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77-2400-14935-1

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

In the Matter of the Adoption of the Exempt
Rules of the Department of Public Safety
Governing Drivers' Licenses and Vehicle
Records; Proof of Identity and Residency;
Minnesota Rules, Chapter 7410.

**Second Order After Review
by the Chief Judge Under
Minn. Stat. § 14.388, subd. 5.**

By a submission filed on July 12, 2002, the Department of Public Safety (Department or agency) seeks review by the Chief Administrative Law Judge of the above rules as modified following the June 21, 2002 Order issued by the Chief Judge. That Order stated, in relevant part, that changes to the proposed rule language were necessary for the rules to be approved.


The Department also seeks a determination that its failure to obtain the approval of the Chief Administrative Law Judge prior to filing the rules with the Secretary of State and publishing them in the State Register was harmless error.

After reviewing the rules as modified (dated June 24, 2002) and Minnesota Statutes and Rules, and for the reasons stated in the attached Memorandum,

IT IS HEREBY ORDERED:

1. The rules Governing Drivers' Licenses and Vehicle Records; Proof of Identity and Residency, Minnesota Rules, Chapter 7410, dated June 24, 2002, adopted by the Department of Public Safety, are APPROVED.
2. The Department's failure to obtain the approval of the Chief Administrative Law Judge prior to filing the rules with the Secretary of State and publishing them in the State Register is harmless error.

Dated this 12th day of July, 2002.


KENNETH A. NICKOLAI
Chief Administrative Law Judge

MEMORANDUM

The Department has modified the rules to delete the portion disapproved by the Chief Administrative Law Judge in the June 21, 2002 Order. It has therefore corrected that defect.

However, the Department of Public Safety failed to obtain approval of this rule from the Office of Administrative Hearings prior to filing the rules with the Secretary of State and publication of the rule in the State Register. That was a failure to satisfy one of the procedural requirements imposed by Minn. Stat. § 14.386 that the rule be approved as to its legality and filed with the Secretary of State by the Office of Administrative Hearings *prior to* publication in the State Register. The agency asks that this procedural error be found to be a "harmless error."

Minn. Stat. § 14.386 governs the procedure for adopting exempt rules. That law requires that a rule "has the force and effect of law only if" four steps are followed. One of the four required steps, providing that "the office of administrative hearings approves the rule as to its legality within 14 days after the agency submits it for approval and files four copies of the rule with the revisor's certificate in the office of the secretary of state," has been satisfied only as of the date of this Order.

Minnesota Statutes section 14.26 (3)(d) states that the "administrative law judge shall disregard any error or defect in the proceeding due to the agency's failure to satisfy any procedural requirements imposed by law or rule if the administrative law judge finds: (1) that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process; or (2) that the agency has taken corrective action to cure the error or defect so that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process." This is known as a "harmless error" in the rulemaking process.

Under Minn. Rule 1400.2400 subps. 3 and 5, the Chief Judge must review the agency's filing based upon the standards set out in Minn. Rule 1400.2100, which includes compliance with procedural requirements and which requires application of the harmless error statute.

In this case, it is clear that the procedural error did not affect the opportunity of any person to meaningfully participate in this rulemaking. There was no opportunity for participation at this point in the proceeding. So the error is harmless within the Administrative Procedure Act's definition of harmless error quoted above, and thus the rule may be adopted.

The Chief Administrative Law Judge has no authority to determine the legal status of these rules immediately prior to the date of this Order.

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