to be paid to the most recent performance of the company and attempts to strike a balance between stable income and the recognition of current economic conditions effecting a company.

A capitalization rate is then applied to this weighted income. The capitalization rate is an anticipated rate of return from an investment; a rate at which income is processed (capitalized) to indicate the probable capital value. Usually this rate is commensurate with the risk of the business venture.

In developing a capitalization rate three basic methods are available. They are:

1. The Summation Method - which uses the "safe rate" (usually that of government bonds) and adds to it an allowance for management, non-liquidity, and risk. This method is usually considered to be the least reliable and is not in common use by appraisers of utility property.

2. The Comparative Method - which computes a capitalization rate by measuring the actions of purchasers in the market place. However, since utilities very seldom sell as a unit there are few market transactions from which a rate can be developed. For this reason this method is rarely used in the field of utility valuation.

3. The Band of Investment Method - which is the combination of the rate applicable to the portion of the capital structure represented by debt with the rate applicable to the portion of the capital structure represented by equity. The rate developed is a weighted average, the weighting representing percentages of the mortgage and equity position or bands of investment. This method, which is currently used by the agency, is the most generally accepted method of developing a capitalization rate for use in the appraisal of utilities.

The computation of the capitalization rate using the band of investment method is done on the basis of an average utility within an industry; that is, all companies within one industry (i.e. electric, gas distribution, pipeline) share the same rate. This is done as a matter of convenience due to the agency's lack of time and personnel. It is common practice for utility appraisers all across the country to apply a single capitalization rate to companies within the same industry.

The information used in the computation of the cap rate is taken from the latest edition of Moody's Public Utility Manual and includes the following techniques:

1. A determination of what percent of the capital structure of the average utility is made up of long term debt, preferred stock and common equity.
2. A determination of the average interest rate for contracted indebtedness, commonly referred to as the embedded cost of debt. This average interest rate will make up the debt portion of the capitalization rate.
3. A determination of the average dividend rate of the outstanding preferred stock. This dividend rate will make up the preferred stock portion of the capitalization rate.
4. A determination of the rate of return for common equity; which will make up the equity portion of the cap rate.
5. The application of the determined rate to the various bands of investment to develop the capitalization rate for the average utility.
6. The final step is to assign a risk factor to each type of utility to establish a cap rate for that particular industry.

Attached to this document is an example of the application of these techniques. You will note that the average utility cap rate as computed is 11%. We have adjusted this rate to allow for risk as follows:

1. Electric utilities - adjusted to 10.75% because they have lower than average interest rates and better than average earnings stability.
2. Gas distribution utilities - no adjustment made. This group represents the average utility.
3. Pipeline companies - adjusted to 11.25% because they have a higher risk factor than the average utility. Pipelines usually pay a slightly higher rate of interest, and because they do not have a monopoly, as do electric and gas companies, their earnings are less stable.

The revision proposed by the agency is occasioned by the fact that the last calculation of the capitalization rate in 1983 - using the same sources and methodology as shown in our Exhibit - resulted in a 10% average utility capitalization rate. As is evidenced by the Exhibit the data now results in the calculation of a 11% average utility capitalization rate.

The agency believes that the amending of the present rules to incorporate these revisions to the current capitalization rates is both reasonable and logical. The major factor causing the proposed changes in the capitalization rates, over those currently in use, is the increase in the interest rates. It is a matter of record that these rates have risen steadily over the past few years.

Interest rates may be advertised which would tend to indicate that our proposed capitalization rates are too low and should be adjusted to even higher levels; however, it must be kept in mind that the interest rates in question are those currently in effect. The income which comprises the income stream is an average of three year's historical income. The capitalization rate proposed by the agency is also based on historical information. It is paramount in appraisal practice to match the correct income stream to the corresponding capitalization rate. In the agency's judgment the rates as now proposed accurately reflect the proper capitalization rate to be applied to the weighted income stream. The combination of these two elements into the income indicator of value will produce an equitable estimate of the worth of a utility. The agency is committed to a policy of review and change, as it witnessed by our introductory statement on page 1 of this document. As economic conditions change, the computation of both the capitalization rate and the income stream may well change. At this time, however, the agency believes the rates as proposed should be adopted.

EXHIBIT I

STATEMENT OF NEED AND REASONABLENESS

CAPITALIZATION RATE WORK-UP

A. The figures used in the study on the capitalization of the average utility were obtained from the Moodys Public Utility Manual Special Features Section and represent historic value figures. The results showed a make-up of 51% debt, 9% preferred stock and 40% common stock for the average utility.

B. The rates used in the Cost of Money Study represent the average of three different kinds of utility bonds. This study considered the imbedded debt of utilities and calculated a rate of 9.74%.

C. The indicated rates shown in the Common Stock Yield and Growth Study represent yields obtained by adding the dividend yield to the percent of earnings per share increase over a ten year moving average. This study not only considers dividend yield but appreciation in per share prices. The average indicated rate was calculated to be 13.00%.

D. The rate shown in Preferred Stock Study is the dividend yield only and does not reflect appreciation in the stock price. The average yield rate is shown as 11%.

E. The resulting capitalization rate calculation was obtained by adding a weighted debt cap rate percentage, a weighted preferred stock cap rate percentage, and a weighted common stock yield percentage.

CAPITALIZATION OF AVERAGE UTILITY

ALL INFORMATION FROM 1982 MOODY'S PUBLIC UTILITY MANUAL
SPECIAL FEATURES SECTION

10 YEAR STUDY - HOW THE AVERAGE UTILITY IS CAPITALIZED

	YEAR	PERCENT OF DEBT	PERCENT OF PREFERRED	PERCENT OF COMMON
Electric Companies	1973	53.8%	12.4%	33.8%
	1974	55.0%	12.7%	32.3%
	1975	53.5%	12.8%	33.7%
	1976	52.5%	12.9%	34.6%
	1977	50.9%	13.1%	36.1%
	1978	50.5%	12.9%	36.6%
	1979	51.4%	12.7%	35.8%
	1980	51.3%	12.7%	36.2%
	1981	51.8%	11.9%	36.3%
	1982	50.3%	11.7%	38.0%
	Average	52.1%	12.6%	35.3%
Transmission Companies	1973	60.2%	6.3%	33.4%
	1974	59.6%	5.8%	34.6%
	1975	58.3%	5.3%	36.4%
	1976	55.5%	5.5%	39.1%
	1977	51.9%	4.9%	43.2%
	1978	52.4%	5.5%	42.1%
	1979	51.3%	5.3%	42.3%
	1980	51.5%	5.7%	42.8%
	1981	52.1%	4.9%	43.0%
	1982	51.2%	5.4%	43.4%
	Average	54.4%	5.5%	40.03%
Distribution Companies	1973	53.8%	8.5%	37.7%
	1974	56.0%	8.3%	35.8%
	1975	54.9%	8.8%	36.4%
	1976	53.0%	9.4%	37.6%
	1977	51.0%	9.9%	39.1%
	1978	48.3%	10.3%	41.3%
	1979	47.1%	9.8%	43.1%
	1980	47.5%	9.0%	43.5%
	1981	50.2%	7.9%	41.9%
	1982	50.3%	7.3%	42.4%
	Average	51.2%	8.92%	39.9%
Rounded Average of Three Industry Averages		51 %	9 %	40 %

10 YEAR PREFERRED STOCK YIELD

YEAR	YIELD IN PERCENT
1973	7.50%
1974	9.95%
1975	10.63%
1976	9.12%
1977	8.43%
1978	9.03%
1979	9.76%
1980	12.82%
1981	15.11%
1982	14.47%
Average	11.00%

SP:N2

CAPITALIZATION OF AVERAGE UTILITY WORKSHEET

ALL INFORMATION FROM 1982 MOODY'S PUBLIC UTILITY MANUAL SPECIAL FEATURES SECTIONS

10 YEAR STUDY - COMMON STOCK YIELD AND GROWTH IN EARNINGS

YEAR	AVERAGE MARKET PRICE	DIVIDEND PER SHARE	DIVIDEND YIELD PER CENT	EARNINGS PER SHARE	5 YEAR MOVING AVERAGE EARNINGS PER SHARE	% EARNINGS PER SHARE INCREASE	INDICATED RATE
1973	$71.21	$5.01	7.04%	$ 7.55	$7.25	2.54%	9.58%
1974	$48.26	$4.83	10.01%	$ 7.63	$7.39	1.93%	11.94%
1975	$51.25	$4.97	9.70%	$ 7.77	$7.56	2.30%	12.00%
1976	$60.10	$5.18	8.62%	$ 7.86	$7.71	1.98%	10.60%
1977	$67.55	$5.54	8.20%	$ 8.83	$7.93	2.85%	11.05%
1978	$63.54	$5.81	9.14%	$ 8.59	$8.16	2.64%	11.78%
1979	$60.28	$6.22	10.32%	$ 8.95	$8.42	3.19%	13.51%
1980	$54.80	$6.58	12.01%	$ 8.98	$8.64	2.62%	14.63%
1981	$55.41	$6.99	12.62%	$10.46	$9.16	6.02%	18.64%
1982	$63.56	$7.43	11.69%	$10.90	$9.58	4.59%	16.28%
Average	$59.60	$5.86	9.94%	$ 8.75	$8.18	3.07%	13.00%

15 YEAR COST OF MONEY STUDY

YEAR	AVG. YIELD ALL UTILITY BONDS	AVG. YIELD NEWLY ISSUED BONDS	AVG. YIELD NEW GAS LIGHT & POWER
1968	6.72%	6.41%	6.80%
1969	7.99%	7.07%	7.98%
1970	8.85%	8.76%	8.79%
1971	7.71%	7.47%	7.70%
1972	7.46%	7.16%	7.50%
1973	7.88%	7.45%	7.91%
1974	9.21%	8.36%	9.59%
1975	9.76%	8.90%	9.97%
1976	8.80%	9.06%	8.92%
1977	8.38%	8.17%	8.43%
1978	9.22%	9.21%	9.30%
1979	10.64%	10.39%	10.85%
1980	13.09%	13.23%	13.46%
1981	16.30%	16.28%	16.31%
1982	14.56%	15.55%	14.87%
	9.77%	9.56%	9.89%
Average Cost of Three Money Indicators			9.74%

COMPUTATION OF AVERAGE CAP. RATE		CAP. RATE
1.	Average Utility Debt Cost	9.74%
2.	Average Debt Percent of Capitalization	.53%
3.	Weighted Debt Cap. Rate Factor	5.16%
4.	Avg. Utility Preferred Stock Yield	11.00%
5.	Avg. Preferred Stock Percent of Capitalization	9.00%
6.	Weighted Preferred Stock Cap. Rate Factor	.99%
7.	Average Utility Equity Return	13.00%
8.	Avg. Equity Percent of Capitalization	38.00%
9.	Weighted Equity Capitalization Rate Factor	4.94%
	Avg. Utility Cap. Rate	11.09%
	Rounded to	11.00%

SP:N2

Rule as Proposed

8100.0300 VALUATION.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Income approach to valuation.** The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40 percent; previous year, 35 percent; and final year, 25 percent. After considering, as far as possible, all conditions that may exist in the future that may affect the present annual return, including risk, life expectancy of the property, and cost of money, the capitalization rates used to compute value for the assessment will be: electric companies, ~~9.75~~ 10.75 percent; gas distribution companies, ~~10.0~~ 11.0 percent; and pipeline companies, ~~10.25~~ 11.25 percent. The income indicator of value computed in accordance with this subpart will be weighted for each class of utility company as follows: electric companies, 15 percent; gas distribution companies, 25 percent; and pipeline companies, 25 percent.

The following example illustrates how the income indicator of value would be computed for a gas distribution company:

	~~1980~~	~~1981~~	~~1982~~
~~1. Net Operating Income~~	~~$---468,000~~	~~$---385,700~~	~~$---450,000~~
~~2. Capitalized Income @ 10%~~	~~4,680,000~~	~~3,857,000~~	~~4,500,000~~
~~3. Weighting Factor~~	~~25 percent~~	~~35 percent~~	~~40 percent~~
~~4. Weighted Capitalized Income~~	~~1,170,000~~	~~1,349,950~~	~~1,800,000~~
~~5. Total Income Indicator of Value~~			~~4,319,950~~

	1980	1981	1982
1. Net Operating Income	$ 570,240	$ 467,650	$ 554,400
2. Capitalized Income @ 11%	5,184,000	4,251,400	5,040,000
3. Weighting Factor	25 percent	35 percent	40 percent
4. Weighted Capitalized Income	1,296,000	1,488,000	2,016,000
5. Total Income Indicator of Value			4,800,000

Subp. 5. **Unit value computation.** The unit value of the utility company will be the total of the weighted indicators of

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value.

The following is an example of the computation of the unit value for a gas distribution company:

1. Cost Indicator of Value:

$5,000,000 x 75% = $3,750,000

2. Income Indicator of Value:

~~$4,319,950~~ $4,800,000 x 25% = ~~$1,079,987~~ $1,200,000

3. Unit Value of Gas Distribution Company:

100% ~~$4,829,987~~ $4,950,000

Any company whose cost indicator was modified under subpart 3 to reflect the average cost per kilowatt adjustment of a plant or plants located in Minnesota shall have an alternative unit value computation made without giving effect to the modification in respect of such plant or plants.

Subp. 6. to 8. [Unchanged.]

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

P.O. Box 43446
St. Paul, MN 55164

(612)
Telephone: 296-5137

April 19, 1984

Northern Border Pipeline Company
224 South 108th Avenue
P. O. Box 3330
Omaha, Nebraska 68103

Attention: C. J. Birch
Property Tax Specialist

Dear Mr. Birch:

Per your request, enclosed is a copy of the Department's Statement of Need and Reasonableness and a copy of the proposed rules.

Sincerely,

RONALD K. COOK
Utility Valuation Examiner
State Assessed Properties
Property Equalization Division

RKC:vh

Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

I.

224 South 108th Avenue
P. O. Box 3330
Omaha, Nebraska 68103
Telephone (402) 691-2100

Northern Border Pipeline Company
New Natural Gas for America

REVENUE
MAILROOM
APR 13 1984

April 11, 1984

Mr. Ronald Cook
Property Equalization Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Dear Ron:

The notice of intent to adopt rules without a public hearing dated March 23, 1984, has been received by us. The notice concerns the proposal to increase the capitalization rates used in the determination of the income indicator of value.

The increases in the capitalization rates for gas distribution companies from 10% to 11% and for pipeline companies from 10.25% to 11.25% have our support and approval. It is felt the market would support higher rates than those proposed, but as a weighted average of three years' income is used by the Department, the rates proposed for 1984 are acceptable.

Please send us a copy of the Department's Statement of Need and Reasonableness and a copy of the final rules proposed for adoption. Thank you.

Very truly yours,

C. J. Birch

C. J. Birch
Property Tax Specialist

kab

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
P.O. Box 43446
St. Paul, MN 55164

(612)
Telephone: 296-5137

April 12, 1984

Internorth
2223 Dodge Street
Omaha, Nebraska 68102

Attention: R. M. Foster, Director
Property Tax

Dear Mr. Foster:

Per your request, we are enclosing the Department's Statement of Need and Reasonableness and a copy of our proposed rules.

If you have any questions, please feel free to contact me.

Sincerely,

RONALD K. COOK
Utility Valuation Examiner
State Assessed Properties
Property Equalization Division

RKC:vh

Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

REVENUE - I2
MAILROOM
APR 5 1984

2223 Dodge Street
Omaha, Nebraska 68102
Telephone (402) 633-4000

INTERNORTH

April 3, 1984

Mr. Ronald Cook
Property Equalization Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Dear Ron:

We have received the notice of intent to adopt rules for valuation of utility companies without a public hearing as this applies to the proposal to increase the capitalization rate used in the determination of the income indicator of value. We approve and support this action to increase the capitalization rate for gas distribution companies from 10% to 11% and pipeline companies from 10.25% to 11.25%. We believe the capitalization rates evidenced by the market would support rates higher than proposed, however, since the Department uses the weighted average of three years' income, the proposed rates are acceptable for 1984.

We would appreciate receiving a copy of the Department's Statement of Need and Reasonableness and also a copy of the final rules proposed for adoption. Thank you for your assistance.

Sincerely,

R M Foster

R. M. Foster
Director, Property Tax

RMF/cjs

J

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

PROPERTY EQUALIZATION DIVISION

In the Matter of the Proposed Adoption of Rules of The State of Minnesota Department of Revenue Governing the Valuation and Assessment of Electric Gas Distribution and Pipeline Companies) (Utility Companies)	STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, LUCI A. MITCHELL, Legal Research Attorney, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Hearings, and the rules of the Attorney General have been followed. There are no exceptions.

Luci A. Mitchell

LUCI A. MITCHELL

Dated: May 16, 1984