

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1042

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-27
DATE FOR REVIEW 7-6
DATE DUE 7-11

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

Approved 7/11/84 (COS) Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 7-12-84 Revisor approved 6.29.84
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 6.19.84 Date

_____ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency Supplement to Notice ✓ OK. contains sm. biz statement

✓ Affidavit of Mailing Notice or rulemaking
2.3.84 At least 30 days prior to ~~hearing~~/adoption
4.27.84 supplement to notice

✓ Mailing list Certificates, 2.3.84 and 4.27.84

✓ Publication in State Register
2.6.84 At least 30/~~20~~ days prior to ~~hearing~~/adoption
2.20.84 Errata 4.30.84 for compliance with 14.115, small biz

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

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains small biz statement

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 : W. D. DONALDSON
Executive Director/Cable Comm. Board

DATE: 7/11/84

Attn: MARTY CASSERLY/Special Assist. Attorney General

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Minnesota Cable Communications Board Governing the Provision of Equipment with Sufficient Channel Capacity by Cable Companies Granted Access to Multiple Dwelling Complexes so as to Allow for Service by Alternative Providers.

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

LDS:sa

AG copy

MINNESOTA CABLE COMMUNICATIONS BOARD
FEB 28 1984

Department of Administration
Cable Communications Board

Adopted Rules Governing the Provision by Cable Companies Granted Access to Multiple Dwelling Complexes of Equipment with Sufficient Channel Capacity so as to Allow for Service by Alternative Providers

Rules as Adopted

4 MCAR S 4.260 Definitions.

A. Scope. The terms used in 4 MCAR SS 4.260-4.263 have the meanings given them in this rule.

B. Alternative providers. "Alternative providers" means other providers of television programming or cable communications services.

C. Association member. "Association member" means an individual owner of a cooperatively owned multiple dwelling complex.

D. Other providers of television programming or cable communications services. "Other providers of television programming or cable communications services" means operators of master antenna television systems (MATV), satellite master antenna television systems (SMATV), multipoint distributions systems (MDS), and direct broadcast satellite systems (DBS).

4 MCAR S 4.261 Conditions for access by alternative providers.

A. Channel capacity. Cable companies granted access to a multiple dwelling complex under Minnesota Statutes, section 238.25 shall provide equipment with sufficient channel capacity to be used by alternative providers of television programming or cable communications services.

B. Technical plan approval. The cable communications company shall determine the technical plan best suited for providing the necessary channel capacity sufficient to allow access to other providers. The plan must be submitted to the property owner for approval. The owner's approval may not be

unreasonably withheld. No additional compensation for evaluation of the plan may be paid or given to the property owner over and above that permitted under Minnesota Statutes, section 238.24, subdivision 8.

C. Duplicate connections. The cable communications company is not required to provide equipment for connecting more than one television receiver in one dwelling unit within the multiple dwelling complex. However, the company may provide duplicate connections at its discretion.

? does this mean "each"

4 MCAR S 4.262 Reimbursement.

A. Providing alternative service. Other providers of television programming or cable communications services shall notify the cable communications company when a resident or association member occupying a dwelling unit in a multiple dwelling complex requests the services provided for by 4 MCAR SS 4.260-4.263. After reaching agreement with the alternative service provider for reimbursement to be paid for use of the equipment, the cable communications company shall make available the equipment necessary to provide the alternative service without unreasonable delay.

B. Reimbursement determination. The amount to be reimbursed must be determined under Minnesota Statutes, section 238.24, subdivision 10. The reimbursed amount must be paid in one installment for each instance of requested use. The payment may not be refunded upon subscriber cancellation of the alternative service.

C. Financial records made available. The cable communications company, upon written request, shall make available to the alternative provider financial records supporting the reimbursement cost requested.

4 MCAR S 4.263 Appeals to board.

An interested or affected person may appeal an action taken by another person under 4 MCAR SS 4.261 and 4.262 to the board using the procedure in 4 MCAR SS 4.003-4.016.

APPROVED AS TO LEGALITY

July 11, 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Jerry D. Jones
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 12 1984
Joan Anderson Growe
Secretary of State

2:20 pm

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

CABLE COMMUNICATIONS BOARD

In the Matter of the Proposed Adoption of Rules of the Minnesota Cable Communications Board Governing the Provision of Equipment with Sufficient Channel Capacity by Cable Companies Granted Access to Multiple Dwelling Complexes so as to Allow for Service by Alternative Providers

ORDER ADOPTING RULES

Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on February 6, 1984 and April 30, 1984 and was deposited in the Minnesota Central Mail system for mailing to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 14.14, subdivision 1, on February 6, 1984 and April 30, 1984. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice and receiving no written requests for a public hearing within the 30-day comment period, and determining the need for and reasonableness of the rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules Governing Governing the Provision of Equipment with Sufficent Channel Capacity by Cable Companies Granted Access to Multiple Dwelling Complexes so as to Allow for Service by Alternative Providers, are adopted this 19th day of June, 1984, pursuant to authority vested in the Board by Minnesota Statutes section 238.05, 238.06 and 238.24, Subdivision 10.

STATE OF MINNESOTA

EXECUTIVE DIRECTOR
CABLE COMMUNICATIONS BOARD

RECEIVED
JUN 27 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Adoption of Rules of the State Cable Communications Board Governing the Provision by Cable Companies Granted Access to Multiple Dwelling Complexes of Equipment with Sufficient Channel Capacity so as to allow for Service by Alternative Providers

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 27th day of January 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 Cable Communications Board for that purpose and be published in the State Register.

STATE OF MINNESOTA

EXECUTIVE DIRECTOR OF
CABLE COMMUNICATIONS BOARD

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULE

I, Eugene F. Trumble, do hereby certify that I am a member and the Vice Chairman of the Cable Communications Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a Resolution adopted at a meeting of the Cable Communications Board, duly and properly called and held on the 9th day of March, 1984, that a quorum was present at said meeting, that a majority of those present voted for the Resolution, and that said Resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to the provision of equipment with sufficient channel capacity by cable companies granted access to multiple dwelling complexes so as to allow for service by alternative providers, promulgated by the Board pursuant to Minnesota Statutes 238.24, Subdivision 10, having been published on February 6, 1984 in the State Register and having received no significant comment under the non-hearing procedures afforded by state law, are hereby approved and adopted, and that the Executive Director of the Cable Communications Board, be and hereby is directed to perform the necessary acts to provide that these rules shall have the force and effect of law pursuant to Minnesota Statutes 238.05 and 238.06."

I, Eugene F. Trumble, do hereby certify that at the June 8, 1984 meeting of the Cable Communications Board duly and properly called and held, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, to ratify the actions authorized by the Board to be taken by the Executive Director on January 13, and March 9, 1984 to provide that the rules promulgated pursuant to Minnesota Statutes 238.24, Subdivision 10 shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21st day of June, 1984.

Eugene F. Trumble

EUGENE F. TRUMBLE, VICE CHAIRMAN
CABLE COMMUNICATIONS BOARD

Attested by one other Board member

In the Matter of the Proposed Adoption of Rules of the State Cable Communications Board Governing the Provision by Cable Companies Granted Access to Multiple Dwelling Complexes of Equipment with Sufficient Channel Capacity so as to allow for Service by Alternative Providers

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

C. Gregory Peterson, being first duly sworn deposes and says:

That on the 27th day of April, 1984, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules without Public Hearing by depositing in the Minnesota Central Mail system for mailing at said City of Saint 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 Cable Communications Board for the purpose of receiving notice of the proposed adoption of rules by this Board.

C. Gregory Peterson

Subscribed and sworn to before me this 27th day of April, 1984.

Janet M. Wischmann

JANET M. WISCHMANN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DECEMBER 7, 1988

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the State Cable Communications
Board Governing the Provision by Cable
Companies Granted Access to Multiple
Dwelling Complexes of Equipment with
Sufficient Channel Capacity so as to allow
for Service by Alternative Providers

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes § 14.22, that their names be placed on file with and maintained by the State Cable Communications Board for the purpose of receiving notice of the proposed adoption of rules by this Board is accurate and complete as of 2:00 P.M., this 27th day of April, 1984.

C. Gregory Peterson

DEPARTMENT OF ADMINISTRATION

CABLE COMMUNICATIONS BOARD

Proposed Rules Governing the Provision by Cable Companies Granted Access to Multiple Dwelling Complexes of Equipment with Sufficient Channel Capacity so as to Allow for Service by Alternative Providers.

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Cable Communications Board proposes to adopt the above-entitled rules without a public hearing. The Cable Communications Board has determined that the adoption of these rules will not be controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 14.21 to 14.26 (1982).

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 substantial change in the proposed language.

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 14.13 to 14.20 (1982).

It is requested, but not required, that if a person wishes to object to a rule, they state in their objection the rule and the number which corresponds to the rule.

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

W. D. Donaldson, Executive Director
Cable Communications Board
500 Rice Street
Saint Paul, Minnesota
(612) 296-2545.

Authority for the adoption of these rules is contained in Minnesota Statutes sections 238.05 and 238.06 (1982) and in Subdivision 10, Section 5, Chapter 329, Laws 1983. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103, upon request.

Earlier rules on this subject were proposed by the Board under the noncontroversial rules procedure of M.S. 14.21 to 14.28 and published in the State Register on November 7, 1983 on pages 1069-1071. Upon receipt of 7 obejctions to the rule in that form, the Board on December 9, 1983 withdrew the rule for the purpose of making modifying amendments as authorized by M. S. 14.05, Subd. 3. On January 13, 1984 the Board approved the proposed rules in the modified form shown below and directed that they be adopted under the non-controversial procedures.

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 W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

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

Publication in the State Register will take place on February 6, 1984. Comments are due not later than 4:30 P.M. March 7, 1984.

Copies of this Notice and the proposed rules are available and may be obtained by contacting W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

STATE OF MINNESOTA

W. D. Donaldson by BP

EXECUTIVE DIRECTOR OF
CABLE COMMUNICATIONS BOARD

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 10th day of April, 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 Administration
Cable Communications Board

Proposed Rules 4 MCAR §§ 4.260-4.263 Governing the Provision by Cable Companies Granted Access to Multiple Dwelling Complexes of Equipment with Sufficient Channel Capacity so as to Allow for Service by Alternative Providers

Notice of Intent to Adopt Rules without a Public Hearing in Accordance with the Procedures for Noncontroversial Rules set out in Minnesota Statutes §§ 14.21-14.28

Notice is hereby given that the Minnesota Cable Communications Board supplements the Notice of Proposed Rulemaking of the above contained rules published in the *State Register* on Monday, February 6, 1984 on pages 1807 to 1809 to assure compliance with Minnesota Statutes § 14.115 (Supp. 1983), the Small Business Considerations in Rulemaking.

Accordingly, affected parties are advised herewith that the proposed rules may have an impact on some small businesses in Minnesota that operate multiple dwelling complexes or furnish cable communication or similar services. These businesses would be required to use the procedures set forth in the rule to determine the conditions for access by alternative providers of television programming or cable communications services and the reimbursement to be provided for such access.

Owners and operators of small businesses described above should familiarize themselves with the procedures set forth in the rule. More detailed information concerning the nature of the rule and its possible impact on small businesses is contained in the agency's statement of Need and Reasonableness.

Additionally, the aforementioned Proposed Notice is amended to change the due date. Comments are due no later than 4:30 p.m., May 30, 1984.

W. D. Donaldson
Executive Director

Department of Commerce

Proposed Rules Regulating Self-Insurers Under the Minnesota No-Fault Automobile Insurance Act

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce 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, section 14.21.

Persons interested in these rules shall have 30 days to submit comments. 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.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to David Corum, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3301.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 65B.48. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available 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 Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

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

Copies of this notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2770.6100 PURPOSE.

The purpose of parts 2770.6100 to 2770.7400 is to ensure that self-insurers under the Minnesota No-Fault Automobile Insurance Act have the financial and administrative resources needed to satisfy all obligations and responsibilities under the act.

2770.6200 DEFINITIONS.

Subpart 1. Scope. For the purpose of parts 2770.6100 to 2770.7400 the terms defined in this part have the meanings given them.

Subp. 2. Applicant. "Applicant" means a person or entity applying to the commissioner for authorization to self-insure under the no-fault act.

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.

CX-83-134 Gary Steven Johnson, petitioner, Appellant, v. Sheriff of Pine County, Minnesota, and Pine County County Attorney, Respondent. District Court, Pine County.

District court properly denied habeas corpus in extradition proceeding. Affirmed. Wahl, J.

C3-83-802 Carolyn Waller, Respondent, George T. Caldwell, Sr., etc., Respondent, v. Powers Department Store, etc., Petitioner. District Court, Hennepin County.

Minneapolis Ordinance § 141.80(c)(7) (1982), which authorizes the court to grant temporary relief against respondents in Minneapolis Department of Civil Rights administrative proceedings, does not permit courts to compel discovery as a means of affording such relief.

Writ issued. Coyne, J.

C1-82-836 In the Matter of the Petition for Disciplinary Action against Steven J. Daffer, a Minnesota Lawyer. Supreme Court.

In the circumstances presented, the lawyer's multiple violations of the rules of professional conduct warrant an indefinite suspension, with leave to apply for readmission in five years.

Per Curiam.

Errata

In *State Register*, Vol. 8, Issue No. 32, the Cable Communications Board was incorrectly classified as part of the Labor & Industry Department. The Board is actually part of the Department of Administration.

Rules as Proposed (all new material)

MINNESOTA CABLE COMMUNICATIONS BOARD
JAN 20 1984

4 MCAR S 4.260 Definitions.

A. Scope. The terms used in 4 MCAR SS 4.260-4.263 have the meanings given them in this rule.

B. Alternative providers. "Alternative providers" means other providers of television programming or cable communications services.

C. Association member. "Association member" means an individual owner of a cooperatively owned multiple dwelling complex.

D. Other providers of television programming or cable communications services. "Other providers of television programming or cable communications services" means operators of master antenna television systems (MATV), satellite master antenna television systems (SMATV), multipoint distributions systems (MDS), and direct broadcast satellite systems (DBS).

4 MCAR S 4.261 Conditions for access by alternative providers.

A. Channel capacity. Cable companies granted access to a multiple dwelling complex under Minnesota Statutes, section 238.25 shall provide equipment with sufficient channel capacity to be used by alternative providers of television programming or cable communications services.

B. Technical plan approval. The cable communications company shall determine the technical plan best suited for providing the necessary channel capacity sufficient to allow access to other providers. The plan must be submitted to the property owner for approval. The owner's approval may not be unreasonably withheld. No additional compensation for evaluation of the plan may be paid or given to the property owner over and above that permitted under Minnesota Statutes, section 238.24, subdivision 8.

C. Duplicate connections. The cable communications company is not required to provide equipment for connecting more than one television receiver in one dwelling unit within the multiple dwelling complex. However, the company may provide duplicate

APPROVED IN THE REVISOR OF STATUTES OFFICE BY: RR

connections at its discretion.

4 MCAR S 4.262 Reimbursement.

A. Providing alternative service. Other providers of television programming or cable communications services shall notify the cable communications company when a resident or association member occupying a dwelling unit in a multiple dwelling complex requests the services provided for by 4 MCAR SS 4.260-4.263. After reaching agreement with the alternative service provider for reimbursement to be paid for use of the equipment, the cable communications company shall make available the equipment necessary to provide the alternative service without unreasonable delay.

B. Reimbursement determination. The amount to be reimbursed must be determined under Minnesota Statutes, section 238.24, subdivision 10. The reimbursed amount must be paid in one installment for each instance of requested use. The payment may not be refunded upon subscriber cancellation of the alternative service.

C. Financial records made available. The cable communications company, upon written request, shall make available to the alternative provider financial records supporting the reimbursement cost requested.

4 MCAR S 4.263 Appeals to board.

An interested or affected person may appeal an action taken by another person under 4 MCAR SS 4.261 and 4.262 to the board using the procedure in 4 MCAR SS 4.003-4.016.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

MINNESOTA CABLE
COMMUNICATIONS BOARD
JAN 20 1984

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD474

Agency: Cable Communications Board

Division:

Agency Contact: Greg Peterson 6-0316

Rule Numbers: 4 MCAR SS 4.260-4.263

Title: Proposed Rules Governing Cable Channel Capacity for Access to Multiple Dwelling Units by Alternative Providers

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Ron Ray
Assistant Revisor
Phone: 296-0945
Date: January 17, 1984

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Judith C. Corrao, do hereby certify that I am Chairman of the Cable Communications Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a Resolution adopted at a meeting of the Cable Communications Board, duly and properly called and held on the 13th day of January, 1984, that a quorum was present at said meeting, that a majority of those present voted in favor of the Resolution, and that said Resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "BE IT RESOLVED, that the rules relating to multiple dwelling unit access channel capacity promulgated by the Board pursuant to Subdivision 10, Section 5, Chapter 329, Laws 1983, be and hereby are adopted under authority vested in the Board by Minn. Stat. § § 238.05 and 238.06, and that the Executive Director of the Cable Communications Board, be and hereby is authorized to perform the necessary acts under the non-hearing procedures of Minn. Stat. 14 to provide that these rules shall have the force and effect of law."
>
> BE IT FURTHER RESOLVED, that the adoption of the rules listed below is hereby determined to be noncontroversial in nature.

Chapter	Title of Chapter
17	Channel Capacity for Access to Multiple Dwelling Units by Alternate Providers

IN WITNESS WHEREOF, I have hereunto subscribed my name this 13th day of January, 1984.

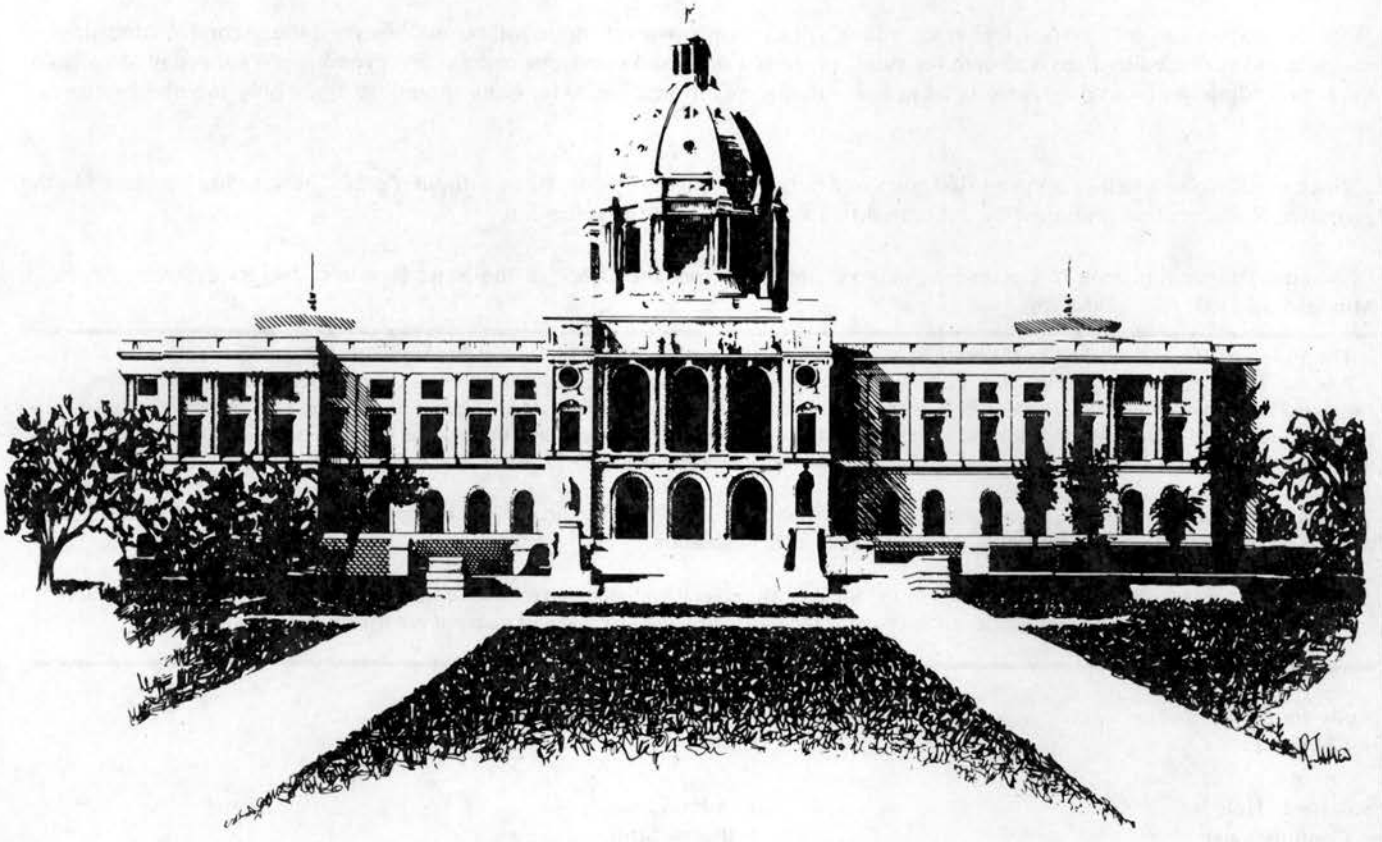
JUDITH C. CORRAO, CHAIRMAN
CABLE COMMUNICATIONS BOARD

Attested by one other Board member

MINNESOTA CABLE
COMMUNICATIONS BOARD
FEB 06 1984

STATE REGISTER

STATE OF MINNESOTA



VOLUME 8, NUMBER 32

February 6, 1984

Pages 1803-1852

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		
33	Monday Jan 30	Monday Feb 6	Monday Feb 13
34	Monday Feb 6	Monday Feb 13	Monday Feb 20
35	Monday Feb 13	Monday Feb 20	Monday Feb 27
36	Monday Feb 20	Monday Feb 27	Monday Mar 5

*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

Stephen A. Ordahl
Director
State Register and
Public Documents Division

Marsha Storck
Editor

Robin PanLener
Editorial Staff

Margaret Connelly
State Register Index Editor

Debbie Kobold
Circulation Manager

Cover graphic: *Minnesota State Capitol*, ink drawing by Ric James.

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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
Issues 14-25, inclusive
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Issue 27-38, inclusive
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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 Labor and Industry Cable Communications Board

Proposed Rules Governing the Provision by Cable Companies Granted Access to Multiple Dwelling Complexes of Equipment with Sufficient Channel Capacity so as to Allow for Service by Alternative Providers

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Cable Communications Board proposes to adopt the above-entitled rules without a public hearing. The Cable Communications Board has determined that the adoption of these rules will not be controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 14.21 to 14.26 (1982).

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 substantial change in the proposed language.

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.

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 14.13 to 14.20 (1982).

It is requested, but not required, that if a person wishes to object to a rule, they state in their objection the rule and the number which corresponds to the rule.

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

W. D. Donaldson, Executive Director
Cable Communications Board
500 Rice Street
Saint Paul, Minnesota
(612) 296-2545.

Authority for the adoption of these rules is contained in Minnesota Statutes sections 238.05 and 238.06 (1982) and in Subdivision 10, Section 5, Chapter 329, Laws 1983. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103, upon request.

Earlier rules on this subject were proposed by the Board under the noncontroversial rules procedure of M.S. 14.21 to 14.28 and published in the *State Register* on November 7, 1983 on pages 1069-1071. Upon receipt of 7 objections to the rule in that form, the Board on December 9, 1983 withdrew the rule for the purpose of making modifying amendments as authorized by M.S. 14.05, Subd. 3. On January 13, 1984 the Board approved the proposed rules in the modified form shown below and directed that they be adopted under the non-controversial procedures.

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 W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

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

Comments are due not later than 4:30 P.M. March 7, 1984.

Copies of this Notice and the proposed rules are available and may be obtained by contacting W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

W. D. Donaldson
Executive Director of
Cable Communications Board

Rules as Proposed (all new material)

4 MCAR § 4.260 Definitions.

A. Scope. The terms used in 4 MCAR §§ 4.260-4.263 have the meanings given them in this rule.

B. Alternative providers. "Alternative providers" means other providers of television programming or cable communications services.

C. Association member. "Association member" means an individual owner of a cooperatively owned multiple dwelling complex.

D. Other providers of television programming or cable communications services. "Other providers of television programming or cable communications services" means operators of master antenna television systems (MATV), satellite master antenna television systems (SMATV), multipoint distributions systems (MDS), and direct broadcast satellite systems (DBS).

4 MCAR § 4.261 Conditions for access by alternative providers.

A. Channel capacity. Cable companies granted access to a multiple dwelling complex under Minnesota Statutes, section 238.25 shall provide equipment with sufficient channel capacity to be used by alternative providers of television programming or cable communications services.

B. Technical plan approval. The cable communications company shall determine the technical plan best suited for providing

the necessary channel capacity sufficient to allow access to other providers. The plan must be submitted to the property owner for approval. The owner's approval may not be unreasonably withheld. No additional compensation for evaluation of the plan may be paid or given to the property owner over and above that permitted under Minnesota Statutes, section 238.24, subdivision 8.

C. Duplicate connections. The cable communications company is not required to provide equipment for connecting more than one television receiver in one dwelling unit within the multiple dwelling complex. However, the company may provide duplicate connections at its discretion.

4 MCAR § 4.262 Reimbursement.

A. Providing alternative service. Other providers of television programming or cable communications services shall notify the cable communications company when a resident or association member occupying a dwelling unit in a multiple dwelling complex requests the services provided for by 4 MCAR §§ 4.260-4.263. After reaching agreement with the alternative service provider for reimbursement to be paid for use of the equipment, the cable communications company shall make available the equipment necessary to provide the alternative service without unreasonable delay.

B. Reimbursement determination. The amount to be reimbursed must be determined under Minnesota Statutes, section 238.24, subdivision 10. The reimbursed amount must be paid in one installment for each instance of requested use. The payment may not be refunded upon subscriber cancellation of the alternative service.

C. Financial records made available. The cable communications company, upon written request, shall make available to the alternative provider financial records supporting the reimbursement cost requested.

4 MCAR § 4.263 Appeals to board.

An interested or affected person may appeal an action taken by another person under 4 MCAR §§ 4.261 and 4.262 to the board using the procedure in 4 MCAR §§ 4.003-4.016.

Department of Health
Health Systems Division

Proposed Temporary Rule Governing the Relocation of Residents from Nursing Homes and Certified Boarding Care Homes, 7 MCAR § 1.801

Notice of Intent to Adopt a Temporary Rule

The State Department of Health proposes to adopt the above-entitled temporary rule to implement Laws of Minnesota 1983, Chapter 199, section 5, subdivision 4. Persons interested in this rule have until February 27, 1984, to submit written comments. The proposed temporary rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in substantial change in the proposed language. Written comments should be sent to:

H. Michael Tripple
Minnesota Department of Health
Survey and Compliance Section
P.O. Box 9441
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone Number: (612) 623-5448

Upon adoption of the temporary rule by the Department of Health, the proposed temporary rule as published and any modifications will be submitted to the attorney general for review as to form and legality.

This temporary rule shall be effective upon the approval of the attorney general. Failure of the attorney general to approve or disapprove the rule within five working days, as provided in Minnesota Statutes § 14.33 (1982), is approval.

As soon as practicable thereafter, notice of the attorney general's decision shall be published in the *State Register* and the adopted rule shall also be published in the manner as provided for adopted rules in Minnesota Statutes § 14.18.

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.

In accordance with Laws of Minnesota 1983, chapter 199, section 16, this temporary rule shall be effective up to 360 days after July 1, 1983, and may be continued in effect for two additional periods of 180 days each if the Commissioner of Health gives notice of continuation of each additional period by publishing notice in the *State Register* and mailing the same notice to all persons registered with the commissioner to receive notice of rulemaking proceedings. This temporary rule shall not be effective 720 days after July 1, 1983, without following the procedures in Minnesota Statutes, §§ 14.13 to 14.20.

This temporary rule will not result in any increased expenditure to local public bodies. Nor will it result in a fiscal impact in excess of $100,000 annually. See Minnesota Statutes § 14.11, subdivision 1 and § 15.065.

The temporary rule establishes the procedures to be followed by a nursing home or certified boarding care home in the event that relocation of some or all of the residents becomes necessary. The provisions contained in the rule are designed to ensure that proper and sufficient notice is given to residents and other affected parties and to require that the necessary assistance is provided to residents to properly prepare for the relocation. The following information is being provided to comply with the provisions of Minnesota Statute § 144A.29, subdivision 4 which requires that each rule promulgated by the Department contain a short statement of anticipated costs and benefits to be derived from the provisions of the rule. The development of this temporary rule is necessitated as the result of a mandate given to the Interagency Board for Quality Assurance to develop a resident relocation plan. See Laws 1983, Chapter 199, section 5, subdivision 4. Thus, the promulgation of this rule will assure compliance with that mandate. A major benefit of this rule is the fact that specific procedures are being adopted to govern the relocation process. Prior to this time, the Department has only been able to provide recommendations to a facility required to relocate residents. While those recommendations were based on provisions of the licensure rules and the Bill of Rights, the establishment of this rule will now provide a concise and readily identifiable set of standards to be followed by a facility. The Department believes that the placement of the relocation procedure in one rule will help to assure that the necessary steps are taken to safeguard the health, safety, and well-being of residents during the relocation process.

Among other requirements, the proposed temporary rule provides for timely notification to residents and family members which is essential for the appropriate and careful planning of the move to another health care facility. The rule also requires that facility staff actively participate in this process and also take any steps which might be needed to assure that there are no interruptions of the residents' care. Careful planning prior to the actual relocation of a resident is essential in order to minimize the risk or degree of "transfer trauma" that can result due to relocation. The Department believes that any costs associated with this rule will be minimal. The rule does not add to the facility's responsibility to appropriately plan for and participate in the discharge or transfer of a resident; rather, the rule combines these responsibilities in a format which can be readily followed in the event relocation of residents is necessary. A number of existing licensure rules address a facility's responsibility in the discharge and transfer process and since these responsibilities are already in place, the Department does not believe that any new responsibility is imposed on the facility.

For example, MHD 45 (h)(5)(aa) already requires the development of resident transfer procedures; MHD 48 (a)(3) requires that pertinent information relative to the care of a resident accompany that resident on discharge or transfer; MHD 49 (c)(1) requires that a resident's medical record contains information on the condition of the resident at the time of discharge or transfer; and MHD 50 (f)(13) requires that the Director of Nursing Service participate in the discharge and transfer planning for residents. While some costs will be associated with the relocation of residents from a facility, it is the Department's position that those costs are a part of the facility's current responsibility to appropriately care for residents and are not "new costs" which will be incurred only as a result of the promulgation of this rule. Any costs will, of course, vary depending upon the number of residents to be relocated, e.g., costs associated with the mailing of the required notices. For these reasons, it is not possible for the Department to specifically delineate the costs associated with this rule.

A copy of this notice and the proposed temporary rule may be obtained by contacting Marlene Randall at the Minnesota Department of Health, telephone number: (612) 623-5474.

Temporary Rule as Proposed (all new material)

7 MCAR § 1.801 [Temporary] Procedures governing relocation of residents from nursing homes and certified boarding care homes.

A. Definitions.

1. Relocation. The term "relocation" means a situation when residents are to be discharged from a nursing home or certified boarding care home as the result of the closing of the facility or the curtailment, reduction, or change of operations or services offered there.

2. Nursing home. A "nursing home" is a facility licensed pursuant to Minnesota Statutes, section 144A.01, subdivision 5.

3. Certified boarding care home. A "certified boarding care home" is a facility licensed pursuant to Minnesota Statutes, sections 144.50 to 144.56 and certified as an intermediate care facility as defined in United States Code, title 42, section 1396d, as amended through December 31, 1982.

4. Facility. For the purposes of 7 MCAR § 1.801 [Temporary], "facility" refers to a nursing home or certified boarding care home.

5. Service offered in the facility. "Service offered in the facility" includes participation in the medicare and/or medicaid programs pursuant to United States Code, title 42, sections 1395 et seq., and 1396 et seq., as amended through December 31, 1982.

B. Notice to the Department of Health.

1. The licensee of the facility shall notify the Department of Health, in writing, at least 90 days prior to the cessation or the curtailment, reduction, or change of operations or services which would result in the relocation of residents.

2. The written notice shall include the information in a.-c.:

a. the date of the closing, curtailment, reduction, or change of operations or services;

b. the number of residents to be relocated; and

c. the names and telephone numbers of the persons in the nursing home responsible for coordinating the relocation of residents.

C. Facility responsibilities.

1. The licensee of the facility and facility staff shall cooperate with representatives from the department of health and from the social service agency for the county in which the facility is located in planning for the relocation of residents.

2. The administrator of a facility shall establish an interdisciplinary team which shall be responsible for coordinating and planning the steps necessary to relocate the residents. The interdisciplinary team shall consist of members involved in providing direct care services to residents.

3. The facility shall send written notices in a.-c. at least 60 days in advance of the date by which the relocation of residents is to be completed.

a. Notice shall be sent to the resident who will be relocated and to the individual responsible for the resident's care. This notice must include the name, address, and telephone number of the individual in the facility to be contacted for assistance and further information; the social service agency for the county in which the facility is located; and the area long-term care ombudsman, provided under section 307(a)(12) of the Older Americans Act, United States Code, title 42, section 3027, as amended through December 31, 1982.

b. Notice shall be sent to the social service agency for the county in which the facility is located. This notice must include the name of each resident to be relocated, the name, address, and telephone number of the individual responsible for the resident's care, and the name and telephone number of the individual in the facility to be contacted for further information.

c. Notice shall be sent to the attending physician of the resident to be relocated. The resident's attending physician shall be requested to furnish any medical information needed to update the resident's medical records and to prepare transfer forms and discharge summaries. This written notice must include the name and telephone number of the individual in the facility to be contacted for further information.

4. A list of available beds to which the resident can be relocated must be prepared. This list must contain the name, address, and telephone number of the facility, the certification level of the available beds, the type of services available, and the number of beds that are available. This list must be made available to the resident, the individual responsible for the resident's care, the area long-term care ombudsman, and the county social service agency.

5. The facility shall conduct small group meetings for the residents and the individuals responsible for the care of the residents to notify them of the steps being taken in arranging for the transfer. Individual residents shall be assisted as necessary.

6. The inventory of the resident's personal possessions must be updated and a copy of the final inventory provided to the resident, the individual responsible for the resident's care, or both. A final accounting of personal funds held in the facility must be completed in accordance with the provisions of 7 MCAR § 1.048 A.8.d. Arrangements must be made for the transfer of the resident's possessions and personal funds.

7. Unless it is medically inadvisable, as documented by the attending physician in the resident's care record, the resident shall be assisted in making site visits to facilities to which they may be transferred.

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8. All administrative duties must be completed prior to the actual relocation of the resident. Personnel in the facility to which the resident will be moved shall be provided with the information necessary to provide care and services to the resident, in accordance with 7 MCAR § 1.048 A.3. (MHD 48(a)(3)).

9. Unless otherwise agreed to by the resident or the individual responsible for the resident's care, at least a 14-day notice shall be provided to a resident prior to the actual relocation.

10. The resident shall be assisted in making arrangements for transportation to the new facility.

11. There must not be a disruption in the provision of meals, medications, or treatments of the resident during the relocation process.

12. If not previously notified, the resident's attending physician shall be informed of the new location of the resident within 24 hours after the actual relocation.

13. Commencing the week following the relocation notice to the Department of Health, the facility shall provide weekly written status reports to the Department of Health as to the progress being made in arranging for the relocation. The initial status report must include the relocation plan developed by the facility, the identity of the interdisciplinary team members, and a schedule for the completion of the various elements of the plan. Subsequent status reports must note the progress being made, any modifications to the relocation plan, any change of interdisciplinary team members, and must include the names of residents who have been relocated during the time period covered by the report. Once relocation has been completed, a listing of the residents who have been relocated and the identity of the facilities or other locations to which the residents were moved must be provided to the Department of Health.

Higher Education Coordinating Board

Proposed Adoption of Rules Governing State Scholarships and Grants-in-Aid and Part-Time Student Grants

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Higher Education Coordinating Board proposes to adopt the above-entitled rules without a public hearing. The Executive Director 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 Section 14.21-14.28 (1982). These proposed rules do not include a change in the definition of student dependency.

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.

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 14.13-14.15 (1982).

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

Rose Herrera Hamerlinck
Minnesota Higher Education Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
612/296-9681

Authority for the adoption of these rules is contained in Minnesota Statutes Sections 136A.111, subd. 2 (1982). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Rose Herrera Hamerlinck, Higher Education Coordinating Board, 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 Rose Herrera Hamerlinck, Higher Education Coordinating Board.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Rose Herrera Hamerlinck at the above address.

David Longanecker
Acting Executive Director
Minnesota Higher Education Coordinating Board

Rules as Proposed

5 MCAR § 2.2101 Scope.

Rules 5 MCAR §§ 2.2101-2.2106 govern state scholarships and grants-in-aid.

5 MCAR § 2.2102 Eligible schools.

Annually ~~by July 31,~~ the board shall adopt by resolution a list of schools at which a state scholarship or grant-in-aid may be used. To be eligible a school must meet the following requirements:

1.-3. [Unchanged]

5 MCAR § 2.2103 Application dates and student eligibility.

A.-B. [Unchanged]

C. Eligibility for initial grant-in-aid. To be eligible for an initial grant-in-aid a student must be an eligible student, as defined in 5 MCAR § 2.0100 D., and all of the following:

1.-3. [Unchanged]

4. if applying for a nursing grant, is enrolled or will be enrolled in a program leading to licensure as a registered nurse or a licensed practical nurse;

5. If under 17 years old, a recipient must have a high school diploma or the equivalent.

D. [Unchanged]

5 MCAR § 2.2104 Ranking applicants.

A. [Unchanged]

B. Priority of classes of applicants. Applicants renewing scholarships shall be given first priority. Applicants renewing grants-in-aid shall be given second priority. Applicants for initial scholarships shall be given third priority. Applicants for initial grants-in-aid shall be given fourth priority. Awards shall be made on a funds available basis. Once an award is made it shall not be withdrawn in order to award an applicant of higher priority.

C. [Unchanged]

5 MCAR § 2.2105 Awards.

A. Monetary awards. ~~Scholarship and grant-in-aid awards range from a minimum of $100 to a maximum of $1,400 but may not exceed one-half of financial need. If a federal Pell grant and a state scholarship or grant-in-aid exceeds 75 percent of financial need, the state scholarship or grant-in-aid must be reduced so that the combination of the two awards does not exceed 75 percent of financial need. The state scholarship or grant-in-aid must be further reduced if additional gift assistance, in combination with a federal Pell grant and a state scholarship or grant-in-aid, exceeds 100 percent of financial need.~~ The amount of a scholarship or grant-in-aid financial stipend shall not exceed an applicant's cost of attendance, as defined in Minnesota Statutes, section 136.121, subdivision 6, after deducting the following:

1. a contribution by the applicant of at least 50 percent of the cost of attending the institution of the applicant's choosing;

2. a contribution by the applicant's parents, as determined by a standardized need analysis; and

3. an estimate of the amount of a federal Pell grant award for which the applicant is eligible.

The minimum financial stipend shall be $100.

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B.-C. [Unchanged]

5 MCAR § 2.2106 Method of payment.

A.-C. [Unchanged]

5 MCAR § 2.2204 Eligible students.

A. Determination of eligibility. A school shall determine if a student is eligible for a part-time student grant. To be eligible a student must be an eligible student as defined in 5 MCAR § 2.0100 D.2., 3., 5., and 6., except that the student need not be a full-time student~~, and all of the following~~. The student must be:

1. ~~is~~ pursuing a program or course of study leading to a degree, diploma, or certificate; and
2. ~~is not eligible~~ ineligible for state or federal financial aid, other than a Pell grant; and
3. ~~is not reimbursed~~ unreimbursed for tuition and fees by any source other than a Pell grant; and
4. ~~demonstrates~~ in financial need.

B.-C. [Unchanged]

Department of Labor and Industry Occupational Safety and Health Division

Proposed Adoption of Rules Implementing the Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work

Notice of Hearing

A public hearing concerning the proposed rules will be held at the Veterans' Service Building (Room D, Fifth Floor), 20 West 12th Street, St. Paul, Minnesota 55155 (Capitol Complex) on Friday, March 9, 1984 commencing at 9:00 a.m. The proposed rules may be modified as a result of the hearing process. The proposed rules will have an impact on small businesses; the quantitative and qualitative impact of the proposed rules is dependent upon whether the business utilizes hazardous substances in the workplace, the possibility that any hazardous substance utilized by the business qualifies as a trade secret, and the quantity and quality of employee training provided by the small business relative to the hazardous substances being used. Therefore, the department urges those who are potentially affected in any manner by the proposed rules to participate in the hearing process.

All interested or affected persons will have an opportunity to participate concerning the proposed rules. 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 the hearing examiner: Mr. Peter Erickson, Office of Administrative Hearings, Fourth Floor Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415 (Telephone: 612/341-7606) 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 period not to exceed 20 calendar days. The rule hearing procedures are governed by Minn. Stat. § 14.05-14.36 (1982) and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedures, call or write the Hearing Examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency 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 agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The agency's authority to adopt the proposed rules is contained in Minn. Stat. § 182.657.

The proposed rule designated 8 MCAR § 1.7220 implements provisions of the Employee Right-to-Know Act of 1983 (Laws of Minnesota 1983, Chapter 316) governing trade secrets. This rule will allow an employer who believes that all or part of the information required under the Employee Right-to-Know Act is a trade secret as defined in Minn. Stat. § 325C.01, subdivision 5, to register that information as a trade secret with the commissioner of the Department of Labor and Industry. This rule also contains provisions governing the classification of such data and conditions of disclosure.

The proposed rules designated 8 MCAR §§ 1.7240, 1.7241, 1.7243, and 1.7245 amend the rules of the Department of Labor and Industry governing discrimination against employees and implement provisions of the Employee Right-to-Know Act of 1983 concerning employees' conditional right to refuse to work.

The proposed rules are included as part of this notice. In addition, copies of the proposed rule are now available and at least one free copy may be obtained by writing to the Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101, or by calling (612) 297-3254. Additional copies will be available at the hearing.

Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency 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 agency. 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 agency (in the case of the agency'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 (1982) 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 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, Minnesota 55155, Telephone: (612) 296-5615.

The hearing attendance is estimated at 50 and is expected to last one day.

Steve Keefe
Commissioner of Labor and Industry

Rules as Proposed

Chapter Seventeen:
Trade Secrets

8 MCAR § 1.7220 Trade secret registration.

A. Registration. A manufacturer or employer who believes that all or part of the information required under the Employee Right to Know Act, Laws of Minnesota 1983, chapter 316, is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5, may register the information with the commissioner as trade secret information. Information so required which is certified by appropriate officials of the United States as necessarily kept secret for national defense purposes may also be registered with the commissioner.

B. Formulations and procedures. Formulations or procedures are trade secrets and need not be registered to be considered trade secrets.

C. Required information. Trade secret registration of the name of a hazardous substance must include the following information:

1. the name of the hazardous substance;

2. a brief description of why it is a trade secret; and

3. the name of a person who can be contacted for additional information.

D. Expiration of registration. A registration expires two years after its filing date unless the registration is renewed.

E. Classification of data. Trade secret information that is registered with the commissioner or other information reported to or otherwise obtained by the commissioner or a representative of the commissioner in connection with any inspection or proceeding under Minnesota Statutes, chapter 182 which contains or might reveal a trade secret is nonpublic or private data as

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defined in Minnesota Statutes, section 13.02, subdivisions 9 and 12. Information that is classified as nonpublic or private, except that which is secret for national defense purposes, may be disclosed to other officers or employees carrying out Minnesota Statutes, chapter 182, when relevant in any proceeding under this chapter, or when otherwise required in order to comply with federal law or regulation but only to the extent required by the federal law or regulation. The commissioner must protect nonpublic or private information by establishing security procedures to prevent its unauthorized use or disclosure.

F. Disclosure. If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger or otherwise to protect the health and safety of employees, he must notify the appropriate manufacturer or employer of his decision by certified mail and timely disclose the information to alleviate the danger.

G. Determination by commissioner. On the request of a manufacturer, employee, or employee representative, the commissioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5. If the commissioner determines that information is not a trade secret and should be disclosed to the public, the commissioner must notify the manufacturer or employer of the decision by certified mail. The manufacturer or employer has 15 days after receipt of notification to provide the commissioner by certified mail with a complete justification and statement of the grounds on which the information is a trade secret. The commissioner must review his determination of whether information should be protected as a trade secret within 15 days after receipt of the justification and statement, or if no justification and statement is filed, within 30 days of the original notice, and must notify the appropriate manufacturer or employer and any party who has requested the information of that determination by certified mail. If the commissioner determines that the information is not a trade secret, the final notice must also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the information shall be available to the public. Prior to the date specified in the final notice, the manufacturer or employer may institute an action for a declaratory judgment as to whether the information is subject to protection as a trade secret.

8 MCAR § 1.7240 Authority and background.

~~Minn. Stat. §§~~ Minnesota Statutes, sections 182.654, ~~subd.~~ subdivisions 9 and 11, and 182.669 prohibit discrimination against an employee because the employee exercised any rights granted under the act on the employee's behalf or on behalf of others. Any employee who believes that he or she has been discharged or discriminated against by any person because the employee exercised any right authorized by the act as described in 8 MCAR § 1.7243, may file a discrimination complaint with the commissioner of the Department of Labor and Industry.

8 MCAR § 1.7242 Purpose and scope.

The rules in this chapter implement ~~Minn. Stat. §~~ Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 ~~of the act~~ and set forth general policies for enforcement of the discrimination provisions of ~~Minn. Stat. § 182.669~~ the act.

8 MCAR § 1.7243 Protected activities.

A. [Unchanged.]

B. Refusal to work under unsafe conditions.

1. [Unchanged.]

2. If an employee has a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition in the workplace, an employee acting in good faith may refuse to work if there is no reasonable alternative. The condition must be so hazardous that a reasonable person would conclude that there is a real danger of death or serious injury and that there is insufficient time to eliminate the danger through enforcement procedures. The employee must, where possible, request the employer to correct the hazardous condition. An employer may not discharge or discipline an employee who refuses to perform assigned tasks under these conditions. ~~However, an employer is not required to pay employees for tasks not performed~~ An employee who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the employer must, in addition to retaining a right to continued employment, be paid for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine the nature of the hazardous condition; and

b. the commissioner determines that the employee, by performing the assigned tasks, would have been placed in imminent danger of death or serious physical harm.

3. An employee who has been assigned to work with a hazardous substance, harmful physical agent, or infectious agent, under conditions which are inconsistent with the training or information provided by the employer under 8 MCAR §§ 1.7206 and 1.7207, and who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the

employer shall, in addition to retaining a right to continued employment, receive pay for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine if a hazardous condition exists; and

b. the commissioner determines that the employer has failed to provide the training required under 8 MCAR § 1.7206 prior to the employee's initial assignment to a workplace if the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent and the employer has failed to provide the information required under 8 MCAR §§ 1.7206 and 1.7207 after a request within a reasonable period of time, but not to exceed 24 hours, of the request.

C.-F. [Unchanged.]

8 MCAR § 1.7245 Claim procedures.

A. Who may file. A complaint alleging discrimination under ~~Minn. Stat. §~~ Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 may be filed by an employee or an authorized employee representative.

B.-D. [Unchanged.]

Department of Public Welfare
Minnesota Board on Aging

Proposed Temporary Rule Governing the Relocation of Nursing Home Residents (12 MCAR §§ 2.04601-2.04606, Temporary)

Notice of Intent to Adopt Temporary Rules

The State Department of Public Welfare proposes to adopt the above-entitled temporary rules to implement Laws of Minnesota 1983, chapter 199, section 16.

Persons interested in these rules have until February 27, 1984 to submit written comments. The proposed temporary 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. Written comments should be sent to:

Sharon Zoesch
Minnesota Board on Aging
Department of Public Welfare
Suite 204, Metro Square Building
St. Paul, MN 55155
612/296-7465

Upon adoption of the temporary rules, this notice, all written comments received, and the adopted temporary rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

The adopted temporary rules will not become effective without the Attorney General's approval and the Revisor of Statute's certification of the rule's form.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these temporary rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The temporary rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

12 MCAR §§ 2.04601-2.04606 (Temporary) govern the responsibilities of local social service agencies in the relocation of nursing home residents or certified boarding care home residents as a result of the closing of a facility, loss of or change in

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certification, termination of receivership, or termination of the facility's Medical Assistance provider agreement. Provisions in these rules include definition of terms, establishment of a relocation committee, identification of alternative resources, provision of relocation assistance to residents, and county status reports on relocation activities.

These temporary rules will not result in additional state or county expenditures. If a relocation becomes necessary, existing staff will carry out the activities in this rule.

Copies of this notice and the proposed temporary rules may be obtained by contacting Lois Cosgrove (612/296-2543).

Leonard W. Levine
Commissioner

Temporary Rules as Proposed (all new material)

12 MCAR § 2.04601 [Temporary] Authority and applicability.

A. Authority.

1. Laws of Minnesota 1983, chapter 199, section 5, subdivision 4, authorizes the commissioner of public welfare to implement a resident relocation plan that instructs the local social services agency for the county in which a long-term care facility is located of procedures to follow to ensure that the needs of residents are met during a relocation.

2. Laws of Minnesota 1983, chapter 199, section 16, requires that the commissioner of public welfare promulgate temporary and permanent rules to implement the provisions of Laws of Minnesota 1983, chapter 199, including a resident relocation plan.

B. Applicability. Rules 12 MCAR §§ 2.04601-2.04606 [Temporary] govern the services that local social service agencies are required to provide for the benefit of residents of long-term care facilities when there are relocations. Individuals should consult 7 MCAR § 1.801 [Temporary] for information regarding the responsibilities of long-term care facilities.

12 MCAR § 2.04602 [Temporary] Definitions.

A. Scope of definitions. As used in 12 MCAR §§ 2.04601-2.04606 [Temporary] the following terms have the meanings given them.

B. Certified boarding care home. "Certified boarding care home" means a facility licensed under Minnesota Statutes, sections 144.50 to 144.56 and certified as an intermediate care facility as defined in United States Code, title 42, section 1396d, as amended through December 31, 1982, but excluding facilities for the mentally retarded as defined in United States Code, section 1396(d), as amended through December 31, 1982.

C. County relocation committee. "County relocation committee" means those staff persons of the local social service agency designated by the county social service director to serve as the relocation committee in a county.

D. Facility. "Facility" means a long-term care facility.

E. Local social service agency. "Local social service agency" means the local agency under the authority of the human services board or board of county commissioners which is responsible for social services.

F. Long-term care facility. "Long-term care facility" means a nursing home or a certified boarding care home.

G. Nursing home. "Nursing home" means a facility defined under Minnesota Statutes, section 144A.01, subdivision 5.

H. Relocation. "Relocation" means a situation when residents are to be discharged from a nursing home or certified boarding care home as a result of the closing of the facility, loss of or change in certification, termination of receivership, or termination of the facility's medical assistance provider agreement.

I. Resident. "Resident" means a person admitted to a long-term care facility.

J. Responsible county. "Responsible county" means the county where the facility from which the residents will be discharged is located.

12 MCAR § 2.04603 [Temporary] Relocation planning.

A. Relocation committee. The director of the local social service agency in each county shall designate appropriate staff as the county relocation committee. Staff designated as the county relocation committee shall be knowledgeable about the needs of long-term care residents, and the local resources available to meet those needs including medicaid and medicare.

B. Alternative resources. The county relocation committee shall develop a procedure to identify and monitor the current availability of alternative resources which may be used if the relocation of residents of a long-term care facility is necessary. These resources shall include at least the following:

1. a list of unoccupied beds in other facilities within the county and in neighboring counties; this list shall contain the following information about each facility:

a. the name, address, and telephone number of the facility;

b. the certification level of the available beds;

c. the type of services available within the facility; and

d. the number of beds that are available;

2. a list of alternative placements which includes swing beds in hospitals and foster care placement;

3. a list of the community and in-home health and social services which may be used on a temporary basis;

4. a list of the possible transportation resources;

5. a list of possible volunteer resources; and

6. the name, address, and telephone number of the appropriate regional ombudsman from the Minnesota Board on Aging Long-Term Care Ombudsman Program.

12 MCAR § 2.04604 [Temporary] Procedure upon notification.

The local social service agency and its county relocation committee shall initiate the procedures provided in 12 MCAR §§ 2.04605-2.04606 [Temporary] immediately upon receipt of written notification of the need for relocation from the income maintenance bureau of the Department of Public Welfare.

12 MCAR § 2.04605 [Temporary] Relocation assistance.

A. Resident information. Upon receiving written notice of the needs to relocate residents, the county relocation committee shall obtain from the facility the name of each resident to be relocated, the name and addresses of either a family member or the individual legally responsible for the resident's care, and the name and telephone number of the individual in the facility to be contacted for further information. This information shall be obtained at least 60 days before the date by which relocation is to be accomplished.

B. Coordination of relocation. The county relocation committee shall designate one of its members to act as a liaison to the individual in the facility responsible for coordinating the relocation of residents. The county designee shall meet with the appropriate facility staff to coordinate the relocation assistance offered by the county relocation committee with the relocation responsibilities of the facility. This coordination shall include participating, as requested, in any group meetings of residents and families to explain the steps being taken in arranging for the relocation of residents.

C. Offer of assistance. The county relocation committee shall provide a written offer of relocation assistance to each resident to be relocated and to their family member, and if applicable, to the person legally responsible for their care. The written offer of assistance shall contain at least the following information:

1. the name and telephone number of the individual to contact to request further information or assistance; and

2. an explanation of the relocation services offered by the county relocation committee.

D. Relocation services. The county relocation committee shall arrange for or provide the following minimum services for residents to be relocated as necessary to ensure placement or other appropriate alternative care:

1. Accurate and up-to-date information about the alternative arrangements for the appropriate care of the resident including all the resources identified in 12 MCAR § 2.04603 [Temporary] B.

2. Assistance in choosing among the available alternatives.

3. Counseling to enable the resident to adjust to the relocation.

4. Assistance in preparing the resident for the actual move which includes:

a. providing written information about the new facility to the resident;

b. providing an opportunity for each resident to visit the new facility to learn the physical layout, meet other residents and staff, and learn about the program and activities; and

c. encouraging a visit by staff and residents from the new facility to the resident prior to the actual relocation, if a site visit by the resident is not possible.

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5. Assistance in making arrangements for transportation as necessary.

6. Assurance that someone accompanies the resident during the actual move.

7. A follow-up visit to the resident within 30 days of the relocation. The follow-up visit includes interviewing or on-site observation of the resident or both, discussion with appropriate staff, and review of pertinent medical or social records to:

a. assess the adjustment of each resident to the new living environment; and

b. recommend appropriate services or methods to meet any special needs of each resident arising out of relocation.

12 MCAR § 2.04606 [Temporary] Reporting.

A. Initial report. The local social services agency shall submit a written report to the social services division of the Department of Public Welfare within one week from the date of receipt of the written notice of the need to relocate residents. The initial report shall contain the following information:

1. the names and phone numbers of the county relocation committee members;

2. a description of the procedure developed to identify and monitor the availability of the resources which may be used to meet the needs of the residents to be relocated; and

3. a timetable for the completion of the relocation process.

B. Status reports. During a relocation process the county relocation committee shall provide weekly status reports to the social services division of the Department of Public Welfare. The status reports shall include:

1. the number of individuals who have relocated during the week;

2. the date of each individual discharge;

3. the new placement of each individual relocated; and

4. identification of any specific problems which arise concerning the relocation process.

C. Summary report. The county relocation committee shall provide a summary report to the social services division of the Department of Public Welfare within 60 days of the completion of each facility relocation process. The report shall include:

1. the number of residents relocated;

2. the medical assistance identification number of each medical assistance recipient relocated;

3. the date of each resident's discharge;

4. the new placement of each resident;

5. the status of each resident at the time of the follow-up visit; and

6. the identification of problems encountered during the relocation process.

D. Submission of summary report. One copy of the summary report shall be submitted to the social service division of the Department of Public Welfare. A second copy of this report shall be submitted to the income maintenance bureau of the Department of Public Welfare.

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 in 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 Commerce

Adopted Temporary Rules Governing Self-Insurance Plan Administrators

The temporary rules proposed and published at *State Register*, Volume 8, Number 20, pages 1102-1106, November 14, 1983 (8 S.R. 1102) are adopted with the following modifications:

Temporary Rules as Adopted

4 MCAR § 1.9261 [Temporary] Authority.

Rules 4 MCAR §§ 1.9260-1.9269 [Temporary] are adopted under the authority of Minnesota Statutes, section ~~60A.28~~ 60A.23, subdivision 8, clause (5).

4 MCAR § 1.9262 [Temporary] Definitions.

The following definitions apply in 4 MCAR §§ 1.9260-1.9269 unless the context clearly indicates a different meaning.

F. Services or risk management services. "Services" or "risk management services" includes~~,~~ ~~but is not limited to,~~ accounting and record retention, actuarial in conjunction with the other services, claims administration, general administration, insurance, legal, loss control and safety, rehabilitation, risk management and analysis, and other services related to the establishment and maintenance of a program of self-insurance.

Department of Health

Adopted Amendments to Rules Relating to Services for Children With Handicaps

The rules proposed and published at *State Register*, Volume 8, Number 10, pages 358-362, September 5, 1983 (8 S.R. 358) are adopted as proposed.

Department of Labor and Industry Workers' Compensation Division

Adopted Amendments to Temporary Rules of the State Department of Labor and Industry Governing Workers' Compensation Permanent Partial Disability Schedule

The rules proposed and published at *State Register*, Volume 8, Number 14, pages 562-595, October 3, 1983 (8 S.R. 562) and Volume 8, Number 23, pages 1296-1337, December 5, 1983 (8 S.R. 1296) are adopted with the following modifications:

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.

8 MCAR § 1.9017 [Temporary] Musculo-skeletal schedule; joints.

E. Knee:

2. Procedures or conditions:

~~n.~~ r. proximal tibial osteotomy, flexion to 90 degrees, extension to 0 degrees, 5 percent.

8 MCAR § 1.9025 [Temporary] Pre-existing impairments.

D. Where the pre-existing disability and the subsequent permanent partial disability affect more than one member, apportionment must be determined as follows:

2. Combine the percentages obtained in 1. in the manner set forth in Minnesota Statutes, section 176.105, subdivision 4, clause (c). Prior to the next application of the formula, the result of an application of the formula must be stated as a decimal, not as a percentage, that is rounded up or down to four decimal places.

Department of Public Welfare
Bureau of Income Maintenance

Extension of Proposed Temporary Rules Governing Reimbursement Methodology for Hospital Inpatient Care Provided Under the Medical Assistance and General Assistance Medical Care Programs 12 MCAR §§ 2.05401-2.05403 (Temporary)

Notice of Continuation of Temporary Rules

Notice is hereby given that the above-entitled temporary rules which were effective on October 1, 1983 and published in the *State Register* on October 24, 1983 are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled temporary rules will be in effect until September 24, 1984 unless they are superseded by permanent rules or legislative action.

January 18, 1984

Leonard W. Levine
Commissioner of Public Welfare

Department of Public Welfare
Bureau of Income Maintenance

Extension of Proposed Temporary Rules Governing the General Assistance Program and Notification and Referral to the Minnesota Emergency Employment Development Act Program 12 MCAR §§ 2.05501-2.05509 (Temporary) and 12 MCAR § 2.04422 (Temporary)

Notice of Continuation of Temporary Rules

Notice is hereby given that the above-entitled temporary rules which were effective on October 1, 1983 and published in the *State Register* on October 17, 1983 are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled temporary rules will be in effect until September 24, 1984 unless they are superseded by permanent rules or legislative action.

January 18, 1984

Leonard W. Levine
Commissioner of Public Welfare

Department of Public Welfare
Bureau of Social Services

Extension of Proposed Temporary Rules Governing Child Day Care Sliding Fees, 12 MCAR § 2.164 (Temporary)

Notice of Continuation of Temporary Rules

Notice is hereby given that the above-entitled temporary rules which were effective on August 31, 1983 and published in the *State Register* on October 3, 1983 are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled temporary rules will be in effect until August 24, 1984 unless they are superseded by permanent rules or legislative action.

January 18, 1984

Leonard W. Levine
Commissioner of Public Welfare

Minnesota Racing Commission

In the Matter of the Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts

The rules proposed and published at *State Register*, Volume 8, Number 20, pages 1162-1185, November 14, 1983 (8 S.R. 1162) are adopted with the following modifications:

Rules as Adopted

4 MCAR § 15.002 Applicant's affidavit.

An application for a Class A license must include, on a form prepared by the commission, an affidavit of the chief executive officer ~~or~~ of a major financial participant ~~as~~ in the applicant setting forth:

4 MCAR § 15.003 Disclosure of ownership and control.

An applicant for a Class A license must disclose:

E. If a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the applicant makes its best effort to disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more in that nonindividual holder. The disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in applicant are so identified. The term "best effort," as used in this and subsequent sections of these rules, means an active and serious attempt which is made in good faith, and goes beyond due diligence, to provide the information required to be disclosed. When an applicant is unable, despite its best effort, to provide the information required, it shall explain fully and document its inability to do so;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or ~~control of the sponsorship or management of horse racing~~ operation of applicant's horse racing facility, and copies of any written agreements;

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.

4 MCAR § 15.004 Disclosure of character information.

An applicant for a Class A license must make its best effort, as defined in 4 MCAR § 15.003 E., to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR §§ 15.003 or 15.010 B. or C. has:

4 MCAR § 15.005 Disclosure of improvements and equipment.

An application for a Class A license must disclose with respect to the pari-mutuel horse racing facility it will own and operate:

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available ~~for the~~, distinguishing between public and other; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

4 MCAR § 15.006 Disclosure of development process.

An applicant for a Class A license must disclose with regard to development of its horse racing facility:

~~6.~~ G. whether the site has been acquired or leased by applicant. If so, the applicant must provide the documentation. If not, the applicant must disclose what actions the applicant must take in order to use the site.

4 MCAR § 15.008 Disclosure of financial plan.

An applicant for a Class A license must disclose with regard to its financial plan:

A. the financial projections for the development period and each of the first five racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class A licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel pools. The disclosure must include:

1. the following assumptions and support for them:

   v. federal taxes;

2. the following profit and loss elements:

   b. total operating expenses, including anticipated expenses for:

      (17) federal and state income taxes;

4 MCAR § 15.010 Disclosure of management.

An applicant for a Class A license must disclose with regard to the development, ownership, and operation of its pari-mutuel horse racing facility:

E. description of the applicant's security plan, including:

3. specific plans to discover persons at the horse racing facility who have been convicted of a felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction or are a threat to the integrity of racing in Minnesota;

4 MCAR § 15.016 Personal information and authorization for release.

In an application for a Class A license the applicant must make its best effort, as defined in 4 MCAR § 15.003 E., to include the following with respect to each individual identified pursuant to 4 MCAR § 15.003 as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR § 15.010 B. or C.;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

3. releases authorized providers and users of the information from any liability under state or federal data privacy law.

4 MCAR § 15.017 Class A license criteria.

The commission may issue a Class A license if it determines on the basis of all the facts before it that: the applicant is financially able to operate a racetrack; issuance of a license will not create a competitive situation that will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and the issuance of the license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors and indices:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including~~, but not limited to~~:

8. any other indices related to integrity which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

C. the quality of physical improvements and equipment in applicant's facility, including~~, but not limited to~~:

14. any other indices related to quality which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

E. financial ability to develop, own, and operate a pari-mutuel horse racing facility successfully, including~~, but not limited to~~:

8. any other indices related to financial ability which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

F. status of governmental actions required by the applicant's facility, including~~, but not limited to~~:

5. any other indices related to status of governmental actions which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

G. management ability of the applicant, including~~, but not limited to~~:

8. any other indices related to management ability which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

J. impact of facility, including~~, but not limited to~~:

6. any other indices related to impact which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

L. effects on competition, including~~, but not limited to~~:

2. minimum and optimum number of racing days sought by the applicant;

3. any other indices of the impact of competition which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants.

The commission also must consider any other information which the applicant discloses and is relevant and helpful to a proper determination by the commission.

4 MCAR § 15.019 Applicant's affidavit.

An application for a Class B license must include, on a form prepared by the commission, an affidavit of the chief executive officer of or a major financial participant ~~as~~ in the applicant setting forth:

4 MCAR § 15.020 Disclosure of ownership and control.

An applicant for a Class B license must disclose:

E. if a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the applicant must make its best effort, as defined in 4 MCAR § 15.003 E., to disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more in that nonindividual holder. The disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in the applicant are so identified;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ~~ownership or control of the~~ applicant's sponsorship or management of horse racing, and copies of any written agreements;

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.

4 MCAR § 15.021 Disclosure of character information.

An applicant for a Class B license must make its best effort, as defined in 4 MCAR § 15.003 E., to discuss whether the applicant or any individual or other entity identified pursuant to 4 MCAR § 15.020 or 15.027 B. or C. has:

4 MCAR § 15.022 Disclosure of improvements and equipment.

An application for a Class B license must disclose with respect to the facility at which it will sponsor and manage pari-mutuel horse racing:

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available ~~for the~~, distinguishing between public and other; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

4 MCAR § 15.025 Disclosure of financial plan.

An applicant for a Class B license must disclose with regard to its financial plan:

A. financial projections for any development period in each of the first or next three racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class B licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel betting pools. The disclosure must include:

1. the following assumptions and support for them:

   u. debt service~~.~~;

   v. federal taxes;

2. the following profit and loss elements:

   b. total operating expenses, including anticipated expenses for:

      (17) federal and state income taxes;

4 MCAR § 15.027 Disclosure of management.

An applicant for a Class B license must disclose with regard to its management of pari-mutuel horse racing:

E. a description of the applicant's security plan, including:

3. specific plans to discover persons at the horse racing facility who have been convicted of a felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction, or are a threat to the integrity of racing in Minnesota;

J. a description of the applicant's plan for pari-mutuel betting, including number of line divisions, windows, selling machines, and clerks; use or duties of each; and accounting procedures, including its proposed system of internal audit and supervisory controls;

4 MCAR § 15.033 Personal information and authorization for release.

In an application for a Class B license the applicant must make its best effort, as defined in 4 MCAR § 15.003 E., to include the following with respect to each individual identified pursuant to 4 MCAR § 15.020 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR § 15.027 B. or C.:

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

3. releases authorized providers and users of the information from any liability under state or federal data privacy law.

4 MCAR § 15.034 Class B license criteria.

The commission may issue a Class B license if it determines on the basis of all the facts before it that: the applicant is fit to sponsor and manage horse racing; issuance of a license will not create a competitive situation which will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and issuance of a license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors and indices:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including~~, but not limited to~~:

8. any other indices related to integrity which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

C. the quality of physical improvements and equipment applicant will use, including~~, but not limited to~~:

14. any other indices related to quality which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

D. financial ability to sponsor and manage pari-mutuel horse racing successfully, including~~, but not limited to~~:

7. any other indices related to financial ability which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

F. management ability of the applicant, including~~, but not limited to~~:

11. any other indices related to management which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

J. effects on competition, including~~, but not limited to~~:

2. minimum and optimum number of racing days sought by the applicant;

3. any other indices related to effects on competition which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants.

The commission also must consider any other information which the applicant discloses and is relevant and helpful to a proper determination by the commission.

4 MCAR § 15.035 Class A and B license application disclosures.

An applicant for a Class A or B license in its disclosures must:

B. make its best effort, as defined in 4 MCAR § 15.003 E., to provide all information required to be disclosed;

C. provide only information relevant to disclosures requested by the commission;

D. upon request of the commission or its agents, provide copies of any documents used in the preparation of its application.

4 MCAR § 15.040 Deadlines for submission of Class A and B license applications.

Deadlines for submission of a Class A or B license application are as follows:

A. applications for a Class A license to own and operate a racetrack in the seven-county metropolitan area must be received by the commission's designee before 5:00 p.m. on the 14th day, as computed pursuant to Minnesota Statutes, section 645.15, after these rules become effective or on ~~January 15~~ March 1, 1984, whichever is later. The designee must deliver investigation fees to the commission promptly upon receipt. The designee must retain and safeguard until the deadline with seals intact all applications received. Promptly after the deadline, the designee must deliver the applications to the commission for opening;

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

Outside Opinion Sought Regarding Proposed Rules Relating to Automobile Insurance Nonrenewals Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing automobile insurance nonrenewals. Promulgation of these rules is authorized by Minnesota Statutes, section 65B.17, subd. 2.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce 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 to: William Kyle, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-6944.

All statements of information and comment shall be accepted until March 7, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Self-Insurance Plan Administrators Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing self-insurance plan administrators. Promulgation of these rules is authorized by Minnesota Statutes, section 60A.23, subd. 8.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce 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 to: Rose Ortiz, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-4017.

All statements of information and comment shall be accepted until March 7, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Ethical Practices Board

Request for Advisory Opinion Re: Hennepin County Disclosure Law—Administration

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its March 9, 1984 Board meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to February 24, 1984.

Ms. Mary Ann McCoy, Executive Director
State Ethical Practices Board
41 State Office Building
St. Paul, MN 55155

Dear Ms. McCoy:

I am the official responsible for administration of the election laws for Hennepin County and am requesting an advisory opinion in regards to Chapter 362, Laws of 1980.

Kroening Volunteer Committee, a State principal campaign committee, made a one-time contribution of $300.00 to Citizens for Daugherty, a Minneapolis Alderman candidate. With this contribution, according to Section 6, they became a political fund and were required to file their committee with Hennepin County.

Since they do not anticipate contributing to another Hennepin County Chapter 362 candidate, they would like to terminate their reporting responsibility to Hennepin County. However, as an on-going State campaign committee they have a cash balance of over $100.00. According to Section 7, Subd. 4, they can not terminate and must continue to report to the State and to Hennepin County.

My question is, may we do an administrative termination on request by State committees who inadvertently contribute to a candidate who falls under Hennepin County Chapter 362 regulations?

Sincerely,

Vernon T. Hoppe, Director of Property Taxation
Hennepin County

Metropolitan Council and Metropolitan Health Planning Board

Public Hearings for the Joint Consideration of:

I. 1984-85 Application for Renewal of HSA Designation

II. 1984 Annual Implementation Plan

The Metropolitan Council and Metropolitan Health Planning Board will jointly hold a public hearing on Wednesday, February 29, 1984 at 7 p.m. in the Council Chambers of the Metropolitan Council, 300 Metro Square Building, St. Paul, Minnesota 55101 for the purpose of receiving written and oral comments on the 1984-85 Application for Renewal of the Metropolitan Council/Metropolitan Health Planning Board's HSA Designation and the 1984 Annual Implementation Plan. Copies of the 1984-85 HSA Application and the Annual Implementation Plan are available for public inspection beginning January 30, 1984 at the following locations:

Metropolitan Council Library
300 Metro Square Building
St. Paul, MN 55101

Minneapolis Public Library
Government Documents Room
300 Nicollet Mall
Minneapolis, MN 55401

St. Paul Public Library
Science and Industry Room
90 W. Fourth St.
St. Paul, MN 55102

Anoka County Library—Blaine Branch
707 Highway 10
Blaine, MN 55434

Carver County Library—Chaska Branch
314 Walnut St.
Chaska, MN 55318

Dakota County Library—Burnsville Branch
1101 W. County Rd. 42
Burnsville, MN 55337

Hennepin County Library—Southdale Branch
7001 York Av.
Edina, MN 55435

Ramsey County Library—Roseville Branch
2180 N. Hamline Av.
Roseville, MN 55113

Scott County Library—Shakopee Branch
235 S. Lewis St.
Shakopee, MN 55379

Washington County Library—Park Grove Branch
7420—80th St. S.
Cottage Grove, MN 55106

Metropolitan Health Planning Board
300 Metro Square Bldg.
St. Paul, MN 55101

Copies of the Annual Implementation Plan, and Work Program and Budget for the Agency are available at no cost from the Metropolitan Council Public Information Office, 300 Metro Square Bldg., St. Paul, MN 55101, Telephone (612) 291-6464.

Persons wishing to speak at this public hearing may register in advance by contacting Debbie Conley at 291-6352. Those who register first will be scheduled to speak first. If you cannot attend, you are encouraged to send written comments to the Metropolitan Health Planning Board, up to 10 working days following this hearing. For further information contact the Metropolitan Health Planning Board at 291-6352.

Gerald J. Isaacs, Chairman
Metropolitan Council

Elaine Voss, Chairperson
Metropolitan Health Planning Board

Department of Natural Resources

Notice of Sale of State Peat Lease

Notice is hereby given that a lease sale to remove peat in swamp and school fund lands located in 2632 acres, more or less, of the Arlberg Bog, St. Louis County, Minnesota will be held before the State Executive Council at their regularly scheduled meeting, at 9:00 AM on March 7, 1984. At the time of the issuance of this notice, the meeting is scheduled to be held at 500 Rice Street, St. Paul, Minnesota.

The Commissioner of Natural Resources, Box 45, Centennial Office Building, St. Paul, Minnesota 55155, will receive sealed bids and applications for a lease to remove peat under the authority of Minnesota Statutes 1982, Section 92.50 up to the time specified below.

Each application and bid must be submitted in a bid envelope obtained from the Division of Minerals and each sealed bid envelope must be enclosed in another envelope and delivered to the Commissioner of Natural Resources, Attention: Division of Minerals, Box 45, Centennial Office Building, St. Paul, Minnesota 55155. Bids must be received by 9:00 AM on March 7, 1984 and no bids received after that time will be considered.

At the time specified for the lease sale, the Commissioner, together with the State Executive Council, will publicly open the bids and announce the amount of each bid separately. A lease will be awarded by the Commissioner, with approval of the State Executive Council, to the highest responsible bidder; but no bids will be accepted that do not equal or exceed the base royalty rates set forth in the prospectus. The right is reserved to the State, through the Executive Council, to reject any or all bids. All bids not accepted will become void.

In the absence of satisfactorily demonstrated past technical and financial competence to perform under similar circumstances, the Commissioner may require bidders to submit information relating to their technical and financial competence to perform under the State's lease to remove peat. If the Commissioner makes such a request of a bidder, the information shall be submitted within 30 days after the date of the Commissioner's request.

Application and bid forms, bid envelopes, instructions on how bids are to be submitted, and copies of the prospectus may be obtained from the Department of Natural Resources, Division of Minerals Office at Box 45, Centennial Office Building, St. Paul, Minnesota 55155, or Box 567, Hibbing, Minnesota 55746.

January 30, 1984

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Public Welfare
Health Care Programs Division

Medicaid Demonstration Project: Notice of Provider Education Seminar

The Department of Public Welfare intends to contract with health care providers to provide health care services for Medical Assistance (MA) recipients on a prepaid basis. A demonstration project will be conducted in three counties to test the feasibility of MA prepayment. The Department is offering a provider education seminar for providers interested in participating in the project or in learning more about their possible role in the project. The metropolitan area counties which have tentatively been selected as demonstration sites are Hennepin and Anoka. Health care providers in these counties might find the seminar of particular interest.

Provider Education Seminar
February 7, 1984
8:30 a.m. to 12:00 p.m.
State Office Building
435 Park Avenue (just West of Capitol)
St. Paul, Minnesota
Room 81 (Auditorium, Ground Floor)

Providers attending the seminar will receive a packet of information describing the project, the capitation rates and the criteria for participation.

Providers who cannot attend, but would like to receive information on the project may contact:

Ms. Kathy Heuer
Health Care Programs Division
Space Center, 444 Lafayette Road
St. Paul, Minnesota 55101
Phone: (612) 297-4668

Department of Transportation

Notice of Possible Acquisition of Rail Line—Burlington Northern, Starbuck-to-Glenwood Line

The Commissioner of the Minnesota Department of Transportation is publishing this Notice to list a rail line for possible acquisition in the State Rail Bank Program. This Notice is published pursuant to Minnesota Statutes, section 222.63, subdivision 3, and in accordance with the rules governing the State Rail Bank, 14 MCAR § 1.4012. Information about the line proposed for acquisition is as follows:

1. The rail line is known as the Starbuck to Glenwood line, it is approximately 8 miles long and is owned by the Burlington Northern, Inc. (BN). The Department is proposing to acquire approximately 6 miles of this line from the grade crossing of Trunk Highway 28 and the line, to the City of Glenwood.

2. The line is located in Pope County.

3. The identified future use for the line is to relocate Trunk Highway 28.

4. The Glenwood to Starbuck line is a segment of the Starbuck to Villard line which was abandoned by BN on May 12 1981. The track structure has been removed from the property.

Written comments about the proposed acquisition of this abandoned line under the State Rail Bank Program should be sent to the Department of Transportation within 30 days of the publication of this Notice. Comments should be mailed to the following address:

Charles Sanft, Director
Rail Planning and Program Development Section
Minnesota Department of Transportation
810 Transportation Building
St. Paul, Minnesota 55155
612/296-1613

Richard P. Braun
Commissioner

State Board of Vocational-Technical Education

Notice of Intent to Prepare Lists for Future Rulemaking Proceedings

In accordance with Minnesota Law, 1980, Chapter 615, the Minnesota State Board of Vocational-Technical Education is establishing a list of persons to receive official notice of its rulemaking proceedings. The law requires each agency or department to establish and maintain such a list to replace the list currently maintained by the State Board of Education/State Board of Vocational Education.

If you wish to receive notice of rulemaking proceedings of the State Board of Vocational-Technical Education, please notify the board in writing. You will then receive notice of any rulemaking proceedings initiated after the date on which your request is received. Please note that this procedure will put you only on the list of the State Board of Vocational-Technical Education.

Please send your written request to:

Joseph P. Graba, State Director
State Board of Vocational-Technical Education
564 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-3995

Water Resources Board

Notice of Regular Meeting Date

Starting on February 10, 1984, the Minnesota Water Resources Board will hold a regular monthly meeting on the second Friday of each month beginning at 9:30 a.m. in its office at 555 Wabasha Street, Room 206, St. Paul, Minnesota 55102.

If you would like to receive meeting notices, contact Karen Schultz at (612) 296-2840.

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.

Department of Energy and Economic Development Governor's Council on Rural Development

Request for Proposals for the Planning and Implementation of a Minnesota Wood Products Trade Show

The Minnesota Department of Energy and Economic Development/Governor's Council on Rural Development (Mn DEED/GCRD) is requesting proposals from qualified individuals interested in working with Mn DEED/GCRD on a project to design, plan, and implement a trade show to promote Minnesota's wood products.

The trade show will be held approximately in February, 1985. A professional trade show/conference consultant will be responsible for program planning.

Proposals are being requested to complete the following major activities.

A. Program Development

B. Coordination

C. Show Management

It is estimated that the cost of this activity need not approach but shall not exceed $11,500. Proposals should be received by Mn DEED/GCRD no later than 4:30 p.m. Friday, February 24, 1984. The formal Request for Proposals may be requested and inquiries should be directed to:

Jane Stevenson, Program Manager
Governor's Council on Rural Development
Department of Energy and Economic Development
100 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101
Phone: (612) 296-3591

Department of Energy and Economic Development Governor's Council on Rural Development

Request for Proposals to Produce the Conference Proceedings Book from the Willmar Rural Women's Conference

The Minnesota Department of Energy and Economic Development/Governor's Council on Rural Development (Mn DEED/GCRD) is requesting proposals from qualified individuals interested in working with Mn DEED/GCRD on a project to produce the conference proceedings book from the Willmar rural women's conference, "Rural Women: An Untapped Resource."

The book will be produced as the primary record of this conference, which was held in May of 1982. It will be produced in sufficient quantities to provide each attendee of the conference with a copy, as well as complimentary copies to other programs around rural Minnesota which work with rural women interested in starting their own business. Proposals are being requested to complete the following major project activities:

A. Complete Rough Editing of the Transcript

B. Do Final Editing of the Manuscript

C. Select and Work with a Typesetter

D. Select and Work with a Printer

It is estimated that the cost of this activity need not approach but shall not exceed $20,000. Proposals should be received by Mn DEED/GCRD no later than 4:30 p.m. Friday, February 24, 1984. The formal Request for Proposals may be requested and inquiries should be directed to:

Jane Stevenson, Program Manager
Governor's Council on Rural Development
Department of Energy and Economic Development
100 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101
Phone: (612) 296-3591

Minnesota Housing Finance Agency Home Improvement Division

Request for Proposals for Engineer's/Architect's Consultation Services

The Minnesota Housing Finance Agency (MHFA) is seeking proposals from engineers and architects to perform energy design evaluations on between 20 and 50 passive solar homes.

The engineer/architect firm selected by the MHFA will conduct energy design analyses on passive solar homes to assess the cost effectiveness of the energy conserving features and use of solar energy on an annual basis. The firm selected must issue a certificate of cost effectiveness for each home design evaluated.

Proposals must include: (1) an outline of the evaluation method to be employed (in case commercially available software is to be used, a sample print-out should be attached); and (2) the cost for the energy design evaluation for each home design, on a sliding scale basis (if applicable), based on an assumption of between 20 to 50 designs.

The written proposals must be received no later than 4:30 p.m. on Monday, February 27, 1984. For more detailed information on the required contents of the proposal, please call Bradley Simenson at (612) 297-3122.

General inquiries and proposals should be sent to:

Bradley Simenson
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, Minnesota 55101
(612) 297-3122

Department of Public Welfare
Support Services Bureau

Request for Proposal for Services as Part of a Rulemaking Project

Notice is hereby given that the Support Services Bureau, Department of Public Welfare, is requesting proposals for services using research, writing and group process skills as an extension to its 1983 rulemaking demonstration project. This project is designed to gain approval of amendments to selected Department rules and to test the effectiveness of utilizing specialized skills on a centralized basis in the development and approval of rules.

The estimated amount of the contract is not to exceed $27,500.

The guidelines to be used in the preparation of a proposal and a detailed description of the project are available from the Manuals Section, Support Services Bureau, Department of Public Welfare. Deadline for receipt of proposals is 4:30 p.m., February 27, 1984. To obtain a copy of the detailed proposal, write or call:

Robert Hamper
Department of Public Welfare
Manuals Section
4th Floor, Centennial Bldg.
St. Paul, Minnesota 55155
(612) 296-2794

Department of Transportation
Division of Technical Services

Potential Availability of Contracts for a Variety of Highway Related Technical Activities

The Minnesota Department of Transportation (Mn/DOT) is planning an expanded highway program. To assist it with the development of this program, Mn/DOT may require the services of qualified consultants for work which may include but not be limited to:

Category A: Preliminary Design (Environmental Studies, Project Development Reporting and Geometric Layouts).

Category B: Detail Design & Plan Preparation

1. Highway
2. Lighting
3. Signing
4. Traffic Signals
5. Landscaping
6. Hydraulics

Category C: Field Surveys (Control, Design)

Category D: Soils & Foundation Investigations

Category E: Special Services

1. Land Use Study
2. Chemical Disposal or Recycle
3. Endangered Species
4. Building Condition Survey
5. Traffic Forecasting
6. Water
7. Air
8. Noise
9. Hydrologic
10. Vibration (Blasting, Pile Driving)
11. Expert Witness (Litigation-Testimony)
12. Audit Evaluation (Federal Procurement Regulations)

Category F: Construction

1. Management
2. Inspection
3. Staking

Those consultants who wish to be considered for any of the potential projects, please furnish the following information:

1. Federal Forms 254/255 and/or your brochure.
2. Indicate the category of activity in which you are qualified and wish to be considered (Example: B-1-5-6, C).
3. Indicate in which fields your key personnel are registered (Engineer, Architect, etc.).
4. Indicate whether or not you are an Equal Opportunity firm and have an Affirmative Action Plan.
5. Indicate if your firm is a certified minority owned firm.
6. Indicate if your firm qualifies as a Small Business Enterprise within the definition contained in M.S. 645.445.
7. Indicate if your firm qualifies as a Minnesota Resident within the definition contained in M.S. 16.072.

It is expected that a qualified reference list will be developed from the responses that will remain in effect until June 30, 1985.

This is not a request for proposal. All expressions of interest in being considered shall be delivered to the address indicated below not later than four o'clock (4:00) PM, February 27, 1984.

B. E. McCarthy, Director
Office of Consultant Engineering Services
Transportation Building, Room 612B
St. Paul, Minnesota 55155
Telephone: (612) 296-3051

SUPREME COURT

Decisions of the Court of Appeals Filed Wednesday, January 25, 1984

Compiled by Wayne O. Tschimperle, Clerk

C5-83-1904 Donald E. Montgomery, Appellant, v. American Hoist and Derrick Company, a Delaware Corporation, Respondent. District Court, Ramsey County.

Motion Denied. Popovich, C.J.

CX-83-1588 Elroy Smith, Relator, v. American Indian Chemical, Dependency Diversion Project, Respondent, and Commissioner of Economic Security, Respondent. Department of Economic Security.

A three day unexcused absence from work caused by an employee's incarceration for failure to pay a speeding ticket is misconduct disqualifying the employee from receiving unemployment compensation benefits.

Affirmed. Popovich, C.J.

CX-83-1283 Boulevard Del, Inc., Appellant, v. Marvin Stillman, Defendant & Third Party Plaintiff, Respondent, Arthur Mack, et al., Third Party Defendants. District Court, Hennepin County.

1. The district court lacked subject matter jurisdiction in vacating summary judgment when judgment had been entered, paid in full and satisfied of record.

2. The district court erred in vacating summary judgment where there was no evidence properly submitted to the court pursuant to Minn. R. Civ. P. 56.05 opposing summary judgment, and there was no affidavit submitted to the court pursuant to the Minn. R. Civ. P. 56.06 stating why a continuance was needed.

Reversed. Foley, J. Took no part, Segwick, J.

C9-83-1209 Loren R. Ortendahl, et al., Respondents, v. Loren L. Bergmann, et al., Appellants. District Court, Douglas County.

1. The trial court may clarify by parol evidence an ambiguous legal description but may not rewrite a purchase agreement to include in the description the property interests of a third party over objections of purchaser.

2. Vendors may not have specific performance of a purchase agreement when they cannot deliver marketable title as called for in the agreement.

Reversed. Foley, J.

C9-83-1579 Dale E. Hanka, Relator, v. The Hardware, Respondent, and Commissioner of Economic Security, Respondent. Department of Economic Security.

1. Where the commissioner, rather than the employer, disputes an employee's eligibility for benefits, the commissioner must assume the initial burden of proving that the employee has voluntarily terminated employment and is thus disqualified for benefits.

2. The evidence in this case does not reasonably support the commissioner's finding that an employer-employee relationship did not exist.

Remanded. Lansing, J.

C7-83-1676 State of Minnesota, Respondent, v. Charles David Pickett, Appellant. District Court, Hennepin County.

1. The trial court did not err in denying defendant's request for a dispositional departure.

2. Although the trial court erred in calculating the duration of the consecutive sentences imposed, the existence of aggravating circumstances justified the limited sentencing departure.

Affirmed. Sedgwick, J.

C9-83-1372 David Joseph Szczech, Respondent, v. Commissioner of Public Safety, Appellant. District Court, Hennepin County.

The Municipal Court retains jurisdiction to hear implied consent cases even if the hearing is not held within the statutory time limit of 60 days.

Minn. Stat. § 169.123(6) 1982), which requires that implied consent hearings "shall be held . . . no later than 60 days following the filing of a petition for review," is directory, not mandatory.

Reversed and remanded. Wozniak, J.

Decisions of the Supreme Court Filed Friday, January 27, 1984

Compiled by Wayne O. Tschimperle, Clerk

C1-83-1057 State of Minnesota, Respondent, v. Gordon Melvin Gale Broten, Jr., Appellant. District Court, Roseau County.

Trial court correctly concluded that aggravating circumstances were present justifying an upward durational departure: although trial court erred in computing defendant's criminal history score, defendant's sentence need not be reduced because the sentence imposed was still within the permissible range of departure from the presumptive sentence obtained by using the correct criminal history score.

Affirmed. Amdahl, C.J.

C6-82-1111 State of Minnesota, Respondent, v. Tommy E. Russell, Appellant. District Court, Hennepin County.

Defendants charged with theft who claim that they were victims of racially discriminatory enforcement failed to meet their burden of establishing a *prima facie* case of racially discriminatory impact and discriminatory intent.

Affirmed. Wahl, J.

C8-82-851 In Re the Marriage of: Mary Mae O'Brien, petitioner, Appellant, v. Jerome P. O'Brien, Respondent. District Court, Wright County.

This case is remanded to provide life insurance protection for an award of permanent spousal maintenance for the wife, but otherwise the trial court's decision with respect to division of property, spousal maintenance, child support, and other matters is affirmed as within the trial court's discretion.

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

C9-83-142 Michael Hafner, et al., Plaintiffs, v. David Thomas Iverson, Defendant and Third Party Plaintiff, Burlington Northern, Inc., defendant and third party plaintiff, Appellant, v. Collins Electric, third party defendant, Respondent. District Court, Ramsey County.

1. Superseding, intervening cause was not established as a matter of law and the case is, therefore, remanded for a new trial.

2. In an action for contribution brought by a third-party tort-feasor against the employer of the injured employee claimant under *Lambertson v. Cincinnati Corp.*, 312 Minn. 114, 257 N.W.2d 679 (1977), the employer is not entitled to assert the fellow-servant doctrine as a defense.

Reversed and remanded for a new trial. Simonett, J.

CX-82-1130, C1-82-1131, CX-82-1354 Northern States Power Company, Petitioner, Respondent, v. Minnesota Public Utilities Commission, Appellant (C1-82-1131), and Minnesota Department of Public Service, Intervenor, Appellant (C1-82-1131), Minnesota Office of Consumer Services, Intervenor, Appellant (CX-82-1130), City of St. Paul, et al., Intervenors-Respondents Below, Minnesota Public Interest Research Group, Intervenor, Appellant (CX-82-1354). District Court, Ramsey County.

The acceptance by the Federal Energy Regulatory Commission of a filed amended coordinating agreement between Minnesota and Wisconsin electrical power utilities established a wholesale rate which must be considered by the Minnesota Public Utilities Commission as an expense of power purchased in setting rates for Minnesota retail electric power purchases.

Affirmed. Kelley, J.

C5-82-1584, C2-82-1607, C3-83-7 City of Moorhead, Appellant (C5-82-1584, C2-82-1607), Konrad Olson, Peter Joseph Miller and FM Apartment Association, Appellants (C3-83-7), v. Minnesota Public Utilities Commission, Respondent, Minnesota Department of Public Service, Respondent, Northern States Power Company, Respondent, City of St. Paul, Respondent, St. Paul Area Chamber of Commerce, Respondent. District Court, Ramsey County.

1. A determination by the Minnesota Public Utilities Commission that a public utility in the business of distributing natural gas to consumers operated a non-integrated gas distribution system in the state was supported by substantial evidence.

2. In reviewing an order of the Minnesota Public Utilities Commission allocating the cost of gas purchased among classes of a non-integrated natural gas distribution system, the court will uphold the decision unless it is in excess of statutory authority, unjust, unreasonable or discriminatory.

3. Appellants have failed to demonstrate by clear and convincing evidence that an order of the Minnesota Public Utilities Commission resulted in arbitrary, unjust, unreasonable or discriminatory rates.

4. Bare allegations unsubstantiated by legal proof are insufficient to successfully establish procedural irregularity by an administrative agency in arriving at its decision.

Affirmed. Kelley, J.

C6-82-900 In Re Petition for Disciplinary Action Against Roman S. Tymiak, an Attorney at Law in the State of Minnesota. Supreme Court.

Disbarred. 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

Tini Mechanical Contractors, Inc., Appellant, v. Commissioner of Revenue, Appellee, Docket No. 3708

Findings of Fact, Conclusions of Law and Order for Judgement

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, at the County Courthouse in the City of Duluth on October 25, 1983.

John Trenti of Trenti, Saxhaug, Berger, Roche, Stephenson, Richards & Aluni, Ltd. appeared on behalf of Appellant.

Thomas K. Overton, Special Assistant Attorney General, appeared on behalf of Appellee.

Briefs were subsequently submitted by the parties.

SYLLABUS

A steam heat main in the streets of the City of Virginia owned by the Public Utilities Commission is construed to be personal property included in Minn. Stat. § 272.03, subd. 2, which reads in part as follows:

"*Personal Property*. For the purposes of taxation, " includes:

* * *

"(5) All gas, electric, and water mains, pipes, conduits, subways, poles, and wires of gas, electric light, water, heat, or power companies, and all tracks, roads, bridges, conduits, poles and wires of street railway, plank road, gravel road, turnpike, and bridge companies;"

* * *

FINDINGS OF FACT

1. This is an appeal from an Order of the Commissioner of Revenue dated September 17, 1982, assessing a sales tax against Tini Mechanical Contractors, Inc., Appellant, for the period January 1, 1980, through February 28, 1982, in the amount of $45,810.60, which included tax of $37,615.11 and interest of $8,195.49, for the sales tax on steam heat pipe purchased by Tini from TPCO in the amount of $939,894.15 for resale and installation to the Public Utilities Commission of Virginia.

2. Tini was the successful bidder in a contract to install steam heat pipes in the streets of the City of Virginia for the Public Utilities Commission of the City of Virginia. The total contract price was $2,795,652, which included the pipe referred to in Item 1.

3. Tini did not pay sales tax to TPCO on the basis that the pipe was purchased for resale.

4. The pipe referred to in the Order of the Commissioner was sold to the Public Utilities Commission of the City of Virginia

for transmitting steam heat and continues to be personal property after installation in the streets of the City of Virginia as specifically provided by Minn. Stat. § 272.03, subd. 2, which reads in part as follows:

"*Personal Property*. For the purposes of taxation, "personal property" includes:

* * *

"(5) All gas, electric, and water mains, pipes, conduits, subways, poles, and wires of gas, electric light, water, heat, or power companies, and all tracks, roads, bridges, conduits, poles and wires of street railway, plank road, gravel road, turnpike, and bridge companies;"

5. The Public Utilities Commission of the City of Virginia is exempt from sales tax as a government agency, and there is no sales tax due on the sale of the pipe to said agency.

6. The pipe was purchased by Tini from TPCO for the purpose of resale, and this is not a taxable event.

7. The Order of the Commissioner assessing sales tax should be rescinded.

CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

1. The sale of steam heat pipe by Tini Mechanical Contractors, Inc., the Appellant, to the Public Utilities Commission of the City of Virginia was a sale of personal property to a tax exempt agency, and no sales tax is due thereon.

2. The Commissioner's Order of September 17, 1982, assessing sales tax against the Appellant in the amount of $45,810.60 is hereby rescinded.

IT IS SO ORDERED.

January 20, 1984

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

MEMORANDUM

Appellant, Tini Mechanical Contractors, Inc., entered into a contract on May 8, 1980, with the Public Utilities Commission of the City of Virginia, hereafter referred to as Commission. The contract provided that Tini would furnish and install a heat main in certain streets in the City of Virginia. The contract provided that the Commissioner would pay to Tini the sum of $2,795,652.

The furnishing of the pipe was included in the total contract price. Tini purchased the pipe from TPCO and according to the Appellee's audit, Tini paid $939,894.15 for the pipe. No sales tax was originally paid on the pipe purchase, and the Appellee has assessed a sales tax of $37,615.11 plus interest against Tini for the sales tax on the pipe purchase.

Tini contends that it sold the pipe to the Commission and that the Commission is exempt from sales tax so no sales tax is due.

Appellee contends that the pipe constituted an improvement to real property and that under the pertinent statutes, Tini is required to pay a sales tax on its purchase of pipe from TPCO.

The issue is whether or not the installation of the pipe should be considered an improvement to real property. If it is classified as an improvement to real property, then Tini is obligated to pay a sales tax on its purchase of the pipe even though the Commission is an exempt body. This is clearly stated in *County of Hennepin v. State of Minnesota*, 263 N.W 2nd 639 (Minn. 1978).

We have not been referred nor do we find any cases considering this specific situation.

The determination of this case rests on the interpretation of various statutes. The statutes involved are as follows:

"297A.01 DEFINITIONS.

"Subdivision 1. The following words, terms and phrases when used in sections 297A.01 to 297A.44 shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning.

* * *

"Subd. 3. A "sale" and a "purchase" includes, but is not limited to, each of the following transactions:

"(a) Any transfer of title or possession, or both, of tangible personal property, whether absolutely or conditionally. . . .

* * *

"Subd. 4. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business. . . . Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the

erection of buildings or the alteration, repair or improvement of real property are "retail sales" or "sales at retail" in whatever quantity sold and whether or not for purpose of resale in the form of real property or otherwise. . . .

* * *

"Subd. 11. "Tangible personal property" means corporeal personal property of any kind whatsoever, including property which is to become a fixture or which is to lose its identity by incorporation in or attachment to real property.

"272.03. DEFINITIONS.

"Subdivision 1. *Real property*. (a) For the purposes of taxation, "real property" includes the land itself and all buildings, structures, and improvements or other fixtures on it, and all rights and privileges belonging or appertaining to it, and all mines, minerals, quarries, fossils, and trees on or under it.

"(b) A building or structure shall include the building or structure itself, together with all improvements or fixtures annexed to the building or structure, which are integrated with and of permanent benefit to the building or structure, regardless of the present use of the building, and which cannot be removed without substantial damage to itself or to the building or structure.

"(c) (i) The term real property shall not include tools, implements, machinery, and equipment attached to or installed in real property for use in the business or production activity conducted thereon, regardless of size, weight or method of attachment.

"(ii) The exclusion provided in clause (c) (i) shall not apply to machinery and equipment includable as real estate by clauses (a) and (b) even though such machinery and equipment is used in the business or production activity conducted on the real property if and to the extent such business or production activity consists of furnishing services or products to other buildings or structures which are subject to taxation under this chapter.

"Subd. 2. *Personal Property*. For the purposes of taxation, "personal property" includes:

* * *

"(5) All gas, electric, and water mains, pipes, conduits, subways, poles, and wires of gas, electric light, water, heat, or power companies, and all tracks, roads, bridges, conduits, poles and wires of street railway, plank road, gravel road, turnpike, and bridge companies;

* * *

"273.13. CLASSIFICATION OF PROPERTY.

"Subdivision 4. *Class III*. (a) Tools, implements and machinery of an electric generating, transmission or distribution system or a pipeline system transporting or distributing water, gas, or petroleum products or mains and pipes used in the distribution of steam or hot or chilled water for heating or cooling buildings, which are fixtures . . ."

In 1965 Minn. Stat. § 273.13, subd. 4, Class III, read in part as follows:

"273.13. Subdivision 4. *Class III*. All agricultural products, except as provided by class III(a) and Class III(d), stocks of merchandise of all sorts together with the furniture and fixtures used therewith, manufacturers' materials and manufactured articles, and all tools, implements and machinery, whether fixtures or otherwise. . . ."

Tini contends that under Minn. Stat. 272.03, subd. 2(5), that the pipe is always personal property and that the contract in effect was a sale of pipe by Tini to the Commission together with the installation of that pipe by Tini.

Appellee takes the position that the pipes are fixtures and that fixtures are realty. The Commissioner concluded that the pipes were an improvement to real estate and, in fact, became real property under the common law which generally indicates that anything affixed to the land is part of the realty. We hold that the old common law of fixtures does not apply in view of the statutory definitions.

There is some logic to both positions. The definition of pipe as personal property in 272.03, subd. 2(5), was the same before 1965 and after 1965.

Before 1965, 273.13, subd. 4, Class III, basically provided that all personal property was subject to assessment and tax was levied basically in the same way as the tax was levied on real estate.

After 1965, 273.13, subd. 4, Class III, was substantially changed so that most personal property was no longer subject to assessment and no longer subject to the taxes in the same manner as real estate.

However, after 1965, heat pipes of the kind involved here continued to be taxed but only if they are "fixtures". 273.13, subd. 4.

It is not exactly clear as to why it was necessary for the statute to define personal property to include such pipes as are involved here, but it may be that they were so defined to be sure that they would come within those items mentioned in 273.13, subd. 4, Class III, prior to 1967. If they had not been so defined, there might have been a question as to how they should be assessed since they are often on the public right-of-way and if they are considered part of the realty, there would have been some problems in levying the proper taxes.

We also find some problem in understanding the significance of the words "whether fixtures or otherwise" in 273.13, subd. 4, Class III, prior to 1967 and then after 1967, the comparable section indicates these items are covered "which are fixtures".

Appellee makes the point that the definition of personal property in 272.03, subd. 2(5) applies only to "power companies". Appellee states the following:

"By its own terms it does not apply to pipes of the City of Virginia."

We do not find this argument very persuasive. It appears to us that providing heat through mains is a non-governmental function and that the Public Utilities Commission must be considered to be a power company.

These statutes have been the subject of many Supreme Court and Tax Court cases. The most recent case to consider these statutes is *Zimpro, Inc. v. Commissioner of Revenue*, 339 N.W. 2d 736, November 4, 1983. That case reads in part as follows:

"Finally, if we adopt Appellant's argument, the sales tax statute and its interpretation would be transformed into an even more confusing quagmire. Appellant's assertions would require merchants to understand the common law of fixtures in order to determine whether a taxable transaction occurred for purposes of the sales and use tax. Although the sales and use tax statute does refer to fixtures, the type of property included within the statutory definition seems to be clearly and logically defined in Minn. Stat. § 272.03, subd. 1(c).

* * *

"Although the sales and use tax statute does refer to fixtures, the type of property included within the statutory definition seems to be clearly and logically defined in Minn. Stat. § 272.03, subd. 1(c). In addition, use of Chapter 272 definitions for sales and use tax purposes promotes certainty and consistency; determining whether a transaction is taxable under Chapter 297A would become more certain in contrast to a determination requiring reference to the uncertain law of fixtures."

Unfortunately, we do not find those definitions quite that clear and logical.

First, it appears that 272.03, subd. 1(c)(ii), does not apply in this case since that only applies where the equipment is "used in the business or production activity conducted on the real property". We are not here considering any activity conducted on the real property.

Minn. Stat. 272.03, subd. 1(a), states that real property includes "the land itself and all buildings, structures, and improvements or other fixtures on it". This does not provide much help since these pipes are subject to tax under 273.13, subd. 4, Class III(a), which specifically includes them if they are fixtures. This section does not classify such pipes either as real or personal property but simply as Class III property.

We then come back to the quagmire referred to by the Supreme Court in *Zimpro*, supra, as to what are fixtures and what is real estate. In addition, we are always confronted by the specific definition in 272.03, subd. 2(5), which specifically provides that such pipes are always personal property.

Another problem is that 297A.01, subd. 4, states that a retail sale occurs for the sale of supplies to contractors "for the erection of buildings or the alteration, repair or improvement of real property". These pipes are certainly not buildings and putting them in the street can hardly be considered an "improvement of real property".

The Commissioner in his brief on page 6 states the following:

"As applied to the case at hand, these principles yield the following result: if the buried heat main constructed by Tini Mechanical is personal property, the retail (taxable) sale is the sale of the completed heat main to the City of Virginia. In such case, no tax would be due because the city is exempt. Minn. Stat. § 297A.25, subd. 1(j)."

The Commissioner takes the position that Minn. Stat. § 272.03, subd. 2(5) does not include the Public Utilities Commission of the City of Virginia when it refers to

"gas, electric, electric light, water, heat, or power companies,"

The Commissioner's brief states on page 9 the following:

"Yet the statute expressly applies [to] only those owned by companies of specific types."

It appears to us that the Municipal Utilities Commission is included in the word "companies" as used in the statute. The supplying of steam heat is a non-governmental function, and it appears to us that no distinction can be drawn between the Public

Utilities Commision and private companies relative to this matter. If pipes are personal property for a private company, it appears to us that pipes are personal property for the Municipal Utilities Commission.

We conclude that the pipes are still personal property and their sale to the Public Utilities Commission of the City of Virginia is exempt from sales tax whether or not they were separated out in the contract. We construe the transaction as a sale of the pipe after it has been welded and insulated and that if a sales tax were due, it should probably be on the entire cost of the pipe including the labor necessary to connect it and insulate it but not including the excavation and refilling of the trench. We consider the excavation and refilling of the trench to be labor involved with the delivery of the pipe and this labor is not subject to sale tax.

We might also note that if the Public Utilities Commission had conducted its contract and bidding procedures in a particualr manner, the purchase of the pipe could have been made directly by the Public Utilities Commission from TPCO, and the Commissioner would undoubtedly then agree that no sales tax was due. We indicated in *Bemidji Community Hospital v. The Commissioner of Revenue*, Docket No. 3284 dated June 16, 1982, the following:

"We feel that it is unfortunate that under the statute exempt entities can be exempt from sales taxes on purchases of materials going into a building if the exempt entity makes the purchases and such material would be taxable if the purchases of the materials are made by the contractor. There is no doubt that that situation exists under the statute, and the Commissioner cannot change that by regulation. We feel that the statute should be clarified so that all exempt entities are treated in the same manner regardless of what kind of actions or paperwork are done."

There is no doubt that the Public Utilities Commission did not follow the necessary procedures in this case, but we find that it was not necessary to do so because the pipes never lost their character as personal property and the sale by Tini to the Municipal Utilities Commission was a tax exempt sale of personal property.

C.A.J.

State of Minnesota Tax Court
County of Hennepin, Regular Division

Donald P. Helgeson & Arline Helgeson, Petitioners, v. County of Hennepin. Respondent, File No. TC-2217

Findings of Fact, Conclusions of Law and Order for Judgement

The above petition came on for hearing on the 6th day of December, 1983, at the Hennepin County Government Center, before Judge Earl B. Gustafson.

Patrick Murray of Wildfang, Rude, McIntosh, Murray, Chartered, appeared on behalf of Petitioner.

Charles Sweetland, Assistant Hennepin County Attorney, appeared on behalf of Respondent.

The issue is whether Petitioners' Loring Green condominium apartment in Minneapolis should be classified for tax purposes as seasonal recreational property.

The Court, having heard and considered the evidence adduced and being fully advised, now makes the following:

FINDINGS OF FACT

1. Petitioners have sufficient interest in the property to maintain their petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.

2. The subject property is located in the City of Minneapolis at 1235 Yale Place described as follows:

"Condominium Apartment #1201, Loring Green, Minneapolis, Minnesota.
Property I.D. Nos. 27-029-24 24 0818 and 27-029-24 24 0633."

3. The taxes at issue are the real estate taxes on the subject property payable in the year 1982.

4. The assessment date in question is January 2, 1981.

5. Petitioners claim the subject property was improperly classified on the assessment date as "non-homestead residential" when it should have been classified as "seasonal recreational" class 3 property under Minn. Stat. § 273.13, Subd. 4(a).

6. The Petitioners' homestead is at Sartell near St. Cloud, Minnesota.

7. The subject property is a one-bedroom condominium apartment in Minneapolis at the south end of the Central Business District near Orchestra Hall.

8. Petitioners use the apartment principally in the late fall, winter and early spring for an average of two days a week.

9. The property is used by Petitioners as lodging while they engage in recreational and cultural pursuits in the Minneapolis area.

10. The property is not leased to any third parties nor used for any business purpose but rather for personal and family recreation and leisure.

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

CONCULSIONS OF LAW

1. The classification of the subject property for taxes should be changed from non-homestead residential to class 3 "seasonal recreational" under Minn. Stat. § 273.13, Subd. 4(a).

2. Real estate taxes due and payable in 1982 and 1983 should be recomputed accordingly and refunds, if any paid to Petitioners as required by such computations, together with interest from the date or original payment.

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

January 23, 1984.

By the Court,
Earl B. Gustafson, Judge
Minnesota Tax Court

MEMORANDUM

Petitioners, Donald and Arline Helgeson, claim their condominium was improperly classified as non-homestead residential real estate. They contend that it should be classified as seasonal recreational property. Non-homestead residential real estate is assessed at a rate of 28% of market value while seasonal recreational property is assessed at a rate of 21%.

Typical non-homestead residential properties are duplexes or apartment buildings leased by the owner for rental income. Typical seasonal recreational properties are summer cottages or vacation homes not used for any commercial purpose.

Petitioners' home is in the St. Cloud area and has been given homestead status. They also own a condominium in the Loring Green complex located at 1235 Yale Place in Minneapolis which they use as a vacation home. Only the classification of the condominium is at issue.

Mr. Helgeson is the principal stockholder and Chairman of the Board of Jack Frost Farms, Inc., a poultry wholesale business that markets under the name of Golden Plump Chickens. He is no longer engaged in day-to-day management and therefore has time for frequent travel and skiing in the western mountains.

Petitioners have owned the condominium for two years. They use it as a place to stay when in the Twin Cities to enjoy the area's recreational and cultural benefits. Both Mr. and Mrs. Helgeson are physically active and when in Minneapolis pursue a number of recreational activities, both indoors and out-of-doors including jogging, biking, tennis, canoeing, swimming and roller skating. They also attend plays, concerts, art exhibitions and other cultural events.

Petitioners use their condominium intermittently throughout the year but less often in the summer than other seasons. No one other than Petitioners and their adult children use the property. It is not used for business purposes.

The statute applicable to this case is Minn. Stat. § 273.13, Subd. 4(a) which provides in pertinent part as follows:

"Except as provided in subdivision 5a, all real property *devoted to temporary and seasonal residential occupancy for recreational purposes* . . . shall be class 3 property and assessed accordingly." (Emphasis Added)

We feel the Petitioners' use of this property brings it within the plain meaning of the statute. Where the words of a statute are clear and free from ambiguity there is no necessity for "interpretation."

Petitioners' property is "devoted to temporary and seasonal residential occupancy for recreational purposes." It is not devoted to permanent homestead use, commercial use or any type of business use.

If this property were located in the north woods, the local assessor would have no problem. The typical lake cabin or hunting shack receives a class 3, "seasonal recreational" classification if the owner is a non-resident of the area who may use the property frequently or infrequently during different seasons of the year. Recreational use is assumed whether occupants actually do nothing more strenuous than read a book or meditate.

In *Otis Lodge, Inc. v. Commissioner of Taxation*, 295 Minn. 80, 206 N.W. 2d 3 (1972) the court indicated that the seasonal recreational classification in Minn. Stat. § 273.13, Subd. 4(a) was originally passed by the legislature to provide tax relief to

seasonal resorts. This purpose was subsequently extended to privately used property; the apparent rationale being that an owner who lives elsewhere and uses the property only occasionally for non-commercial purposes puts no burden on the local school system, requires limited governmental services and therefore, should be allowed to pay somewhat less in taxes.

Respondent properly points out troublesome language in the case of *Lilja v. County of Wright*, 307 Minn. 276, 239 N.W. 2d 465 (1976) which held duplex property in Monticello was not seasonal recreational where Petitioner lived in the Twin Cities and used the property for weekend relaxation and gardening. In that case the court concluded that no matter what the term recreational may mean in other factual situations, the activity of gardening was not "recreational" within the meaning of Minn. Stat. § 273.13, Subd. 4(a).

Without attempting to distinguish the facts of the *Lilja* case from the instant case, we are unwilling to extend its ruling any further by finding that jogging, biking, tennis, canoeing, swimming and roller skating are not recreational activities.

E.B.G.

State of Minnesota Tax Court
County of Itasca, Ninth Judicial District

In the Matter of Real Estate Taxes Payable in the Year 1982 and 1983, Steve Hecomovich, Petitioner, v. Itasca County, Respondent, File No. C-83-50

Findings of Fact, Conclusions of Law, Order for Judgment, and Memorandum

The above matter came on for trial at the Itasca County Courthouse at Grand Rapids, Minnesota, on August 11, 1983, beginning at 10 A.M. before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court.

Appellant appeared Pro Se.

John P. Dimich, Itasca County Attorney, appeared for Respondent.

After having reviewed the evidence adduced at the trial and the files and records herein, the Court now makes the following:

FINDINGS OF FACT

1. The petition herein involves real property located in the City of Marble, Itasca County, Minnesota, described as follows:

"Lot 6, Block 5 of the City of Marble, Minnesota (Assessor's ID No. 165-010-505060)"

2. The property includes a fourplex frame apartment building in the City of Marble, Minnesota.

3. The petition was filed on January 11, 1983, and indicates that Petitioner intended to contest the taxes payable in calendar year 1983. At trial, however, the parties stipulated that the Court was to decide the estimated market value as of January 2, 1981, for taxes payable in 1982 as well as the estimated market value as of January 2, 1982, for taxes payable in 1983.

4. The Petitioner has sufficient interest in the property to maintain his petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.

5. As of January 2, 1981, the assessor's estimated market value of the subject property was $28,000 and as of January 2, 1982, the assessor's estimated market value of the subject property was $28,150.

CONCLUSIONS OF LAW

1. The Petitioner has failed to sustain the burden of proof to show that the property has been unfairly and unequally assessed in comparison to other properties in the assessment district.

2. The assessor's estimated market value of $28,000 for January 2, 1981, and $28,150 as of January 2, 1982, is hereby affirmed.

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

January 23, 1984.

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

MEMORANDUM

The Petitioner's chief contention is that the economic conditions on the Iron Range for the past years have not been reflected in the assessor's estimated market values based on the income approach. At trial he presented actual income and expense figures for 1982 and projected income and expense figures for 1983. The statement for 1982 showed a small profit and the projected statement for 1983 showed a loss due to vacancies which the Petitioner attributes to the economic situation on the Iron Range.

During trial, the Petitioner presented to the Court a list of properties which the Petitioner testified were sold during calendar years 1982 and 1983 at less than their estimated market value, but he presented no verification of the sales prices of the various properties and admitted that most of his information was hearsay. He admitted that he had not compared the alleged sales prices with the Certificates of Real Estate Value in the assessor's office.

During the trial, Mr. Alan Hovi, the Itasca County Assessor, testified on behalf of the Respondent. He testified that he was able to find only two Certificates of Real Estate Value for the nine alleged sales on the Petitioner's list. One of the certificates indicated that a warranty deed was given for a property sold on a contract for deed in 1978, and the second certificate indicated that it was a sale by a personal representative of an estate so neither one of them was considered to be an arms-length sale in 1982. It is entirely possible that real estate values in the City of Marble have dropped since the assessment date, but the evidence presented by the Petitioner was not sufficient to give the Court a basis for finding that the estimated market values as of the respective assessment dates was excessive.

The valuation determined by the assessor is presumed to be correct until the Petitioner presents substantial proof to the effect that the value is excessive. In this case the proof of value was not sufficient.

J.K.

State of Minnesota Tax Court
County of Lyon, Fifth Judicial District

Thomas R. & Josephine E. Halbach, Petitioners, v. County of Lyon, Respondent, File No. CV-83-976

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

The above entitled matter came on for trial before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, at the Lyon County Courthouse at Marshall, Minnesota, on October 25, 1983, beginning at 10 A.M. Subsequent to trial both parties have submitted briefs in support of their positions.

Thomas R. Halbach, appeared Pro Se. Kathleen A. Kusz, Assistant Lyon County Attorney, appeared for Respondent.

The value of the subject property is not in issue herein. The only issue is whether or not the Petitioners are entitled to a homestead classification of the subject property for taxes payable in calendar year 1983.

Upon the Stipulation of Facts, the evidence adduced at the trial, and the files and records herein, the Court now makes the following:

FINDINGS OF FACT

1. Petitioners owned the property at 705 South 4th Street, Marshall, Minnesota until July 6, 1982. The contract for deed requires the Petitioners to pay any nonhomestead taxes for 1982.

2. Petitioner, Thomas Halbach, went to Chicago, Illinois on a temporary job assignment on December 31, 1980. The assignment was duly authorized under the Federal Interpersonnel Act of 1970, and the assignment was agreed to by the Agricultural Extension Service of the University of Minnesota and US-EPA. This assignment was for a temporary, limited, specific term. His family moved to a temporary apartment in Des Plaines, Illinois on January 4, 1981.

3. Prior to the temporary job assignment, the Petitioners had resided in the subject property for more than five years as their homestead. As of January 2, 1981, the subject property was classified as the homestead of the Petitioners.

4. On January 2, 1982, the City Assessor of the City of Marshall mailed to the Petitioners at Des Plaines, Illinois, a homestead declaration card covering the subject property. The card was signed by the Petitioners and returned to the assessor from Des Plaines, Illinois.

5. The city assessor denied homestead classification without giving a specific reason.

6. The Petitioners appealed to the City Board of Review, and were denied homestead classification, without being given a specific reason.

7. The Petitioners appealed the decision to the Lyon County Board of Equalization where they presented evidence indicating ownership, residence, specifics of the temporary employment and intent to return. The County Board denied the homestead classification.

8. The appeal herein was filed on May 23, 1983.

9. At the expiration of the temporary assignment in Chicago, Petitioner Thomas Halbach was unable to return to his previous job in Marshall because it was terminated on August 5, 1982, due to state budget cuts. He was then transferred to another city.

10. The Petitioners occupied the house at 705 South 4th Street a few days during 1982. They ate, slept, bathed, cleaned house, maintained the yard and visited with neighbors and friends.

11. In their absence, friends and neighbors cared for the property at the direction of the Petitioners.

12. The house was not rented, nor was any income derived from it, nor did Petitioners allow anyone else to occupy it during the time in issue.

13. The subject property was advertised for sale beginning in November of 1980.

14. The Petitioners filed Minnesota Income Tax Returns and paid taxes to the State of Minnesota in 1981 and 1982, in spite of the fact that Illinois income taxes would have been substantially lower.

15. The Petitioners insured their property as a home.

16. The Petitioners maintained their Minnesota car registration and their Minnesota drivers licenses at 705 South 4th Street, Marshall, Minnesota.

17. Most household goods and furniture were taken by the Petitioners to the temporary apartment in Des Plaines, Illinois, but a substantial number of items were left in the subject property.

18. The Petitioners were registered voters in Marshall, Minnesota, at all times relevant herein.

19. The Petitioners received most of their mail in Des Plaines, Illinois, but also had mail addressed to them at Marshall forwarded to them.

20. Petitioners maintained contacts with friends in Marshall. They also kept their insurance with an agent who was stationed at Marshall, Minnesota.

21. The Petitioner intended to return to the subject property at the end of the temporary assignment and continued to claim a homestead classification for the subject property throughout the period in issue herein.

22. As of January 2, 1982, the Petitioner, Thomas R. Halbach, had been on temporary assignment, out of the state for more than one year.

23. The Memorandum attached hereto is made a part of these findings.

CONCLUSIONS OF LAW

1. The Petitioners are entitled to a homestead classification of the subject property for calendar year 1983.

2. Real estate taxes due and payable in 1983 shall be recomputed accordingly and refunds, if any, paid to the Petitioners as required by such computations, together with interest and costs and disbursements herein.

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

January 23, 1984.

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

MEMORANDUM

Respondent contend that the Petitioners have presumptively abandoned their homestead rights pursuant to Minn. Stat. § 510.07. The Court rejects that argument. The Court is of the opinion that Chapter 510 relates only to the exemption of a house owned and occupied by a debtor from seizure or sale under legal process on account of any debt not lawfully charged to them in writing. Chapter 520 was never intended to be a guide for homestead classification for tax purposes.

In the case of *In Re Petition of Wolf Lake Camp, Inc. vs. County of Itasca*, 312 Minn. 424, 252 N.W. 2d. 261, the Minnesota Supreme Court held that the use to which land is put, not the inherent nature of the land itself, determines how real estate is to be classified. In that case the court said:

". . . First, the use to which the land is put, not the inherent nature of the land itself is controlling; that is, the test is what the land is devoted to, not what it can be devoted to . . ."

In the instant case the only use to which the subject property was put was the homestead of the Petitioners. The property was not rented to others nor was it occupied by others. Even though the use was not extensive it was the exclusive use to which the property was put.

Respondent cites *Donaldson v. Lamprey*, 29 Minn. 18, 11 N.W. 119, in support of its argument to the effect that the Petitioners abandoned their right to a homestead classification. That case, however, did not involve the issue of a homestead classification for tax purposes. It involved the issue of whether or not the owner had lost his exemption from seizure or sale under what is now known as Chapter 510. In that case, the owner was held to have abandoned his homestead because he had acquired a new homestead elsewhere. In the instant case, the Petitioners did not acquire another homestead. The evidence clearly establishes that the Petitioners intended only a temporary stay in Illinois. They rented an apartment in Des Plaines for the duration of their stay in order that the family could be together.

In *Stone vs. County of Anoka*, District Ct. File No. 42752-1030 this Court held that Petitioners did not lose their right to homestead classification due to forced confinement in a nursing home.

It is very significant that the Petitioners paid income taxes to the State of Minnesota in 1981 and 1982 in spite of the fact that the income taxes in Illinois would have been significantly lower.

Minn. Stat. § 273.13, subd. 11, allows the assessor to require proof "by affidavit or otherwise of the facts upon which classification as a homestead may be determined. . . ." The fact that the card was mailed to Petitioners at Des Plaines, Illinois and returned to the assessor from that address is of no significance herein.

The only fact which appears to be in contradiction of their stated intention to occupy the premises as their homestead is the fact that they advertised the property for sale beginning in November of 1980. That fact alone, however, is not a sufficient basis to deny the homestead classification.

The Petitioners have asked this Court to assess punitive damages against the Respondent under the Civil Rights Act. That is a separate issue over which this Court has no jurisdiction. Such an action must be brought in a civil suit in state or federal district court. The only issue before this Court is the validity of the non-homestead classification.

J.K.

ERRATA

At *State Register*, Volume 8, Number 23, December 5, 1983, page 1347, under the Minnesota Housing Finance Agency's Adopted Temporary Rules Governing Energy Improvement Loan Insurance Program, MCAR §§ 3.180 to 3.184, correct the following:

"12 MCAR § ~~3.183~~ 3.184 [Temporary] Eligible improvements."

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STATE REGISTER

STATE OF MINNESOTA



VOLUME 8, NUMBER 44

April 30, 1984

Pages 2325-2356

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		
45	Monday Apr 23	Monday Apr 30	Monday May 7
46	Monday Apr 30	Monday May 7	Monday May 14
47	Monday May 7	Monday May 14	Monday May 21
48	Monday May 14	Monday May 21	Monday May 28

*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.

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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:

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EXECUTIVE ORDERS

Executive Order No. 84-7

Providing Clean Drinking Water to the Residents of Pine County, Minnesota

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, THE Minnesota Pollution Control Agency (MPCA), has determined that two municipal and several private wells in the City of Askov have been contaminated with the chemicals Benzene and Dichloroethylene and,

WHEREAS, the officials of the Minnesota Pollution Control Agency have requested assistance from the National Guard in providing clean drinking water to the affected residents of Pine County;

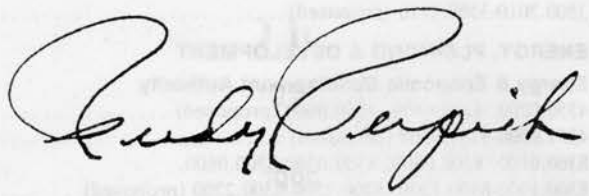
NOW, THEREFORE, I order:

1. The Adjutant General of Minnesota to order to active duty on and after April 7, 1984, in service of the State, such elements of the military forces of the State and equipment as are necessary to provide drinking water to the residents of Pine County. These forces shall be utilized for a period of time as necessary.

2. The costs of subsistence, transportation, fuel, and pay and allowances of said individuals shall be defrayed from the general fund of the State as provided for in Minnesota Statutes Sections 192.49, Subdivision 1; 192.51 and 192.52.

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 10th day of April, 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 Administration
Cable Communications Board

Proposed Rules 4 MCAR §§ 4.260-4.263 Governing the Provision by Cable Companies Granted Access to Multiple Dwelling Complexes of Equipment with Sufficient Channel Capacity so as to Allow for Service by Alternative Providers

Notice of Intent to Adopt Rules without a Public Hearing in Accordance with the Procedures for Noncontroversial Rules set out in Minnesota Statutes §§ 14.21-14.28

Notice is hereby given that the Minnesota Cable Communications Board supplements the Notice of Proposed Rulemaking of the above contained rules published in the *State Register* on Monday, February 6, 1984 on pages 1807 to 1809 to assure compliance with Minnesota Statutes § 14.115 (Supp. 1983), the Small Business Considerations in Rulemaking.

Accordingly, affected parties are advised herewith that the proposed rules may have an impact on some small businesses in Minnesota that operate multiple dwelling complexes or furnish cable communication or similar services. These businesses would be required to use the procedures set forth in the rule to determine the conditions for access by alternative providers of television programming or cable communications services and the reimbursement to be provided for such access.

Owners and operators of small businesses described above should familiarize themselves with the procedures set forth in the rule. More detailed information concerning the nature of the rule and its possible impact on small businesses is contained in the agency's statement of Need and Reasonableness.

Additionally, the aforementioned Proposed Notice is amended to change the due date. Comments are due no later than 4:30 p.m., May 30, 1984.

W. D. Donaldson
Executive Director

Department of Commerce

Proposed Rules Regulating Self-Insurers Under the Minnesota No-Fault Automobile Insurance Act

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce 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, section 14.21.

Persons interested in these rules shall have 30 days to submit comments. 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.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to David Corum, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3301.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 65B.48. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available 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 Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

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

Copies of this notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2770.6100 PURPOSE.

The purpose of parts 2770.6100 to 2770.7400 is to ensure that self-insurers under the Minnesota No-Fault Automobile Insurance Act have the financial and administrative resources needed to satisfy all obligations and responsibilities under the act.

2770.6200 DEFINITIONS.

Subpart 1. Scope. For the purpose of parts 2770.6100 to 2770.7400 the terms defined in this part have the meanings given them.

Subp. 2. Applicant. "Applicant" means a person or entity applying to the commissioner for authorization to self-insure under the no-fault act.

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.

Subp. 3. Certified financial statement. "Certified financial statement" means a statement of the operating results and financial position of an applicant, authorized self-insurer, or parent company. A statement includes a balance sheet, income statement, statement of changes in financial position, or the equivalent in the case of nonprofit organizations and political subivisions, and associated notes. A statement must include the professional opinion of an independent certified public accountant. A parent company's certified financial statement must be a consolidated statement combining the operating results and financial position of the parent company and its subsidiaries.

Subp. 4. Commissioner. "Commissioner" means the commissioner of the Department of Commerce.

Subp. 5. Licensed vendor of risk management services. "Licensed vendor of risk management services" means an entity authorized under Minnesota Statutes, section 60A.23, subdivision 8, to contract with self-insurers for the purpose of administering self-insurance programs.

Subp. 6. No-fault act. "No-fault act" means the automobile insurance system defined in Minnesota Statutes, sections 65B.41 to 65B.71.

Subp. 7. Parent company. "Parent company" means a company or organization that directly, or indirectly through one or more intermediaries, controls an applicant or authorized self-insurer, and that is not also controlled by another company or organization.

Subp. 8. Political subdivision. "Political subdivision" means a statutory or home rule charter city or county, the state of Minnesota, or any instrumentality of a statutory or home rule charter city or county or the state of Minnesota.

Subp. 9. Subsidiary. "Subsidiary" means a company or organization that is directly, or indirectly through one or more intermediaries, controlled by a parent company.

2770.6300 APPLICATION REQUIREMENT.

No person or entity may self-insure for no-fault act liabilities without the commissioner's authorization. The commissioner may only grant self-insurance authority to applicants that have followed the application procedures and that meet the authorization standards described in parts 2770.6100 to 2770.7400.

2770.6400 APPLICATION PROCEDURES.

Subpart 1. Application forms. An application for self-insurance authority must be made on forms prescribed and made available by the commissioner.

Subp. 2. Financial statements. Certified financial statements for an applicant's most recently ended fiscal year and for each of the three prior years must be included with an application. If an applicant is a subsidiary, then an application must also include certified financial statements for the parent company's most recently ended fiscal year and for each of the prior three years.

Subp. 3. Application fee. A $500 application fee must be included with each application.

Subp. 4. Assumption of liability agreement. The parent company of an applicant must agree to assume the applicant's liabilities under the no-fault act if the applicant alone fails to satisfy part 2770.6500, subpart 2, item B, subitems 1 to 5. This agreement must be in a form prescribed by the commissioner. If required, a completed assumption of liability agreement form must be provided before an application can be considered complete.

Subp. 5. Resolution of governing body. If an applicant is a political subdivision, then a certified copy of a resolution from its governing body authorizing the political subdivision to seek self-insurance authority must be included with an application.

Subp. 6. Commissioner's action. The commissioner shall grant or deny authorization to self-insure within 60 days of receiving all application materials.

2770.6500 AUTHORIZATION STANDARDS.

Subpart 1. Political subdivision. The commissioner shall grant self-insurance authority to an applicant that is a political subdivision if it satisfies these conditions:

A. at least 25 motor vehicles are registered in its name; and

B. it has, or has contracted with a licensed vendor of risk management services to provide, the administrative resources needed to:

(1) process, review, and pay claims;

(2) evaluate the medical and rehabilitation needs of automobile accident victims; and

(3) estimate current and future loss liabilities.

Subp. 2. All other applicants. The commissioner shall grant self-insurance authority to an applicant that is not a political subdivision if the following conditions are satisfied:

A. the applicant satisfies subpart 1, item B;

B. either the applicant alone or the parent company alone:

(1) satisfies subpart 1, item A;

(2) has existed for at least five years;

(3) has a current net worth, or the equivalent, of at least $5,000,000;

(4) had positive net income, or the equivalent, during the last five-year period and in at least three of those years; and

(5) had positive net funds flow during the last five-year period and in at least three of those years;

C. neither the applicant nor its parent company, if one exists, has sought protection under the United States Bankruptcy Code during the last three years; and

D. the funds flow, debt structure, profitability, and overall financial integrity of the applicant and its parent company, if one exists, demonstrate a continuing ability of the applicant to satisfy any financial obligations that have been and might be incurred under the no-fault act.

2770.6600 COMMISSIONER'S DECISION.

Subpart 1. Approval. The commissioner shall authorize an applicant to self-insure by issuing a self-insurance certificate to the applicant. The certificate must include the dates when self-insurance authority begins and ends.

Subp. 2. Denial. The commissioner may deny self-insurance authority by informing the applicant by mail of the decision.

2770.6700 RENEWAL.

Authorization to self-insure ends 150 days after the end of self-insurer's fiscal year. Authorization may be renewed for one year if a self-insurer informs the commissioner no later than 120 days after the end of its fiscal year that it wishes to continue to self-insure. The commissioner shall issue a new certificate of authority to each self-insurer whose self-insurance authority is renewed.

2770.6800 SECURITY REQUIREMENT.

Subpart 1. Surety bond required. An authorized self-insurer shall maintain a surety bond written by a corporate surety authorized to do business in Minnesota. The bond must be filed with the commissioner and name the "Commissioner of Commerce—State of Minnesota" as its obligee.

Subp. 2. Bond form. The surety bond must be executed on forms prescribed and made available by the commissioner, or on other forms not materially different from the forms prescribed by the commissioner. The commissioner shall refuse to accept surety bonds executed on forms that are not consistent with the requirements of this part or the purpose of parts 2770.6100 to 2770.7400.

Subp. 3. Condition, cancellation. The condition of the surety bond must be the execution of the self-insurer's legal obligations as a self-insurer. The bond cannot be canceled unless 30 days' notice is provided by the surety to the commissioner. After cancellation, the bond must remain in force for those liabilities incurred by the self-insurer from the time the bond first became effective until its cancellation, regardless of when compensation was or may be claimed, awarded, or paid.

Subp. 4. Penalty sum. The bond must provide a penalty sum of $100,000 or 125 percent of the self-insurer's total outstanding liabilities, whichever is greater. The penalty sum must be consistent with the latest report of outstanding loss liabilities as required in part 2770.6900.

Subp. 5. Use of bond by commissioner. In the event the commissioner determines that the self-insurer has violated the condition of the bond, the commissioner may draw upon the penalty sum to pay any unpaid claim obligations incurred by the self-insurer and to recover any costs or expenses incurred by the Department of Commerce that are directly attributed to administering the self-insurer's claims.

2770.6900 REPORTING REQUIREMENTS.

Subpart 1. Financial statements. Authorized self-insurers shall provide these items to the commissioner no later than 120 days after the end of each fiscal year:

A. a certified financial statement for the self-insurer's most recently ended fiscal year, and a copy of the self-insurer's most recent form 10K filed with the Securities and Exchange Commission, if applicable;

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. a certified financial statement for the parent company's most recently ended fiscal year, if applicable, and a copy of the parent company's most recent form 10K filed with the Securities and Exchange Commission, if applicable; and

C. any quarterly financial statements for the applicant and the parent company, if applicable, issued since the end of the latest fiscal year for which a certified financial statement has been provided to the commissioner.

Subp. 2. Status report. Authorized self-insurers shall provide to the commissioner, on forms prescribed and made available by the commissioner, information needed to maintain accurate records of the self-insurers' address, relevant personnel, scope of self-insurance under the no-fault act, and other administrative matters. The status report shall be provided at the same time as the self-insurer notifies the commissioner of its intention to seek renewal of self-insurance authority, as required in part 2770.6700.

Subp. 3. Loss liabilities report. Authorized self-insurers shall provide, by March 1 of every year, a report of paid and outstanding loss liabilities incurred under the no-fault act evaluated as of December 31 of the prior year. The loss liabilities report must be on forms prescribed and made available by the commissioner.

2770.7000 QUARTERLY FINANCIAL STATEMENTS.

If the commissioner determines that a deterioration in the funds flow, net worth, debt structure, profitability, or general financial integrity of the self-insurer or its parent company, if a parent company exists, adversely affects the self-insurer's ability to satisfy its financial obligations under the no-fault act, then the commissioner shall require an authorized self-insurer to submit quarterly financial statements for the self-insurer and its parent company.

2770.7100 ASSIGNED CLAIMS PLAN, UNFAIR PRACTICES.

Self-insurers authorized under this chapter are reparation obligors under Minnesota Statutes, section 65B.43, subdivision 9, and shall participate in the assigned claims plan in Minnesota Statutes, section 65B.63. Self-insurers authorized under this chapter are also subject to Minnesota Statutes, sections 72A.17 to 72A.32, regulating trade and claim service practices.

2770.7200 TERMINATION OF SELF-INSURANCE STATUS.

An authorized self-insurer shall inform the commissioner at least 30 days after becoming insured. Self-insurance authority terminates immediately upon becoming insured.

2770.7300 REVOCATION OF SELF-INSURANCE AUTHORITY.

The commissioner shall revoke a self-insurer's authorization to self-insure:

A. if the commissioner determines that a self-insurer:

(1) does not satisfy applicable authorization standards in part 2770.6500;

(2) is not complying with a lawful order of the commissioner;

(3) is not complying with Minnesota Statutes, chapter 65B;

(4) has not complied with parts 2770.6700 to 2770.7100; or

(5) is not complying, or has not complied with any other statutory requirement; and

B. if the commissioner determines that the self-insurer has failed, or is unable, to remedy circumstances that will, in the future, prevent the self-insurer from complying with standards or requirements of this chapter.

2770.7400 WAIVER OF STANDARDS.

Subpart 1. Standards. The commissioner shall waive the standards in part 2770.6500, and shall not revoke self-insurance authority under part 2770.7300, item A, if:

A. an entity authorized to self-insure at the time this chapter becomes effective does not satisfy the standards in 2770.6500;

B. the entity has been an authorized self-insurer for at least two years prior to this chapter becoming effective;

C. the commissioner determines that the entity, while self-insured, has executed its responsibilities and obligations as a self-insurer; and

D. the entity follows the procedures contained in subpart 2 for requesting a waiver of standards.

Subp. 2. Procedures. A self-insurer must request a waiver of standards under this part by applying, in writing, to the commissioner no later than 30 days after this chapter becomes effective. The commissioner shall either grant or deny a waiver of standards under this part no later than 30 days after receiving a request.

Subp. 3. Duration. A waiver of standards granted under this part shall be granted to a self-insurer only once and shall be effective for no more than three years. If the commissioner determines that a self-insurer for which a waiver of standards was previously granted no longer satisfies the conditions contained in subpart 1, then the commissioner shall revoke the waiver of standards.

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 in 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.

Higher Education Coordinating Board

Adopted Rules Governing State Scholarships and Grants-in-Aid and Part-Time Student Grants

The rules proposed and published at *State Register*, Volume 8, Number 32, pages 1812-1814, February 6, 1984 (8 S.R. 1812) are adopted as proposed.

Public Utilities Commission

Adopted Rules Governing Utility Delinquency Charges

The rules proposed and published at *State Register*, Volume 7, Number 37, pages 1289-1290, March 14, 1983 (7 S.R. 1289) and Volume 8, Number 3, pages 82-85, July 18, 1983 (8 SR 82) are adopted with the following modifications:

Rules as Adopted

4 MCAR § 3.0317 Definitions.

B. Delinquent ~~account~~ amount. "Delinquent ~~account~~ amount" means the portion of a customer's account representing charges for utility service or services past due. In the case of a residential customer on either a ~~utility's~~ budget billing plan or a payment schedule ~~under~~ ~~4 MCAR § 3.0299 G.~~, "delinquent ~~account~~ amount" means the lesser of the outstanding account balance or the outstanding scheduled ~~monthly payment~~ payments.

C. Late payment charge. "Late payment charge" means the allowable charge a utility may impose upon a delinquent ~~account~~ amount.

D. Utility. "Utility" means a public utility as defined in Minnesota Statutes, section 216B.02, as modified by Minnesota Statutes, sections 216B.025 and 216B.026.

E. Residential customer. "Residential customer" means a customer of a utility whose principal use of gas or electricity is for household purposes such as lighting, cooking, water heating, and space heating in space occupied as living quarters. Utility service is normally supplied through a single meter to a single family dwelling unit, but apartments or other subdivided dwelling units may be classified as residential even though several individual units take service through the same meter.

4 MCAR § 3.0319 Determination of delinquency.

A utility which chooses to impose a late payment charge on its customers shall use two measures for determining when a customer's bill is delinquent:

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. Residential customer. If a residential customer's ~~utility~~ bill payment is not ~~paid~~ received by the utility by the next scheduled billing date, which must be not less than 25 days from the current billing date, a late payment charge may be imposed. the current billing date must be no more than three working days before the date of mailing of the bill by the utility. The utility may print a due date on the bill which is not more than five days before the next scheduled billing date.

B. Nonresidential customer. If a nonresidential customer's utility bill is not ~~paid~~ received by the utility within a grace period of not less than 15 days from the current billing date, a late payment charge may be imposed. The current billing date must be no more than three working days before the date of mailing of the bill by the utility.

4 MCAR § 3.0320 Requirements for imposing late payment charge.

Before a utility may impose a late payment charge, the utility shall comply with the following requirements:

A. Tariffs. The utility shall file and have approved by the commission tariffs providing for the late payment charge and specifying the terms and conditions of the late payment charge. The filing must include substantiating documents and exhibits supporting the finance fee and grace periods proposed.

B. Bill content. The utility shall clearly indicate upon each bill the terms and conditions of the late payment charge, including the date after which the late payment charge is applied, the amount of the late payment charge after the charge is actually applied, and the monthly and the annual percentage rate of the late payment charge.

D. Implementation. Within 90 days of the effective date of this rule, the utility shall comply with the tariff, bill content, and uniformity requirements of A.-C.

4 MCAR § 3.0321 Amount of late payment charge.

A late payment charge imposed by a utility must ~~consist of the following two components~~ be calculated as follows:

A. Minimum delinquent amount. The utility shall not assess a late payment charge until the delinquent amount exceeds $10.

B. Finance fee. The utility may impose a finance fee no greater than 1½ percent per ~~month~~ monthly billing period on the delinquent ~~account~~ amount.

~~B. Collection~~ C. Minimum finance fee. The utility may impose a ~~collection~~ minimum finance fee no greater than $1.

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.

Board of Animal Health

Notice of Change of Meeting Date

The regular quarterly meeting of the Board of Animal Health scheduled for Friday, July 13, 1984, has been changed to Friday, July 6, 1984, starting at 9:30 a.m.

Dr. J. G. Flint
Secretary & Executive Officer

Board of Animal Health

Notice of Special Board Meeting

A special meeting has been called to consider adoption of proposed 3 MCAR § 2.026 Pseudorabies control and to interview applicants for the position of Secretary & Executive Officer to the Board. It will be held on Friday, June 1, 1984 at 9:30 a.m., at the Holiday Inn, New Ulm, Minnesota.

If the Board is unable to complete the agenda on June 1, 1984, the meeting will be continued to June 8, 1984 in the office of the Board of Animal Health, Dept. of Agriculture Bldg., 90 W. Plato Blvd., St. Paul, Minnesota.

Dr. J. G. Flint
Secretary & Executive Officer

Department of Energy and Economic Development Community Development Division

Notice of Adoption of Criteria Regarding Affordable Rents Under the Small Cities Development Program

Notice is hereby given that pursuant to the Federal Housing and Urban-Rural Recovery Act of 1983, the Department of Energy and Economic Development has adopted the following definition of affordable rents under its administration of the Small Cities Development Program.

"Affordable rents" for multi-unit structures are those rents which do not exceed 30 percent of adjusted gross income, including utilities, and/or do not exceed 120 percent of the fair market rent for the area in which the project is located, as determined and adjusted from time to time by the United States Department of Housing and Urban Development.

April 18, 1984

Leland Newman
Director of Community Support Programs

Department of Finance

Notice of Municipal Obligations Maximum Interest Rate, May, 1984

Pursuant to Minnesota Statutes, Section 475.55, Subdivision 4, Commissioner of Finance, Gordon M. Donhowe, announced today that the maximum interest rate for municipal obligations in the month of May will be eleven (11) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to twelve (12) percent per annum.

For further information contact:

Peter Sausen, Director
Debt Management
State of Minnesota
Department of Finance
(612) 296-8372

Pollution Control Agency

Outside Opinion Sought Regarding the Use of a State Uniform Manifest for the Shipment of Hazardous Waste

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) is seeking information from sources outside the Agency regarding a State required uniform manifest for the shipment of hazardous waste. The Agency is considering requiring the use of a specific uniform manifest form based on the federally required National Uniform Manifest Form.

The Agency requests information or comments on the State requiring the use of a specific State manifest form, and the information to be required on the form. Written or oral information or comments may be submitted to Karen Ryss at the address listed below or at 612/296-7776, during regular business hours.

Karen Ryss
Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
1935 West County Road B2
Roseville, Minnesota 55113

Information or comments will be accepted until May 18, 1984.

Sandra S. Gardebring
Executive Director

State Planning Agency
Minnesota Job Skills Partnership

Notice of Meeting

The Minnesota Job Skills Partnership Board has scheduled the following regular meetings at 1:00 p.m. on the days listed. For meeting location, please call Donna Schmidt at 296-0388.

Monday, May 21, 1984
Monday, August 20, 1984
Monday, November 19, 1984

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
Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
02310-13195	Asbestos Removal for Bangsberg Hall at Bemidji St. Univ.	Administration	Bemidji State Univ.	Contact buyer
26-070-10380 776777	Recruitment Poster	Bemidji University	Bemidji	Contact buyer
29-000-35703	Outboard Motors	Natural Resources	St. Paul	Contact buyer
26-071-13863 Rebid	Track Lighting System	Mankato	Mankato	Contact buyer
26-071-13996-7	Purchase of Port Selector System Expansion	Mankato State University	Mankato	Contact buyer
29-000-35752	Marine Comm. Equip.	Natural Resources	Various	Contact buyer
67-190-09338	Folder/Inserter	Revenue	St. Paul	Contact buyer
79-000-41641	Portable Conveyors	Transportation	Willmar, Mn	Contact buyer
Price Contract	Unprinted Envelopes	Central Stores	St. Paul	75,000-80,000
Price Contract	Rubbish Disposal	DOT	Minneapolis, Mn	Contact buyer
27-150-40727 776540	1984-85/1985-86 College Catalog	Mesabi CC	Virginia, Mn	Contact buyer
78-890-01502	Supply Spray Foam & Equipment	Willow River	Willow River Camp	Contact buyer
29-002-09483	Tranceiver	Mn/DOT Elec.	St. Paul, Mn	Contact buyer

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
26-071-14021	Refinish Gym Floor — Mankato St. Univ.	Mankato St. Univ.	Same	Contact buyer
Price Contract	Snow Removal Contract Vermilion CC	Vermilion Com. College	Ely, Mn	Contact buyer
Price Contract	Snow Removal — Willmar CC	Willmar CC	Willmar, Mn	Contact buyer
Price Contract	Snow Removal — Worthington CC	Worthington Com. College	Worthington, Mn	Contact buyer
Price Contract	Snow Removal — Austin CC	Austin CC	Austin, Mn	Contact buyer
07-700-29603	Install Vestibules	Public Safety	Public Safety	Contact buyer
78-550-04418	Aluminum Mini Blinds (ADD. #1)	Correctional Facility	Lino Lakes, Mn	Contact buyer
Sch, 170-C	Wire Rope	Various	Various	Contact buyer
37-050-93345 776998	Acid Rain In Mn	Education	St. Paul, Mn	Contact buyer
07-700-29702 777031	Prebill W/Title	Public Safety	St. Paul, Mn	Contact buyer
07-100-29671	Traffic Accident Report	Public Safety	St. Paul, Mn	Contact buyer
78-550-04369-70	Wood Stripping System	MN Correctional Facility-Ind.	Same	Contact buyer
29-008-32857	Explosives	Natural Resources	St. Paul	Contact buyer
Contract	Continuous Forms Warrants	Various Agencies	Various	20,000-30,000.
26-072-08626	Phototypesetting Paper	Moorhead State University	Moorhead	Contact buyer
04-511-22738	Office Furniture	Agriculture	St. Paul	Contact buyer
78-630-04432	Manila Tag	MN Correctional Facility	Oak Park Heights	Contact buyer
79-000-41611 etc	FWD Tractor Shovels	Transportation	Various	Contact buyer
79-000-41744 etc	Rotary Snowplows	Transportation	Various	Contact buyer
07-300-29617	Recorder System	Public Safety	St. Paul	Contact buyer
02-410-43529	Wire	Info Systems Bureau	St. Paul	Contact buyer
29-001-06985	Buchanan Lake Public Access Near Ottertail	Natural Resources	Bemidji	Contact buyer
26-175-05618	Purchase of Data Transmission System	Southwest State Univ.	Marshall	Contact buyer
78-000-13867-etc	Desk Transcribers	Dept. of Corrections	Various	Contact buyer
Contract	Snow Removal — Inver Hills Comm. College	Inver Hills Comm. Coll.	Inver Grove Heights	Contact buyer
Contract	Corrugated Metal Pipe, Culverts	Various	Various	65,000-75,000
79-050-14792	Treated Lumber	Transportation	Various	Contact buyer
21-200-07758	Cutting & Packaging USDA Surplus Cheese	Economic Security/OEO	Various	Contact buyer

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

Department of Administration
Division of State Building Construction

Availability of Contracts for Architects, Engineers and Landscape Architects

The Department of Administration (DOA) intends to retain the services of qualified professionally registered architects, engineers and landscape architects, to design, prepare construction drawings and monitor construction of a number of projects

during the year commencing July 1, 1984. These projects will be varied in nature and scope and will involve new construction, remodeling projects and facility studies. The cost of construction or remodeling projects will be less than $400,000.00 and the fees associated with facility studies will be less than $35,000.00. Particular emphasis will be placed on the background and experience of the firm on similar projects as well as the firm's geographic proximity to the project.

Firms wishing to be considered for these projects are asked to submit a short brochure or resume consisting of no more than 10 pages giving qualifications and experience of the firm to the Division of State Building Construction, ATTENTION: George Iwan. Qualified applicants will be contacted as the need arises and may be requested to appear in St. Paul for an interview. Firms which responded during the past year need only respond with a letter indicating continued interest as well as significant organization and experience changes since submission of their last brochure.

In submitting their brochures or resumes, firms shall indicate the area or areas of the list shown below in which they feel qualified.

1) Research and Programming
2) Educational
3) Health and Medical
4) Correctional
5) Restoration
6) Office and Administration
7) Recreational
8) Service and Industrial
9) Arts, including Performing Arts
10) Exhibition and Display
11) Landscape and Site Planning
12) Interiors
13) Water and Waste Facilities
14) Energy Supply and Distribution
15) Pollution Control
16) Acoustics

In some cases, DOA may enter into annual contracts for investigative studies, these annual contracts will be prepared on the basis of the needs of DOA.

The name of firms responding will be provided to other State Agencies having a need for the services described herein.

Names of qualified firms will be retained on file with DOA until June 30, 1985.

Designers for projects with estimated costs or fees in excess of those shown above will be selected by the State Designer Selection Board. Projects referred to the Board will be advertised in the *State Register*.

Department of Administration
Division of State Building Construction

Availability of Contracts for Registered Professional Testing Services

The Department of Administration (DOA) intends to retain the services of qualified professionally registered individuals to conduct site surveys, materials testing and soil borings and tests during the year commencing July 1, 1984. These projects will be varied in nature and scope. The fees associated with these projects will generally be less than $2,000.00, although the fees for some projects may exceed this amount.

As projects arise, it is the intention of DOA to contact firms who have expressed an interest in providing such services to the State. The final selection will be made on the basis of the background and experience of the firm, the geographic proximity of the firm to the project site, and an estimate of the fees to be charged for the specific project. Such estimates will be requested when a specific project exists.

Firms wishing to be considered for these projects are asked to submit a short brochure or resume consisting of no more than 10 pages outlining their background, qualifications, and fields of expertise to the Division of State Building Construction, Room G-10, State Administration Building, St. Paul, Minnesota 55155, ATTENTION: George Iwan. Qualified applicants will be contacted as the need arises and may be requested to appear in St. Paul for an interview.

Firms which have previously responded to this request need only provide a letter expressing continued interest as well as significant organization and experience changes since submission of their last brochure.

Names of qualified firms will be retained on file with DOA until June 30, 1985. Names of firms will be provided to other State agencies having a need for the services described herein.

Department of Corrections
Minnesota Correctional Facility-Lino Lakes

Request for Proposals for Professional/Technical Services Contract for Certified Clinical Psychologist

In order to comply with state law, the Minnesota Correctional Facility-Lino Lakes, hereby publishes its intention to maintain a contract with a certified clinical psychologist for the period from July 1, 1984 to June 30, 1985. The contractor will provide the following services:

Develop psychological evaluations on adult male inmates as requested by program teams and Department of Corrections administrative personnel. Also will advise program staff concerning the treatment needs of residents. Consulting sessions to consist of two 5-hour visits per week with a limit of 90 visits per year. The estimated amount of the contract will not exceed $18,000.

Desired qualifications include a doctorate in clinical psychology with at least five years of experience in an adult correctional institution.

Proposals for the above contract to be submitted by May 18, 1984, to W. J. McGrath, Business Manager, Minnesota Correctional Facility-Lino Lakes, 7525 Fourth Avenue, Lino Lakes, Minnesota 55014.

Department of Health
Division of Maternal and Child Health

Request for Proposals for Counseling/Hotline Services

The Minnesota Department of Health is requesting proposals from public and private non-profit organizations to continue a toll-free family planning/VD information, counseling, and referral Hotline for Minnesota residents for a period of eighteen months. An amount not to exceed $22,500.00 is available for this project from the Department, although the full cost of the service is expected to exceed $55,000.00. Proposals must be submitted to the Department no later than 4:30 p.m., May 21, 1984.

Interested persons may obtain a Request for Proposals and further instructions by submitting a written request to:

Ms. Ruth Algren
Activity Manager
Family Planning/Reproductive Health Unit
Section of Maternal and Child Health Technical Services
Minnesota Department of Health
717 Delaware Street S.E.
P.O. Box 9441
Minneapolis, Minnesota 55440

Iron Range Resources and Rehabilitation Board

Request for Proposals for Advertising and Public Relations Consultants

The Iron Range Resources and Rehabilitation Board is seeking proposals from Minnesota advertising and public relation firms to assist in the administration of an extensive program of advertising and promotion of the tourism activities of the Board, which includes, but is not limited to, the Iron Range Country Program, the Iron Range Interpretative Center, Giant's Ridge Recreational Ski Area, Hill Annex Mine Tours, Paulucci Planetarium, and the Croft Mine Park.

The program will involve the coordination of all advertising, the purchase of all time and space, assisting in the design lay-out and production of all print advertising and the production of radio and television commercials. The total cost of this project will not exceed $320,000.

To receive the formal request for proposal, contact:

Richard A. Nordvold
Iron Range Resources and Rehabilitation Board
P.O. Box 392
Chisholm, MN 55719

Deadline for submission of proposals is May 24, 1984, 4:30 p.m. Project will commence July 1, 1984 and continue through June 30, 1985.

Department of Natural Resources

Request for Proposals for Magneto Telluric Survey

The Minnesota Department of Natural Resources is requesting proposals from individuals and organizations capable of performing a magneto telluric survey in east-central Minnesota where there is a complex of tightly folded mafic extrusive and hypabyssal rocks interbedded with sulfide facies iron formation. This is an ideal geological setting for precious metals, or base metal mineral deposits. Further information on structural features or massive sulfide conductors is needed before planning drill holes. Recent magneto telluric surveys have provided excellent structural analysis to great depth along with location of conductive sulfide deposits.

The State of Minnesota is requesting a proposal for a minimum of twelve to fifteen miles of magneto telluric traverse, with receiver stations at approximately one-quarter mile intervals. In very complex areas a few additional stations may be required to provide needed detail. The survey will have a frequency range of + or − 30 hz to 4100 hz. The traverse will run along a state highway with numerous houses, usually on forty-acre tracts which are serviced with overhead power lines and underground cables. The contractor will provide equipment and personnel to do the field survey, process the data and provide a comprehensive report on the project. Mobilization and demobilization costs will be included in the proposal. Three-fourths of the survey is to be completed before June 30, 1984.

The estimated amount of the contract will not exceed $40,000. The issuance of the request for proposals does not require the department to award a contract and the department reserves the right to withdraw this request if it is considered to be in its best interest. All proposals must be received no later than 4:30 p.m. on May 21, 1984.

All proposals and inquiries should be directed to:

Tom Lawler
Minnesota Department of Natural Resources
Division of Minerals
P. O. Box 567
Hibbing, Minnesota 55746
(218) 262-6767

Pollution Control Agency Division of Water Quality

Request for Proposal for Contractual Services to Perform Recovery, Removal or Remedial Actions Regarding Spills and Small Scale Hazardous Substances Removal or Remedial Actions

The Minnesota Pollution Control Agency (MPCA) is seeking proposals from contractors qualified in various specialized areas of pollutant response and cleanup of hazardous substances, pollutants or contaminants that may cause pollution of the waters of the state or present potential health or safety concerns for the public. The MPCA desires to contract with these qualified parties for services during fiscal year 1985. No actual work or payment is guaranteed pursuant to the contract, but services such as the removal, storage, sampling and analysis, transportation and disposal of hazardous substances, pollutants or contaminants are anticipated to be needed as a result of pollutant releases or threatened releases that may cause pollution of the waters of the state or present potential health or safety concerns for the public.

The duration of the contract with qualified parties is twelve (12) months with an execution date anticipated for July 1, 1984. Funding for this contract will be provided by Federal funds obtained by the State through Title 1, Section 106, Federal Water

Pollution Control Act, as amended and the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B (1983 Supp.). The contract, in an amount up to $60,000, may include more than one responsive qualified party and the Agency reserves the right to limit the number of parties to the contract. If necessary, this contract may be amended to provide additional funds.

Request for the RFP document, which describes the requirements necessary for the contract, and inquiries should be directed to:

Mr. Pat Mader
Enforcement Section
Division of Water Quality
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

The deadline for receipt of completed proposals is 5:00 p.m. on Tuesday, May 16, 1984. Proposals should be submitted to the attention of the above MPCA contact person. Late submittals will not be accepted.

April 19, 1984

Sandra S. Gardebring
Executive Director

Department of Public Welfare
Anoka State Hospital

Request for Proposal for Medical Services

Notice is hereby given that the Anoka State Hospital, Mental Health Bureau, Department of Public Welfare, is seeking the services which are to be performed as requested by the Administration of Anoka State Hospital. Contracts will be written for the period beginning July 1, 1984, and ending June 30, 1985.

1. Psychiatric services. Responsibilities will include psychiatric assessments, psychiatric treatment, attendance at Medical Staff meetings, participation in the Utilization Review program, appearances at Special Review Board hearings, probate court hearings, and in-service education. The estimated total amount for all psychiatric contracts will not exceed $183,000 annually.

2. Neurological services. Responsibilities will include the furnishing of computerized tomography (CAT-Scans) and interpretation of results, neurological consultation and supervisory training and assistance with neurological research and evaluation at Anoka State Hospital. The estimated total amount for all neurology contracts will not exceed $15,000 annually.

3. Podiatry services. Responsibilities will include providing proper podiatry services in relation to Medical Assistance and Medicare guidelines, at times arranged by Medical Director or his designee. Total estimated amount of contract will not exceed $2,000 annually.

4. Optometry services. Responsibilities will include eye exams and referrals, dispensing of eyewear, and consultation with medical staff. Total amount of contract will not exceed $2,000 annually.

5. Radiology services. Responsibilities will include the interpretation of all x-rays and conduct fluoroscopy examinations, and provide consultation to medical staff. Total amount of contract will not exceed $16,000 annually.

6. Electroencephalogram (EEG) testing. Responsibilities will include conducting the EEG tests with a tracing for each test. Equipment will be furnished by Anoka State Hospital. Total amount of contract will not exceed $2,500 annually.

7. Interpretive service for hearing impaired patients. Responsibilities will include interpretation of treatment plans to hearing impaired patients, and daily interpretation during treatment, and assist in the communication of discharge plans. Total amount of contract will not exceed $2,000 annually.

8. Quality Assurance. Responsibilities will include consultation and technical assistance service in the planning for QA, Medical Records, Program Evaluation, and Utilization Review. Total estimated amount of contract will not exceed $60,000 annually.

9. Family Practice Services. Responsibilities will include specialized medical care for mentally ill and chemically dependent patients. Total estimated amount of contract will not exceed $24,000 annually.

Responses must be received by May 22, 1984. Direct inquiries to: Mark Wilcox, Deputy Administrator, Anoka State Hospital, 3300—4th Avenue North, Anoka, Minnesota 55303. Telephone: 422-4300.

Department of Public Welfare
Health Care Programs Division

Request for Proposals for Services as a Medical Review Agent

The Department of Public Welfare is requesting proposals for statewide Pre-Admission Certification, activities, verification of admission necessity and appropriateness of treatment program of hospital admission on Medical Assistance recipients. The contract period will be 7/1/84 through 6/30/85.

The proposal may be comprised of a single or multiple bids. The total cost not to exceed $750,000.00.

The guidelines to be used in the preparation of a proposal and a detailed description of the project are governed under DPW Temporary Rule 48 and available from the Professional Services Section, Department of Public Welfare. A detailed budget should also accompany the proposal. Deadline for receipt of proposals is 4:30 P.M., Friday, May 25, 1984.

Proposals and inquiries should be directed to:

Thomas L. JoliCoeur, Supervisor
Health Care Programs Division
Professional Services Section
Space Center
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-8822

Department of Public Welfare
St. Peter State Hospital

Request for Proposals for Medical Services

Notice is hereby given that the St. Peter State Hospital, Mental Health Bureau, Department of Public Welfare, is seeking the services which are to be performed as requested by the Administration of St. Peter State Hospital. Contracts will be written for the period of July 1, 1984 thru June 30, 1985.

1) Services of a consulting psychologist to provide psychological evaluations and examinations of chemical dependent patients at the St. Peter State Hospital. Contract will not exceed $16,500.

2) Services of an individual who specializes in internal medicine, to provide medical evaluations of mentally ill and chemically dependent patients at St. Peter State Hospital complex. Individual will provide primary care and act as a consultant to staff physicians. Contract will not exceed $27,000.

3) Services of a consulting psychiatrist to provide psychiatric evaluations and make recommendations with regard to psychotropic medications at St. Peter State Hospital complex. Individual will give direct clinical service as well as train staff. Three individual contracts are proposed. Contracts will not exceed a total of $79,750.

4) Services of a radiologist to study, interpret and dictate findings of x-ray films at the St. Peter State Hospital. Contract will not exceed $12,000.

5) Services of a consulting psychiatrist to provide psychiatric examinations of men referred to the Intensive Treatment Program for Sexual Aggressives (ITPSA), at the Minnesota Security Hospital; participate in their evaulations and recommendations to courts. Contract will not exceed $29,250.

6) Services of a consulting psychiatrist to provide general psychiatric care to patients at Minnesota Security Hospital, including diagnosis, treatment, progress notes and periodic assessments. Contract will not exceed $16,200.

7) Services of a consulting interpreter that will service hearing impaired patients and also train staff in the art of signing at the St. Peter State Hospital complex. Two contracts are proposed not to exceed a total of $31,500.

8) Services of a consulting neurologist who will do patient evaluations, implement and monitor on campus electroconvulsive (ECT) therapy at St. Peter State Hospital complex. Contract will not exceed $22,500.

Responses must be received by May 21, 1984. Direct inquiries to:

Thomas R. Bolstad
Senior Accounting Supervisor
St. Peter State Hospital Complex
100 Freeman Drive
St. Peter, MN. 56082
Phone: (507) 931-7116

SUPREME COURT

Decisions of the Court of Appeals Filed Tuesday, April 17, 1984

Compiled by Wayne O. Tschimperle, Clerk

CX83-1638 Atlen Cole, Relator, v. Holiday Inns, Inc., and Commissioner of Economic Security. Department of Economic Security.

The notice of determination of benefit rights, provided by the Commissioner of Economic Security, is in compliance with Minn. Stat. § 268.10, subd. 2(3). Dismissal of relator's appeal for failure to timely appeal did not violate her right to procedural due process under the Fourteenth Amendment to the Constitution of the United States.

Affirmed. Popovich, C.J.

C0-84-55 Phyllis P. Preiss, Relator, v. Commissioner of Economic Security. Department of Economic Security.

Relator's refusal to apply for or accept employment at a reasonable rate of pay, at reasonable hours, in a location 22 miles from her home, intending to wait for another opening, rendered her unavailable for work and ineligible for unemployment compensation benefits.

Affirmed. Popovich, C.J.

C3-83-1190 State of Minnesota v. Richard Lowell Evans, Appellant, Ramsey County.

The trial court did not commit reversible error by its instruction on abandonment or withdrawal and appellant did not make a reasonable effort to prevent the commission of the crime.

Felony murder instructions need not include a statement that intent to commit the underlying felony is required so long as the intent element is given subsequently where the underlying felony is a separate offense and the jury is appropriately charged on intent.

The trial court did not err in refusing to submit defense counsel's requested instruction on conspiracy to commit aggravated robbery, because there was no rational basis to convict appellant of conspiracy while acquitting him of aiding and abetting.

When attempted aggravated robbery is the underlying felony, aiding and abetting attempted aggravated robbery is an included offense to felony murder.

Appellant's multiple sentences for aiding and abetting felony murder and aiding and abetting attempted aggravated robbery were improper because the offenses arose out of the same behavioral incident.

Affirmed in part, vacated in part, with the sentence modified accordingly. Parker, J.

C2-83-1505 Janice Ann Rude v. Commissioner of Public Safety, Appellant. Goodhue County.

Reasonable and probable grounds existed to invoke the implied consent law where peace officer had a combination of objective indications of possible intoxication—the smell of alcohol on the driver's breath, a spilled glass which smelled of alcohol in the driver's car, and a serious accident.

Under the implied consent statute, any inquiry into the driver's capacity to make a knowing, voluntary or intelligent choice of whether to submit to chemical testing is immaterial.

Reversed. Parker, J.

C8-83-1816 Sherry Lynn Vaughn and Ramsey County v. Edward Love, Appellant. Ramsey County.

The trial court acted within its discretion when it denied defendant's motion to restrict the prosecution's impeachment by prior conviction.

The trial court's refusal to admit a videotaped cross examination of the court-appointed expert in an unrelated case did not violate defendant's right to cross examination.

The trial court's suppression of testimony of undisclosed witnesses was not an abuse of discretion.

Affirmed. Parker, J.

C9-83-1940 Ronald Elmer Caldwell, Appellant, v. State of Minnesota. Ramsey County.

The right to confrontation was not violated when the defendant was not permitted to inquire into the procedure used for choosing his photo for inclusion in a photo display shown to the victim of aggravated robbery.

The pretrial 12-man photo display was not impermissibly suggestive. Further, its admission into evidence was not an abuse of discretion. The four-man lineup was merely confirmatory of the eyewitness' prior identification and did not create a substantial likelihood of misidentification.

The unimpeached testimony of a single eyewitness, the victim of an aggravated robbery, was sufficient to convict.

Affirmed. Parker, J.

CX-83-1672 State of Minnesota v. Earthia Wiley, Appellant. Hennepin County.

The en banc panel of the court being evenly divided, the trial court's decision that the affidavit in support of the search warrant was sufficient is affirmed.

Affirmed. Foley, J.

Dissenting, Sedgwick, J., Lansing, J., and Parker, J.

C2-83-1892 Marlin S. Skelton and Patricia Skelton, Appellants v. Donald Doble and Sylvia Doble, et al. Wright County.

Appellants have no enforceable right to the disputed property where they have no written conveyance which satisfies the statute of frauds and the doctrine of practical location is inapplicable.

The trial court erred in awarding damages for trespass when appellants occupied the disputed property under a claim of right.

Affirmed in part, reversed in part, remanded. Foley, J.

C0-83-1311 State of Minnesota v. Roger McLane, Appellant. Itasca County.

By failing to challenge a search warrant at the omnibus hearing, trial counsel waived any review on appeal unless ineffectiveness of counsel is shown.

Where the search warrant was not patently invalid, failure to challenge its validity at trial does not establish ineffectiveness of counsel.

Affirmed. Wozniak, J.

C1-83-1611 In the Matter of the Welfare of G.L.M. Dakota County.

The sufficiency of evidence resulting in a finding of delinquency is reviewed in the light of most favorable to the prosecution.

Where petition for delinquency recognizes the possibility that the crime charged was committed in one of two ways, and the evidence is sufficient to sustain a finding beyond a reasonable doubt that the crime was committed in one of those two ways, the finding of delinquency must stand.

Affirmed. Sedgwick, J.

C0-83-2023 Georgia-Pacific Corp., Appellants, v. Gypsum George's Cash & Carry Building Materials, Inc. and George Rybold. Hennepin County.

Supreme Court affirmance of a summary judgment in favor of Georgia-Pacific on contract claims against Gypsum George bars a later trial on Georgia-Pacific's claim for prejudgment interest arising from the contract claims.

Affirmed. Sedgwick, J.

C9-83-2053 Kenneth H. Westphal, Appellant, v. Richard W. Anderson. Hennepin County.

Where there is no written contract between the parties that would establish the existence of a joint venture, appellant's claim is insufficient to support a notice of lis pendens.

Affirmed. Sedgwick, J.

C2-83-1701 Blocher Outdoor Advertising Company, Inc., Appellant, v. Minnesota Department of Transportation. Ramsey County.

14 MCAR § 1.5037 E.10., a rule defining unzoned commercial or industrial activity, is a valid and binding rule promulgated pursuant to statutory authority, reasonable, and within the rulemaking power granted to the Commissioner of Transportation.

The Commissioner's conclusion that Randy's Salvage Service operation is not an "unzoned commercial or industrial activity" is supported by substantial evidence in view of the entire record.

Affirmed. Lansing, J.

C6-83-1880 Darlene Hollar, Relator, v. Richard Manufacturing Company, and Commissioner of Economic Security. Department of Economic Security.

Evidence that employee refused to be available for overtime hour as required by employer and left the plant after confrontation over issue with officer of employer reasonably supported Commissioner's finding that employee voluntarily quit.

Affirmed. Forsberg, J.

Decisions of the Supreme Court Filed Friday, April 20, 1984

Compiled by Wayne O. Tschimperle, Clerk

C9-83-349 Johnny Robertson v. Special School District No. 1, Appellant. Hennepin County.

A public employer is entitled to offset the amount of unemployment compensation benefits received by a discharged employee against the amount of backpay to which the employee, by virtue of his veteran status, is entitled. Public policy favors the offset to prevent a double recovery by the discharged employee.

Reversed in part and affirmed in part. Amdahl, C.J.

C0-83-935 Amcon Corporation and O-J Sporting Goods Company, Appellants, v. City of Eagan, defendant and third-party plaintiff. Dakota County.

Landowner's application for rezoning from agricultural did not specify categories being requested. But Eagan City Council had notice plaintiffs wished an underlying roadside business designation in addition to the planned development zoning granted. City council clearly evidenced its refusal to grant both designations. Therefore, issue was properly before the district court.

District court's holding that underlying rezoning was not required by the city ordinance effectively determined appellants' right to acquire both designations. Issue was thus properly before this court on appeal.

Where planned development ordinance was ambiguous as to whether underlying rezoning was required and city's comprehensive plan indicated roadside business zoning for plaintiffs' property and city advanced no reasons for denying underlying reclassification, such denial was arbitrary and capricious.

Reversed and remanded. Amdahl, C.J.

C1-83-118 Dennis L. Sharp, et al., v. Charles M. Laubersheimer, et al., Appellants. Hennepin County.

The trial court erred when it awarded plaintiffs compensation for services rendered in contradiction to the express partnership and joint venture agreements, the Minnesota Uniform Partnership Act, and Minnesota case law. Minn. Stat. § 323.17 (1982); *Breza v. Thaldorf*, 276 Minn. 180, 149 N.W.2d 276 (1967).

Affirmed in part and reversed in part and remanded with directions.

Peterson, J.

C4-82-1396 Ward Hauenstein, Appellant, v. The Loctite Corporation, and S.H. Ansell Company, Defendant and Third-Party Plaintiff, v. Michael P. Redmond and Charles K. Sumner, etc., Third-Party Defendants. Hennepin County.

A manufacturer's duty to warn in strict liability cases extends to all reasonably foreseeable users. Where a plaintiff seeks damages for both negligence and strict liability based solely on failure to warn, the plaintiff must submit the case to the jury on only one theory.

The jury's decision on causation is dispositive of both the strict liability and the negligence claims.

Affirmed. Peterson, J.

Dissenting, Yetka, J. & Todd, J.

Took no part, Coyne, J.

C4-83-825 In Re the Marriage of: Ann Moberg, petitioner, Appellant, v. Allen W. Moberg. Hennepin County.

Untimely service of order to show cause on contempt motions was improper basis for vacating judgment when those motions were not part of the judgment.

Family court could not review and vacate referee's judgment when respondent failed to move for amended findings, appeal, or otherwise object to the judgment and when there were no grounds for re-opening judgment.

SUPREME COURT

Respondent waived his right to object to lack of testimony supporting referee's award by failing to move for amended findings, to file an appeal, or to otherwise object until appellant's enforcement action 1 year later.

Reversed and remanded. Yetka, J.

C7-83-737, C3-83-850 Daniel C. Leslin, Relator, v. County of Hennepin and Commissioner of Economic Security, and Audley B. Dembley, Relator, v. University of Minnesota and Commissioner of Economic Security. Department of Economic Security.

Under Minn. Stat. § 268.09, subd. 1(2) (b) (1982), and employee suffering from a chemical dependency problem need not maintain total abstinence from chemicals or achieve total success in treatment to make reasonable efforts to retain his employment. However, to qualify for unemployment compensation benefits under that section, such an individual must "make consistent efforts to maintain the treatment he knows or has been professionally advised is necessary to control that illness."

The Commissioner of the Department of Economic Security was justified in concluding that both of these employees failed to make consistent efforts to maintain the necessary treatment.

Affirmed. Scott, J.

C4-82-1298 State of Minnesota v. William D. Jones, Appellant. Cass County.

The evidence was sufficient to prove beyond a reasonable doubt that the defendant aided in the commission of the homicide, that the homicide was not committed in the heat of passion and that the homicide was premediated.

Where the trial court gave clear instructions on all the crimes charged and included an instruction on unconsidered or rash impulse and there was no objection or request for a specific instruction on heat of passion, the lack of such instruction was not error.

The trial court did not commit reversible error by allowing the use of defendant's prior conviction for impeachment purposes.

The trial court did not abuse its discretion by refusing to sequester the accomplice during the corroboration testimony where the request to sequester was not made until 11 of the 14 prosecution witnesses had testified and much of the corroboration testimony was already in evidence.

Affirmed. Wahl, J.

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

Lee A. Jackson, Appellant, v. the Commissioner of Revenue, Appellee, Docket No. 3974

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

This is an appeal from an order of the Commissioner dated June 22, 1983 assessing additional income tax against the Appellant for 1982. Additionally, the Appellant seeks a refund of income tax withheld from his wages in 1982 and remitted by his employer to the Commissioner. The matter came on for hearing at St. Paul before Judge Earl B. Gustafson on March 13, 1984 for pre-trial and on the Commissioner's motion for summary affirmance and on various motions filed by the Appellant.

Lee A. Jackson, appeared Pro Se for Appellant. Neil F. Scott, Special Assistant, Attorney General, appeared for the Appellee.

SYLLABUS

The issue in this case is whether the wages and other income earned by the Appellant in 1982 is subject to Minnesota income tax.

FINDINGS OF FACT

1. On or about April 15, 1983 the Appellant filed a 1982 state income tax return form with an attached wage and tax statement (form W-2) and federal tax return form.

2. The Appellant failed to sign the return and wrote on the return "not a tax return—see attached letter". The attached letter states three reasons why the Appellant feels his income is not subject to taxation. The Appellant's reasoning will be discussed in the Court's Memorandum.

3. On May 20, 1983 the Department of Revenue demanded the Appellant file a full and complete 1982 state income tax return.

4. The Appellant did not comply with the Department of Revenue's request.

5. On June 22, 1983 the Department of Revenue, under Minn. Stat. § 290.47 filed a 1982 income tax return on the Appellant's behalf and sent the Appellant notice of additional tax due.

6. The Department of Revenue determined the Appellant's 1982 income by adding the income shown on the Form W-2 submitted by the Appellant together with additional income in an amount equal to additional income reported by the Appellant on his 1981 income tax return. Deductions were allowed for federal tax liability and standard deduction. Credit was allowed for income tax withheld by Appellant's employer, Richfield Public Schools, and a personal credit. Late payment and a 5% negligence penalty were added.

7. The Appellant appealed to this court for a redetermination of tax due and a refund of the income tax withheld from his wages by his employer, Richfield Public Schools.

8. The Commissioner moved for summary affirmance. The Appellant filed an affidavit and argued in opposition to the motion. The Appellant has not disputed the calculation of the tax by the Commissioner but disputes the right of the State to impose a tax on him.

CONCLUSIONS OF LAW

1. The wages paid to the Appellant by Richfield Public Schools and his income from other sources is includable in the Appellant's Minnesota gross income under Minn. Stat. 290.01, subd. 20.

2. The Appellant has failed to present any facts establishing the incorrectness of the tax return prepared by the Commissioner of Revenue under Minn. Stat. 290.47.

3. The Commissioner's order dated June 22, 1983 assessing additional tax is summarily affirmed.

4. The Appellant's claim for refund of tax withheld by his employer is summarily denied.

5. The various motions filed by the Appellant are moot and therefore, not ruled upon.

LET JUDGMENT BE ENTERED ACCORDINGLY.

April 19, 1984

By the Court,
Earl B. Gustafson, Judge

State of Minnesota Tax Court

Lee A. Jackson, Appellant, v. The Commissioner of Revenue, Appellee, Docket No. 3976

Findings of Fact, Conclusions of Law and Order for Judgement

This is an appeal from an order of the Commissioner dated June 23, 1983 changing withholding amounts claimed by the Appellant. The matter came on for hearing at St. Paul before Judge Earl B. Gustafson on March 13, 1984 for pre-trial, on the Commissioner's motion for summary affirmance and various motions by the Appellant.

Lee A. Jackson, appeared Pro Se for Appellant. Neil F. Scott, Special Assistant Attorney General, appeared for the Appellee.

FINDINGS OF FACT

1. The Appellant is a school teacher for Richfield Public School Systems, employed pursuant to contract on a 40-hour week basis.

2. In 1982 the Appellant earned in excess of $30,000 from his employment. He earned a similar amount in 1983.

3. On March 15, 1983 the Appellant filed an Employee's Withholding Allowance Certificate (form W-4) with Richfield Public Schools stating that he had no tax liability for 1982 and did not expect one for 1983 and that is exempt from withholding tax.

4. On June 27, 1983 the Department of Revenue advised Richfield Public Schools and the Appellant that the Appellant's claimed "exempt status" was being disallowed and that he should be treated as single with one dependent until a corrected form W-4 was filed.

5. The Appellant appealed the disallowance to this court.

6. The findings of the court in the companion file *Lee A. Jackson v. Commissioner of Revenue*, Tax Court Dkt. 3974 are incorporated into these findings of fact by reference.

CONCLUSIONS OF LAW

1. The Appellant has failed to establish that he is exempt from withholding tax under Minn. Stat. 290.92, subd. 19.

2. The order by the Commissioner dated June 23, 1983 is summarily affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

April 19, 1984

By the Court,
Earl B. Gustafson, Judge

State of Minnesota Tax Court
County of Hennepin, Fourth Judicial District

Northwest Airlines, Inc., Petitioner, v. State of Minnesota and County of Hennepin, Respondents, Court File Nos. 735980, 0075, 0349, 0690, 1107 and 1824

Findings of Fact, Conclusions of Law and Order for Judgment

The above-entitled matters, Chapter 278 tax petitions objecting to real estate taxes payable in 1978-1982, came on for hearing on the issue of valuation before Judge Earl B. Gustafson commencing December 16, 1982, and concluded January 27, 1983, with a viewing of the property. A separate hearing on the issue of unequal treatment for taxes payable 1981 and 1982 was commenced June 2, 1983, and concluded June 9, 1983. Post-trial briefs were ordered and the case was submitted to the Court for decision on January 23, 1984.

Ralph W. Peterson, Mark T. Solstad and Thomas F. Hutchinson of Eastlund, Peterson & Solstad, Ltd. appeared on behalf of Petitioner.

Robert R. Distad, Assistant County Attorney, appeared on behalf of Respondent.

The Court, after hearing the evidence adduced and being fully advised, finds the following:

FINDINGS OF FACT

1. Petitioner contests real estate taxes payable in 1978, 1979, 1980, 1981 and 1982 on property located at the Minneapolis-St. Paul International Airport in Hennepin County known as Parcel 8000.

2. Parcel 8000 is the Northwest Airlines, Inc. main base consisting of 89.67 acres with Petitioner's corporate headquarters, overhaul base and hangars. The original improvement, built in 1961, included the office building, test cell, Hangars 1-5, shops and stores, engine buildings, concrete apron and parking. In 1972 two larger hangars, 6 and 7, new shops, pumps and reservoir, boilers, test cells and guardhouses were added.

3. Petitioner leases the property from the Metropolitan Airports Commission and is obligated to pay all real estate taxes.

4. The taxes at issue are based on estimated market values determined by the Commissioner of Revenue as follows:

January 2, 1977	$42,200,000
January 2, 1978	42,200,000
January 2, 1979	45,800,000
January 2, 1980	45,800,000
January 2, 1981	44,725,000

5. Petitioner claims that the estimated market values placed on its property by the Commissioner of Revenue exceeds its actual market value and, in addition, claims that its property is unfairly and unequally assessed.

6. The Court finds the actual market values of the subject property to be as follows:

January 2, 1977	$40,480,000
January 2, 1978	40,663,000
January 2, 1979	43,780,000
January 2, 1980	43,616,000
January 2, 1981	43,721,000

7. The Court also finds that commercial property in Hennepin County during 1980 and 1981 was systematically valued at approximately 85% of market value and that this ratio should be applied to the above 1980 and 1981 market values.

8. The final equalized values for tax purposes are as follows:

January 2, 1977	$40,480,000
January 2, 1978	40,663,000
January 2, 1979	43,780,000
January 2, 1980	37,073,600
January 2, 1981	37,162,850

9. The attached Memorandum is made a part of these Findings of Fact and Conclusions of Law.

CONCLUSIONS OF LAW

1. The correct assessor's estimated market values (EMV) for the subject property (Parcel 8000) are as follows:

January 2, 1977	$40,480,000
January 2, 1978	40,663,000
January 2, 1979	43,780,000
January 2, 1980	37,073,600
January 2, 1981	37,162,850

2. Real estate taxes due and payable in 1978, 1979, 1980, 1981 and 1982 should be recomputed accordingly and refunds, if any, paid to Petitioner as required by such computations, together with interest from the date of original payment.

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

April 20, 1984.

By the Court.
Earl B. Gustafson, Judge

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STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

CABLE COMMUNICATIONS BOARD

In the Matter of the Proposed Adoption of Rules of the Minnesota Cable Communications Board Governing the Provision of Equipment with Sufficient Channel Capacity by Cable Companies Granted Access to Multiple Dwelling Complexes so as to Allow for Service by Alternative Providers

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The above-captioned rules are being proposed in response to legislative directive contained in Laws 1983, Chapter 329, Section 5, Subdivision 10. The Chapter relates to Cable Communications, authorizing cable companies to use roads and existing utility easements and in major substance, requires and defines, access by cable communications companies to residents of multiple dwelling complexes. In return for this access, certain conditions are imposed upon cable companies. These proposed rules respond to the requirements of the above-cited subdivision in which cable companies granted access under the procedures establishing the amount of compensation to the property owner are required to install equipment that will permit use by alternative providers of television programming or cable communications services.

AUTHORITY TO ADOPT RULES

The agency believes that the proposed rules are noncontroversial in nature, and that it may, therefore, utilize procedures for adoption of rules without public hearing as provided in Minnesota Statutes § 14.21 to 14.26 (1982).

This Statement of Need and Reasonableness is being made available to the public before notice of intent to adopt the rules in accordance with the procedures specified in the above-cited statute. A notice of intent to adopt rules without public hearing, together with the proposed new rules, will be published in the Minnesota State Register on Monday, February 6, 1984, and the same notice will be given by mail to persons who have registered their names with the agency for the purpose of receiving notice of rule hearings.

For 30 days following the published notice, all interested persons will have an opportunity to object to the lack of a hearing and to submit data and views on the proposed rules in writing. If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing on a proposed rule, the agency will proceed under Subdivision 4 of the above-cited statute to hold a public hearing thereon, affording all interested persons an opportunity to participate.

General rulemaking authority is given to the Cable Communications Board in Minnesota Statutes § 238.06, Subdivision 1.

SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The agency has complied with the provisions of Minnesota Statutes § 14.115 by considering in the drafting and adoption of these rules their impact on small business as enumerated in Subdivision 2. To the degree that the statutory direction under which the rules are promulgated permits, they have been prepared in accordance with the subdivision's charge to reduce the impact on small business. Any further changes would be violative of the legislative direction contained in Laws 1983, Chapter 329, Section 5, Subdivision 10.

The agency has complied with the provision of M. S. 14.115, Subd. 4 by providing opportunity for small businesses affected by the proposed rules to participate in the rulemaking process and to comment on them at public meetings. In addition, copies of the proposed rules have been distributed to the organizations representing the small businesses affected.

NEED AND REASONABLENESS

The current rules of the Cable Communications Board (the Board) are contained in the Minnesota Code of Agency Rules, 4 MCAR § § 4.001 - 4.250. *

4 MCAR § 4.240 Definitions.

A. Scope.

This establishes that the definitions set forth in the proposed rules are not otherwise defined.

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* A copy of the current rules may be purchased from the Documents Division, Department of Administration, State of Minnesota, 117 University Avenue, Saint Paul, MN 55155; telephone: (612) 297-3000.

B. Alternative Providers.

This definition conforms to the meaning set forth in Chapter 329 and is identical to the definition set forth in 4 MCAR § 4.240 D.

C. Association Member.

This definition conforms to the meaning set forth in Chapter 329.

D. Other Providers of Television Programming or Cable Communications Services.

This definition conforms to the meaning set forth in Chapter 329 and identifies all known entities capable of providing the services described in Laws 1983, Chapter 329, Section 5, Subdivision 10. It has the same meaning as Section B. Alternative Providers (above).

4 MCAR § 4.241 Conditions for Access by Alternative Providers.

A. Channel Capacity.

A condition of cable companies being granted access to a multiple dwelling complex where compensation to the property owner is established under procedures set forth in the enabling legislation is their provision of distribution equipment within the complex to allow competitive providers of the same or similar services to also be able to serve the same dwelling units within the complex.

The rule is needed to ensure that all persons living in multiple dwelling complexes as defined have the opportunity to avail themselves of the television and other communications services furnished by cable companies or by alternative providers. It carries out the legislative findings and responds to legislative directive that rules be promulgated. It represents a reasonable approach to accomplishment of the objective without exerting undue hardship or lengthy procedures.

B. Technical Plan Approval.

Submission of a technical plan to the property owner for providing the required channel capacity is established as a procedure so that the particular service characteristics of each multiple dwelling complex may be considered. No further compensation for the property owner's

evaluation of the plan is provided, since the property owner may already receive compensation for diminution of fair market value and for professional review of the initial installation or a modification thereof. Further compensation would constitute an unreasonable burden.

C. Duplicate Connections.

To avoid unreasonable burdens on the cable communications company, no requirement for parallel distribution equipment is imposed.

4 MCAR § 4.242 Reimbursement.

A. Providing for Alternative Service.

In order to systematically document a verifiable need for the alternative service, a procedure is established for notifying the cable communications company when the services of an alternative procedure are desired, and for arranging for reimbursement therefrom for the use of the channel capacity required. The rule puts into direct communication the two parties that will share the equipment and apportion its cost.

B. Reimbursement Determination.

Lest there be confusion and conflict, a procedure that is clear and precise must exist for determining the amount of the one-time reimbursement by the alternative provider to the cable communications company for the use of the equipment by the former. The amount itself is to be arrived at strictly in accordance with the formulae provided in Subdivision 10, Section 5, Chapter 329, Laws 1983.

C. Financial Records Made Available.

There is a need for documentation of actual cost. The most logical way is for the rule to require that cost of the equipment made available to the Alternative Provider be documented by financial records made available upon request.

4 MCAR § 4.243 Appeals to the Board.

There is a need to alert persons to their appeal rights already in the Board's rules. An avenue for appeal by any of the parties involved in the activities covered by the rule is set forth.

CONCLUSION

Based on the foregoing, the proposed rules and its addition to the rules of the Cable Communications Board is both needed and reasonable.

W. D. DONALDSON
Executive Director

Dated: January 27, 1984

WDD/blf

In the Matter of the Proposed Adoption of Rules of the Minnesota Cable Communications Board Governing the Provision of Equipment with Sufficient Channel Capacity by Cable Companies Granted Access to Multiple Dwelling Complexes so as to Allow for Service by Alternative Providers

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Martha J. Casserly, 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 Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney Genral have been followed. Any exceptions are noted below.

Martha J Casserly

MARTHA J. CASSERLY
Special Assistant Attorney General

Dated: June 27, 1984