

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY
STATE BOARD OF EDUCATION

In the Matter of the Adoption of
the Rules Relating to Driver
Education, Minnesota Rules,
Part 7411.0100 to 7411.0900.

ORDER ON REVIEW OF
RULES UNDER MINN.
STAT. § 14.26

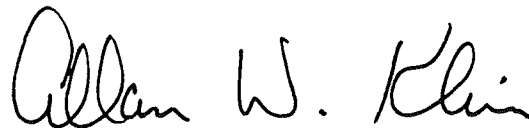
The Minnesota Department of Public Safety and the State Board of Education (agencies) are seeking review and approval of permanent rules relating to driver education, which were adopted by the agencies pursuant to Minn. Stat. § 14.26. On August 6, 1996, the Office of Administrative Hearings received all of the documents from the agencies required to be filed under Minn. Stat. § 14.26 and Minn. R. 1400.2310.

Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY ORDERED:

1. The agencies have the statutory authority to adopt the rule.
2. The rule was adopted in compliance with the procedural requirements of Minn. Stat. Ch. 14 and Minn. R., Pt. 1400.
3. The adopted rule is not substantially different from the rule as originally proposed.
4. The record for the adopted rule demonstrates a rational basis for the need for and reasonableness of the proposed rule as required by Minn. R. 1400.2100, item B and Minn. Stat. § 14.26, subd. 3.
5. The adopted rules are constitutional or legal as required by Minn. R. 1400.2100, item E, with the following exceptions: 7411.0100, subp. 2a, and the "Effective Date" provision of the rules are DISAPPROVED.

Dated this 20th day of August, 1996.



Allan W. Klein
Administrative Law Judge

MEMORANDUM

Under Minn. Stat. § 14.26, the administrative law judge is directed to review adopted rules submitted by the agencies as to legality. As stated in the above order, the rules meet the statutory authority, procedural requirements, and substantial difference requirements of Minn. Stat. § 14.26 and Minn. R. 1400.2100. However, Minn. R., part 7411.0100, subpart 2a, and the "Effective Date" provision of the rules are being disapproved under Minn. Stat. § 14.26 and Minn. R. 1400.2100, subpart E, as illegal.

Minn. R. 7411.0100, subpart 2a, is a new provision which provides as follows:

Subp. 2a. Approving authority. "Approving authority" means the commissioner of the Department of Public Safety or an authorized agent of the department. The Department of Public Safety may request the assistance of the State Board of Education in the administration and enforcement of this chapter.

The use of the word "may" in the rule part is used here without adequate criteria or standards to guide the regulated parties in the administration and enforcement of the rules and thus constitutes excessive discretion by the agency. A rule needs to have specific criteria for the agency to follow to avoid excessive agency discretion and to ensure that the rule will be applied in a consistent manner. Blocher Outdoor Advertising Co. v. Minnesota Dep't of Transp., 347 N.W.2d 88, 91 (Minn. Ct. App. 1984)

The proposed rule provision does not provide a reasonably clear policy or standard which controls and guides the agencies, regulated parties, and the public in determining who will administer and enforce the rules. In addition, in some situations, the proposed rule conflicts with statutes which require that certain acts be taken by the State Board of Education.

To correct this defect, the administrative law judge recommends the following language:

Approving authority. "Approving authority" means the commissioner of the Department of Public Safety or an authorized agent of the department, provided however, that where a statute requires that an act be performed by the State Board of Education, then "approving authority" shall mean the State Board of Education.

The recommended language will allow the agencies to continue to enforce and administer the rules as directed by the governing statutes. If the statutes allocating the powers and duties of the agencies change, the language of the rule is broad enough to accommodate such legislative changes without requiring further amendment to the rules.

In addition, the effective date provision of the rules is being disapproved as an illegal provision. The provision provides: "These amendments to Minnesota Rules, chapter 7411, are effective August 1, 1996." Pursuant to Minn. Stat. §§ 14.27, a rule is effective five working days after the notice of adoption is published in the State Register unless a later date is required by law or specified in the rule. Therefore, unless a later effective date is chosen by the agencies, the earlier effective date of August 1, 1996, must be stricken from the rule since the notice of adoption has not yet been published.

Finally, the administrative law judge makes the following recommendations and comments on the Statement of Need and Reasonableness. These are suggestions for use in future rulemaking proceedings. They are not defects that must be corrected by the agencies in this proceeding.

With respect to the analysis of the requirements provided for under Minn. Stat. § 14.131, the administrative law judge notes a lack of detail in the analysis of these factors. While the administrative law judge is not disapproving the rule based on the lack of analysis, the judge recommends that future discussions of the factors listed in Minn. Stat. § 14.131, should contain more in-depth analysis to the extent the agencies, through reasonable effort, can ascertain the information.

Pursuant to Minn. Stat. § 14.26, subd. 3(b) and Minn. R. 1400.2300, subp. 6, this order will be submitted to the chief administrative law judge for approval.

A.W.K.