

# State

STATE OF  
MINNESOTA



Pages 1943-1966

# Register

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# EXECUTIVE ORDERS

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## Emergency Executive Order No. 169

### Providing for Assistance to Officials of Polk County, Minnesota

I, Rudy Perpich, Governor of the State of Minnesota, by the virtue of the authority vested in me by the Constitution and applicable statutes, hereby issue this Executive Order;

Whereas, the Sheriff of Polk County has requested assistance in traffic control and evacuation of citizens from flooded areas and;

Whereas, flood conditions are such as to present hazards to citizens:

Now therefore, I order:

1. The Adjutant General of Minnesota to order to active duty on or before April 1978, in the service of the state, such elements of the military forces of the state as required, and for such period of time necessary to insure the safety of our citizens.

2. Cost of subsistence, transportation and fuel, and pay and allowances of said individuals will be defrayed from the general fund of the state as provided for by Minn. Stat. 1976, § 192.49; Subd. 1, and § 192.51; and Minn. Stat., 1977 Supplement, § 192.52.

This order is effective retroactive to 8 April 1978 and shall be in force until such time the need for emergency assistance has been alleviated.

In testimony whereof, I hereunto set my hand on this 13th day of April, 1978.





# RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, 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 as proposed 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. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

## Department of Economic Security

### Adopted Rule Governing the Employment of Summer Youth Under the Youth Employment Act of 1977

The rule published at *State Register*, Volume 2, Number 23, p. 1147, December 12, 1977 (2 S.R. 1147), as a proposed rule is adopted and is identical to its proposed form, with the following amendments:

#### Rule as Adopted

##### 8 MCAR § 4.0010

A. Purpose. This rule adopted pursuant to Laws of 1977, ch. 254, § 3, is designed to establish a procedure for the allocation of funds under the Youth Employment Act of 1977, Laws of 1977, ch. 254, and to establish contracting, operating, and invoicing procedures to be utilized in the expenditure of said funds.

~~B. Application of rule. This rule applies to those funds which are allocated for expenditure by political subdivisions and nonprofit organizations located within the jurisdiction of a CETA (federal Comprehensive Employment and Training Act of 1973, P. L. 93-203) prime sponsor.~~

~~C. B.~~ Definition of terms. The following terms used in this rule shall have the meaning given them:

1. "Act" means the Youth Employment Act of 1977, Laws of 1977, ch. 254.

2. "Commissioner" means the Commissioner of the Minnesota Department of Economic Security.

3. "Contract" means an agreement entered into between a prime sponsor or a political subdivision or a nonprofit organization and the commissioner for the operation of a youth employment program under the Act.

4. "Department" means the Minnesota Department of Economic Security.

5. "Prime Sponsor" means a unit of government, combination of units of government, a rural concentrated employment grantee, or an Indian reservation, which has entered into a grant with the United States Department of Labor to provide comprehensive manpower services under the federal Comprehensive Employment and Training Act of 1973 (P. L. 93-203).

6. "Program Employer" means an organization which employs a person or persons under the program established by the Act.

7. "Subcontract" means an agreement entered into between a prime sponsor and a political subdivision and/or nonprofit organization for the operation of a youth employment program under the Act.

~~D. C.~~ Allocation of funds. The commissioner shall allocate funds available under the act as follows: to state counties, cities and Indian reservations in the state. All funds not allocated to state agencies and Indian reservations shall be allocated to counties and cities.

1. Allocations to counties.

a. Fifty percent (50.0%) of the amount which the commissioner determines shall be allocated to counties funds available under the act shall be allocated to each county counties on the basis of the each county's share of

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# RULES

## 8 MCAR § 4.0010

the estimated youth population of the state which is 14 through 21 years of age.

b. Fifty percent (50.0%) of the ~~amount which the commissioner determines shall be allocated to counties~~ funds available under the act shall be allocated to ~~each county~~ counties according to ~~the~~ each county's share of the estimated youth population of the state which is 14 through 21 years of age, adjusted for:

(1) Historic summer unemployment rates in the county as evidenced by official labor force estimates for the months of June, July and August for the most recent three-year period for which such data is available. This factor is designed to provide more funds to counties with high summer unemployment rates.

(2) The county's proportion of families below the poverty level as evidenced by 1970 U.S. Census figures as adjusted by reference to more recent population surveys, provided that such reference to more recent population surveys shall be made only if such data is available for all counties in the state. This factor is designed to provide more funds to counties with a high proportion of families below the poverty level.

(3) Estimates of post-secondary school enrollment in the county as evidenced by validated statistics from the Minnesota Higher Education Coordinating Board or in their absence, by the most recent U.S. Census data. This factor is designed to eliminate the impact of a county's post secondary school enrollment on it's share of the state's youth population.

c. The method of allocation to counties expressed mathematically shall be as follows:

$$A_{ci} = \frac{0.5(YP_{ci})}{YP_s} + \frac{0.5F(YPA_{ci})}{\sum_{i=1}^n (YPA_{ci})} (U_{ci})(P_{ci})$$

where: 1.  $A_{ci}$  = allocation to the  $i^{th}$  county

2.  $F$  = funds available under the Act

3.  $YP_{ci}$  = youth population 14 through 21 years of age in the  $i^{th}$  county, determined by interpolation for the current year from projections of the State Demographer

4.  $YP_s$  = same as 3. above for the State

5.  $YPA_{ci}$  = youth population as in 3. above, but adjusted for post-secondary school enrollment as referenced in 8 MCAR C.1.b.(3).

6.  $U_{ci}$  = most recent three year average of official labor force unemployment rates for the months of June, July, and August for the  $i^{th}$  county

7.  $P_{ci}$  = percent of all families with income below the poverty level in the  $i^{th}$  county as evidenced by the 1970 Census or more recent population surveys as referenced in 8 MCAR C.1.b.(2).

2. Allocation to cities and Indian reservations. After the commissioner has made an allocation to each county, each county's allocation shall be divided as follows:

a. Each city within the county which has a total population of 2500 or more shall receive that portion of the county's allocation which is proportionate to the population of the city as compared to the total population of the county as evidenced by the most recent U.S. Bureau of Census estimates. Each Indian reservation within the county shall receive that portion of the county's allocation which is proportionate to the population of the Indian reservation as compared to the total population of the county as evidenced by 1970 U.S. Census figures.

b. The remainder of the county allocation, that part which is not allocated to cities and Indian reservations under 8 MCAR § 4.0010 ~~D. C.~~ 2.a., shall be allocated to the county as a whole.

~~3. Indian reservations. The amount which the commissioner determines shall be allocated to Indian reservations, shall be allocated to each reservation based on the population of the reservation as compared to the total population of the Indian reservations in the state.~~

~~E. D.~~ Contracting procedures. Each prime sponsor will be offered a contract for the amount of funds allocated to its area. Upon the offer of a contract, each prime sponsor may exercise the following options:

1. Sign the contract for the entire amount of the allocation and directly administer the program.

2. Sign the contract for the entire amount of the allocation and subcontract the operation of the program to political subdivisions and/or nonprofit organizations within the prime sponsor's jurisdiction.

3. Designate all or a part of the allocation to be directly used by a state agency, political subdivision or a nonprofit organization.

4. Decline the offer of contract. In such a case, the commissioner shall offer to contract directly with the cities, Indian reservations and counties in the prime sponsor's area.

## RULES

### E. Operation procedures.

1. Regular program. Youth who are at least 14 years of age but less than 22 years of age at the time they are to begin employment under the program established by the Act are eligible for program employment. Approximately fifty percent of the youth hired should be from families whose annual incomes do not exceed the poverty guidelines established by the Employment and Training Administration of the United States Department of Labor. However, in the event there are insufficient eligible youth from families below the poverty level available for employment to meet this goal within an area under the jurisdiction of a prime sponsor which has received an allocation under 8 MCAR § 4.0010 C., and the prime sponsor certifies such insufficiency to the Department and the Department concurs, such poverty level criteria shall be waived with respect to the funds allocated to such area. Hereinafter, this portion of the program is referred to as the "regular program."

2. Post-secondary program. Notwithstanding 8 MCAR § 4.0010 ~~F.~~ E. 1., at least 33 1/3 percent of the funds allocated to the prime sponsor area are to be used to hire youth who are at least 18 years of age but less than 22 years of age who are certified by the Department as intending to enroll or enrolled in a post secondary educational institution. Approximately fifty percent of the youth hired should be from families whose annual incomes do not exceed the poverty guidelines established by the Employment and Training Administration of the United States Department of Labor. However, in the event there are insufficient eligible youth from families below the poverty level available for employment to meet this goal within an area under the jurisdiction of a prime sponsor which has received an allocation under 8 MCAR § 4.0010 C., and the prime sponsor certifies such insufficiency to the Department and the Department concurs, such poverty level criteria shall be waived with respect to the funds allocated to such area. Hereinafter, this portion of the program is referred to as the "post-secondary program." A partial waiver from this part may be obtained in accordance with the procedures set forth in 8 MCAR § 4.0010 ~~H.~~ G.

3. To obtain eligible youth, program employers must place a job order with the Department and may employ only those youth referred by the Department.

4. Eligible youth (not designated as supervisors) shall be paid the federal minimum wage for a period not to exceed 40 hours per calendar week and for not more than 12 weeks.

### 8 MCAR § 4.0010

5. Program employers, at their discretion, may designate one eligible youth as supervisor for every ten youth in its employ under the Act. Program employers who employ at least five but less than ten youth may designate one youth as a supervisor. Youth designated as supervisors shall be paid the federal minimum wage plus twenty-five cents (25¢) per hour for up to 40 hours per week for a period not exceeding 12 weeks.

6. Upon signing a contract or subcontract program employers may begin employing eligible youth referred by the Department; however, no youth may be employed while attending school as a full-time student. No youth may be employed beyond September 30th of each calendar year.

~~G.~~ F. Invoicing. The Department shall reimburse contractors for wages paid to eligible youth, employer's contributions to FICA paid in behalf of such youth and Workers' Compensation insurance costs for such youth. Invoices and specific procedures for reimbursement will be furnished to program employers by the Department.

### ~~H.~~ G. Reallocation procedures.

1. Funds may be reallocated within a county or between a county and a city or between counties under the following circumstances:

a. The city or county originally allocated the funds according to the formula in 8 MCAR § 4.0010 ~~D.~~ C. refuses the funds.

b. The city or county originally allocated the funds gives its permission for those funds to be used in another city or county.

c. The prime sponsors may reallocate up to the equivalent of one full-time slot or position not to exceed \$1,000 between any subdivision above for the purpose of simplified administration of the program.

2. Prime sponsors may shift funds from the post-secondary portion of their program to the regular portion of their program provided that they certify in writing to the Department that they are unable to obtain sufficient youth who meet the criteria set forth in 8 MCAR § 4.0010 ~~F.~~ E. 2., and the Department concurs.

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# PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, 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 Personnel Recruitment and Selection Division

### Proposed Temporary Rule Governing Examination and Referral of Candidates for Classified Positions in State Civil Service and Emergency Appointments to Classified Positions

Notice is hereby given that the following amendments to 2 MCAR §§ 2.044, 2.048, 2.064, 2.084, and 2.087 governing the examination and referral of candidates for classified positions in the state civil service and emergency appointments to classified positions are proposed for adoption as temporary rules as authorized by Minn. Stat. § 15.0412, subd. 5 (1977 Supp.), and Laws of 1978, ch. 734, pending completion of a full hearing and adoption of permanent rules.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed amendments for 20 days immediately following publication of this material in the *State Register* by writing to Julie Vikmanis, Manager of the Examining and Referral Division, Department of Personnel, 3rd floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. The temporary rules may be revised on the basis of comments received.

Clarence E. Harris  
Acting Commissioner

April 17, 1978

### Temporary Rule as Proposed

**2 MCAR § 2.044 Conduct of selection processes.** Any or all parts of the selection processes shall be held at such times and places as in the judgment of the Commissioner most nearly meet the convenience of the applicants, practicability of administration, and needs of the service. The selection process shall be conducted either by the Commissioner or persons designated by the Commissioner. No person whose application has been accepted shall be entitled to take any part of the selection process on a date, time or place other than those determined by the Commissioner. The Commissioner may prohibit applicants from repeating an examination within a six month period from the date of the administration of the previous examination in order to protect the security of examinations and provide a reasonable period between selection process administrations. Where classes are open to competition on both a competitive and promotional basis within a six month period and the initial screening device in both processes is similar, provision shall be made for eligible employees to use the score obtained in the initial screening device of the selection process in which they first participated for the alternate process.

**2 MCAR § 2.048 Order of names on eligible list.** Names of eligibles shall be placed on the eligible list in the order of their final earned rating plus preference credit provided that the earned rating was a passing grade. In the case of a tie between a veteran and a non-veteran, the name of the veteran shall be placed ahead of a non-veteran. In case of other ties in final ratings, names shall be placed on the list in order of rating earned on the part of the selection process given the greatest weight. Any remaining ties shall be broken by arranging names on the basis of the last four digits of the Social Security number using a random point of origin. In other cases where two or more candidates have identical final scores their names shall be placed on the eligible list in random order.

**2 MCAR § 2.064 Duration of eligible lists.** The Commissioner shall determine the period during which promotional or open competitive eligible lists shall remain in effect. However, this period shall not be less than six months for open competitive lists or one year for layoff, reemployment or promotional lists, nor more than three years for any list, except for layoff lists, where the eligibility of a candidate shall be extended to a period of time equal to the employee's state seniority to a maximum of eight years. If an eligible list exists for any class and the Commissioner deems it necessary to establish another such list for the same class, the existing list shall ordinarily may, at the discretion of the Commissioner, taking into consideration the number of anticipated vacancies, frequency of previous examination administration, continued candidate availability, and changes in the selection process, be cancelled. At the discretion of

## PROPOSED RULES

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the Commissioner, an existing list may be combined with the new list by placing names of eligibles in order of final ratings as provided in these rules. The eligibility of individuals placed on such combined lists shall expire at the end of the period established by the Commissioner, but at the discretion of the Commissioner, such eligibility may be extended for an additional period or periods not to exceed three years; ~~except for persons on layoff lists, whose eligibility shall be extended to a period of time equal to the employee's state seniority to a maximum of eight years.~~ With eligible lists for classes for which continuous or frequent testing is conducted, the term of individual candidate eligibility shall begin on the date of placement of their name on the eligible list and continue for a period established by the Commissioner taking into consideration the number of anticipated vacancies and average length of candidate availability.

### 2 MCAR § 2.084 Certification of eligibles.

A. Order of certification. The one name highest on the layoff list shall be certified for one vacancy. In the case of competitive eligible lists, upon initial entry into the state service, the Commissioner shall certify the first ten names, when available, on such list; together with any additional names of persons having the same score as the tenth name so certified. In the case of promotional eligible lists, the first three names on such lists shall be certified, together with any additional names of persons having examination ratings within three points of the person on the list with the highest examination ratings; and with any additional names of persons having the same score as the last name certified in accordance with the above.

Eligibles shall be certified in strict order of standing without regard to sex or special qualifications, except when the Commissioner is satisfied that the facts and reasons specified by the appointing authority warrant such action, certification may be limited to the eligibles possessing the special qualifications.

B. ~~Multiple vacancies.~~ If more than one vacancy is to be filled, the name of one additional eligible for each additional vacancy shall be certified.

2 MCAR § 2.087 Emergency appointment. An emergency appointment is an appointment for a period not exceeding ten consecutive working days made under conditions necessitating immediate action to provide for carrying on work that must be continued in the public interest. The Commissioner shall not approve successive emergency appoint-

ments nor shall the Commissioner approve more than three emergency appointments for one person within ~~one calendar year~~ any twelve month period. (Minn. Stat. 43.20, subd. 3.)

Prior approval shall not be required in the case of emergency appointments, but each such appointment shall be reported to the Commissioner before payment for services can be made.

In any case in which a need for action in filling a vacancy shall have been known, or could have been known by the exercise of due diligence far enough in advance to afford opportunity for appropriate action under some other provision of this law and these rules, no emergency shall be deemed to exist, and no emergency appointment shall be made.

When possible, an emergency appointment shall originally be made at the minimum rate for the class to which the position thus filled can be allocated properly. The Commissioner shall allocate the position filled by emergency appointment to the proper class and shall notify the appointing authority of such allocation and the rate of pay applicable thereto. After such notice no payroll reporting a different rate of pay shall be approved.

No seniority shall be gained as a result of an emergency appointment.

## Department of Public Welfare Medical Assistance Division Proposed Amendment to Rule 47 Governing the Medical Assistance Program

### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Office Building, Room 83, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, 55155, on June 5, 1978,

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commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to George Beck, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8108, either before the hearing or within five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The proposed amendments to DPW 47 provide for Medical Assistance program payment for abortion services only when certain conditions are met. The proposed amendments, if adopted, would allow payment for abortion services only if the abortion is a medical necessity to prevent the death of the mother, if the pregnancy is the result of certain criminal sexual conduct, or if the pregnancy is the result of incest. The proposed amendments are needed in order to implement the limitations on Medical Assistance program payment for abortion services imposed by Laws of 1978, ch. 508 and by 42 CFR §§ 449.100 through 449.109.

Copies of the proposed rule are now available and one free copy may be obtained by writing to Robert Randle, Director, Medical Assistance Program, 690 North Robert, St. Paul, Minnesota 55164, (612) 296-8517. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rule is contained in Minn. Stat. § 256B.04. A "statement of need" explaining why the agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone number (612) 296-5615.

Edward J. Dirkswager, Jr.  
Commissioner

April 6, 1978

### Rule as Proposed

#### DPW 47 Medical Assistance

E. Services under the medical assistance program.

1. The following services are not covered under the MA program:

(E.1.a. through s. are unchanged.)

t. Abortion services unless specifically provided in subsection E.2.t. of this rule.

(E.1.u. to end are unchanged.)

2. The following services are covered under the MA program:

(E.2.a. through s. are unchanged.)

t. The cost of abortion services shall be paid only when the conditions under (1), (2). or (3) are met:

(1) The abortion is necessary to prevent the death of the mother. The cost of the abortion shall be covered only if the following documentation accompanies the provider's invoice to the state agency:

(a) The signed written statement of two physicians that it was their professional judgment that the abortion was necessary to prevent the death of the mother; and

(b) The signed written statement of the recipient that she voluntarily consented to the abortion. In the event that the recipient is physically or legally incapable of providing informed consent, consent may be obtained as is otherwise provided by law.

(2) The abortion is to terminate a pregnancy which is the result of a sexual assault. The cost of the abortion shall be covered only if a report of the assault was made to a valid law enforcement agency within 48 hours of the time the assault occurred and a signed statement from the law enforcement agency accompanies the provider's invoice to the state agency. In the event the recipient was physically unable to make the report within 48 hours of the assault, the report must have been made within 48 hours after the recipient became physically able to make the report.

The statement of the law enforcement agency shall include the following information:

(a) The name of the victim; and

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(b) The date of the alleged incident; and

(c) The date the report was made to the law enforcement agency; and

(d) The name and address of the person who signed the report to the law enforcement agency; and

(e) A statement by the law enforcement agency that the report alleges at least one of following:

(i) Circumstances existing at the time of the assault caused the recipient to have a reasonable fear of imminent great bodily harm to herself or to another.

(ii) The assailant was armed with a dangerous weapon or an article used or fashioned in a manner which led the recipient to reasonably believe it to be a dangerous weapon, and used or threatened to use the weapon or article to cause the complainant to submit.

(iii) The assailant caused personal injury to the complainant and used force or coercion to accomplish sexual penetration.

(iv) The assailant was aided or abetted by one or more accomplices and either:

(aa) An accomplice used force or coercion to cause the recipient to submit; or

(bb) An accomplice was armed with a dangerous weapon or an article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the recipient to submit.

The provider's invoice shall also be accompanied by a statement, signed by the recipient, that her pregnancy resulted from the sexual assault reported, and a statement, signed by the recipient's physician, that in his/her professional opinion the length of the pregnancy at the time of the abortion was not inconsistent with the recipient's statement.

(3) The abortion is to terminate a pregnancy which is the result of incest. The cost of the abortion shall be covered only if a report of incest was made to a valid law enforcement agency prior to the time of the abortion and a signed statement from the law enforcement agency accom-

panies the provider's invoice to the state agency. The statement shall include the following information:

(a) The name of the victim; and

(b) The date of the alleged incident; and

(c) The date the report was made to the law enforcement agency; and

(d) The name and address of the person who signed the report to the law enforcement agency; and

(e) A statement by the law enforcement agency that the name of the relative who allegedly committed incest with the victim appears in its report.

The provider's invoice shall also be accompanied by a statement, signed by the recipient, that her pregnancy resulted from the incest reported, and a statement, signed by the recipient's physician, that in his/her professional opinion the length of the pregnancy at the time of the abortion was not inconsistent with the recipient's statement.

(4) For the purposes of this subsection E.2.t. only, the following definitions apply:

(a) "Abortion services": medical service performed for the purpose of terminating a pregnancy. This shall not be construed to include:

(i) drugs or devices which prevent implantation of the fertilized ovum; or

(ii) medical procedures necessary for the termination of an ectopic pregnancy.

(b) "Assailant": person who allegedly committed the sexual assault reported to the law enforcement agency.

(c) "Incest": sexual intercourse with another nearer in kin than first cousin, of the whole or half-blood.

(d) "Valid law enforcement agency": an agency charged under applicable law with enforcement of the general penal statutes of the United States, or of any state or local jurisdiction.

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# OFFICIAL NOTICES

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

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

## Department of Agriculture Shade Tree Program

### Plant Quarantine No. 78-1 Elm Wood April 24, 1978

Whereas, it has been determined by the Commissioner of the Minnesota Department of Agriculture that a seriously injurious disease commonly known as Dutch elm disease, is present in the State of Minnesota, and that transportation of elm wood into and through cities and designated disease control areas, will contribute to serious loss and damage to the general welfare, economy, and aesthetics of the state and enhance the further spread of Dutch elm disease:

Therefore, under the authority conferred by Minn. Stat. § 18.022, subd. 7 and § 18.48, subds. 1-4 (1976), I, Bill Walker, Commissioner of Agriculture for the State of Minnesota do hereby establish a quarantine hereinafter setting forth the name of the pest, the disease control areas, the products regulated, the procedures governing movement of elm wood and the penalties:

**Pests:** *Ceratocystis ulmi* (Dutch elm disease fungus), *Scolytus multistriatus* (smaller European elm bark beetle), *Hylurgopinus rufipes* (native elm bark beetle)

**Disease Control Area:** Home rule charter or statutory cities and designated shade tree disease control areas in the unincorporated areas of any county in the State of Minnesota.

**Regulated Products:** Elm wood of all species with bark intact. This includes all elm logs, branches, brush, and firewood.

**Elm Products Not Regulated:** Elm wood products without bark, elm wood chips, or shredded elm wood.

**Regulations Governing Movement:** The following movement of all elm wood, including elm firewood, with bark intact, is prohibited: (a) into or through any home rule char-

ter or statutory city as defined by Minn. Stat. § 410.015; and (b) into or through any designated disease control areas as defined by Minn. Stat. § 18.023, subd. 1(g) (Supp. 1977) in the unincorporated areas of any county. This prohibition shall not apply to movement of such wood pursuant to an approved wood disposal or utilization program authorized by Minn. Stat. § 18.023 (Supp. 1977).

#### PENALTY:

1. Any elm wood product or material transported into and through said cities and said designated disease control areas in violation of this quarantine is subject to destruction or to being returned to the point of origin at the discretion of the Commissioner of Agriculture and at the owner's expense.

2. Any common carrier, firm, corporation, or person who shall transport such products or materials into and through said cities and said designated disease control areas in violation of these quarantine regulations is subject to the misdemeanor penalties set forth in Minn. Stat. § 18.60 (1976).

This notice and quarantine effective Monday, April 24, 1978. Done in the State Office Building, St. Paul, Minnesota on Monday, April 24, 1978.

Bill Walker  
Commissioner of Agriculture

Questions regarding this quarantine should be directed to:

Ms. Jane Meyer, Administrator  
Minnesota Shade Tree Program  
600 Bremer Arcade Building  
St. Paul, MN 55101  
(612) 296-8580

## Notice to Extend Period of Time for Solicitation of Outside Opinion on the Purchase of Milk on the Basis of Protein and Other Non-fat Solids

Notice is hereby given that the Minnesota Department of Agriculture is extending the solicitation period for outside opinions from April 28, 1978, as published in the April 17, 1978 (2 S.R. 1908), until June 30, 1978 for opinions on the possible adoption of rules which would allow the purchasing of whole milk on the basis of non-fat solids contained therein in addition to milk fat per hundredweight. Said rules would, among other things, relate to the testing of protein



## OFFICIAL NOTICES

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and other non-fat solids in whole milk as set forth in Minn. Stat. § 32.35 (1976).

All interested parties desiring to submit data or views relating to said proposed rules should address comments to:

Orlowe Osten, Director  
Dairy Industries Division  
430 State Office Building  
Telephone (612) 296-3647.

All comments and materials must be received by 4:30 p.m. June 30, 1978.

Bill Walker  
Commissioner

### **County Attorneys Council Board of Governors**

#### **Meeting Notice**

The Board of Governors of the County Attorneys Council meets on the third Friday of the month at 11:00 a.m. in the Walnut Room of the University Club, 420 Summit Avenue, St. Paul, Minnesota until further notice is published. Information regarding agendas or possible cancellation of a meeting can be obtained by contacting the County Attorneys Council offices at 40 North Milton Street, St. Paul, Minnesota 55104; phone: (612) 296-6972.

### **Department of Economic Development Tourism Division Industrial Development/ International Trade Divisions**

#### **Solicitation of Applications and Proposals for Advertising Services**

Applications and proposals are being accepted for advertising services for the Tourism and Industrial Development/International Trade Divisions of the Department of Economic Development.

The Department is accepting applications and proposals for its 1979 fiscal year advertising programs. The Tourism Division has a \$400,000 budget for media advertising, which will include production costs and agency fees.

The Industrial Development/International Trade Divisions have a \$62,500 budget for media advertising, which will include production costs and agency fees.

Separate applications and proposals must be made individually for each of the two projects. These contracts will be awarded separately. Each contract will run from July 1, 1978, to June 30, 1979. Those agencies interested in submitting a proposal should contact Steve Kane, Deputy Commissioner, Minnesota Department of Economic Development, 480 Cedar Street, St. Paul, Minnesota 55101, (612) 296-3924, for an application. Proposals and applications will be accepted until May 22, 1978.

### **Department of Education Vocational-Technical Education Division**

#### **Notice of Intent to Solicit Outside Opinion Regarding Rules for Vocational Instructor Licensure and Changes in the Post-Secondary Vocational Rules**

The Department of Education, Division of Vocational-Technical Education, is drafting rules to implement Laws of 1978, ch. 764, § 79, which permits the State Board of Education to promulgate rules regarding licensure for vocational instructors.

The Department will also be drafting changes in the Post-Secondary Vocational Education Rules (Chapter Six, §§ 1.0100-1.0109), to comply with the following changes: Laws of 1978, ch. 764, §§ 9, 10, 14, 64, 65, 66, 108, 130, 131, 132, 133, 134 and Laws of 1978, ch. 792, §§ 8, 24, 25, 26, 27 and 28.

The Department invites interested persons or groups to provide information, comment and advice on these subjects in writing or orally to Mr. Robert Van Tries, Assistant Commissioner for Vocational-Technical Education, 564 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101.

Written statements will be made part of the public hearing record.

## Ethical Practices Board

### Outside Opinion Solicited on Request for Advisory Opinion Regarding Non-campaign Disbursements and Campaign Expenditures

The State Ethical Practices Board solicits opinions of any individual or association regarding the following request for an advisory opinion prior to review for approval of an advisory opinion.

April 20, 1978

Mr. Roger Noreen, Chairman  
State Ethical Practices Board  
41 State Office Building  
St. Paul, Minn. 55155

Dear Mr. Noreen:

I am writing to request an Advisory Opinion to clarify what types of services and expenses provided or incurred by a legislator after the adjournment sine die of the legislature may be properly considered a non-campaign disbursement or a campaign expenditure.

#### BACKGROUND

As you know, the legislature recognizes the importance and need for its members to maintain close communications with their constituents. After all, no legislator can effectively serve the public as their elected representative unless (a) he is kept aware of his constituents needs and interests and (b) he keeps his constituents informed of the myriad of new state programs, laws and regulations. In other words, effective representation necessitates two-way communication — communication which may not end with the adjournment of the legislature.

To facilitate communication, it has been the policy of the legislature to help its members defray a major portion of the cost of providing constituent services. Examples of such aid have included the transportation, stationery and postage allowances.

The legislature has also recognized, however, that constituent services may, on occasion, be abused. The temptation to use such services primarily as a means to influence the reelection of the legislator who provides them has been great. Therefore, the legislature has sought to reduce the potential for abuse by recently amending Chapter 10A, the Ethics in State Government Laws.

#### THE PROBLEM

While the new amendments to Chapter 10A (Laws of 1978, Chapter 463 and 793) provide a better guide for what types of services and expenses are to be considered campaign expenditures, they do not explicitly delineate what particular services and expenses provided or incurred after adjournment are made for the purpose of influencing an election. The problem arises when a specific expense or service may be viewed as having more than one purpose or effect.

For example, suppose a legislator wishes to issue a news release to the local media after adjournment which simply explains a current state program (assume also that the release makes no reference to the legislator's voting record, "campaign pledges", etc.). Although one could argue that the release *might* have an effect in influencing that legislator's reelection, another could justifiably maintain that the *primary* purpose of the release is to inform the public of the particulars of a current state program. Unfortunately, the current law seems to provide little guidance in determining whether this is a constituent service, a non-campaign disbursement, or a campaign expenditure.

#### CURRENT LAW

The relevant sections of Chapter 10A, as amended, which touch on this problem are:

##### A. Section 10A.01, subdivision 10.

(i) "'Campaign expenditure' or 'expenditure' means a purchase or payment of money or anything of value or an advance of credit made or incurred *for the purpose* of influencing the nomination or election of a candidate."

(Emphasis added)

(ii) "Expenditure does not include:

(a) Non-campaign disbursements. . . .

(d) The publishing or broadcasting of news items or editorial comments by the news media."

##### B. Section 10A.01, subdivision 10c.

(i) "'Non-campaign disbursement' means a purchase or payment of money or anything of value made, or an advance or credit incurred, by a political committee, political fund, or principal campaign committee *for any purpose other than* to influence the nomination or election of a candidate."

(Emphasis added)

(ii) "Non-campaign disbursement includes:

## OFFICIAL NOTICES

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. . . (f) Services for a constituent by a member of the legislature or a constitutional officer in the executive branch, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held; . . .”

### QUESTIONS

In light of the above, could the Board respond to the following questions:

1. What criteria, if any, are used to determine whether an expense is made for the purpose of influencing an election (i.e., a campaign expenditure) or for any other purpose (i.e., a non-campaign disbursement)? Is the determination based upon the item's content (e.g., is it informative or political to whom it is sent, i.e., to a constituent or the media); its time of release or use (e.g., before or after adjournment); or who pays for it (e.g., the candidate or his campaign committee)?

2. Are news releases, press statements, speeches, radio beepers, photographs, editorial columns and letters to the editor which do not mention the member's voting record, legislative programs, "campaign pledges," etc., which are sent by a legislator to the media after adjournment considered to be a campaign expenditure and subject to the reporting requirements? What, if any, of these items are sent to constituents?

3. Are other informative materials (i.e., materials which do not mention the member's voting record, etc.) such as a bill, map, legislative manual, news clipping, data from a state department or agency, state department or agency rules and regulations, a film (e.g., "Legislatures Today") or a pamphlet (e.g., "How a Bill Becomes a Law") which are sent by a legislator to a constituent after adjournment considered a campaign expenditure and subject to the reporting requirements?

4. Are informative letters (i.e., ones which make no reference to the member's voting record, etc.) which are sent to a constituent after adjournment considered a campaign expenditure? What if they are sent in response to a constituent's letter or request? What if that constituent's letter or request is received after adjournment?

5. If any of the items mentioned in questions 2, 3 and 4 are considered a campaign expenditure, must the legislator include the cost of stationery and/or stamps provided as part of his allotment by the legislature? Must he also include the cost of having such material typed by a secretary who is employed by the legislature?

6. Under any of the above circumstances, does it matter if the legislator is not seeking reelection? What if he is seeking election to another office?

7. What if any of the items mentioned above are sent to residents of a district other than the legislator's?

May we have your opinion on the above questions at your earliest convenience?

Sincerely,

Raymond J. Albrecht  
State Representative

## Department of Health Environmental Health Division

### Notice of Intent to Solicit Outside Opinion Regarding Proposed Revision of Rules and Adoption of New Rules Relating to Various Subjects

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6 (1976) that the Commissioner of Health will propose the amendment and revision of existing rules and the adoption of new rules.

All interested parties desiring to submit data or views relating to the proposed adoption, amendment or revision of the rules noted below should address their comments (either written or oral) to Ms. Pauline Bouchard, Minnesota Department of Health, Division of Environmental Health, 717 Delaware S.E., Minneapolis, Minnesota 55440 or by calling 612/296-5525. Evidence submitted for consideration should be pertinent to the matter at hand. Any material received by the Department of Health will become part of the hearing record.

Amendments and revisions to rules relating to the following subjects are proposed:

1. licensing of plumbers;
2. public water supplies;
3. construction and abandonment of water wells;
4. license fees for hotels, restaurants and resorts;
5. children's camps; and
6. swimming pools.

New rules are proposed relating to the following subjects:

## OFFICIAL NOTICES

1. a sanitation code for food service facilities; and
2. installation of water conditioning equipment and licensing of water conditioning contractors and installers.

Any materials submitted shall be reviewed and considered by the Department of Health during the preparation of the proposed rules. Notice of the public hearing on the proposed rules shall be published in the *State Register* and given to all interested parties who have registered with the Secretary of State's Office in accordance with the provisions of the Administrative Procedures Act.

### **Pollution Control Agency Air Quality Division**

#### **Order for Hearing and Notice of Hearing on Application of Ford Motor Company for a Variance from Minn. Reg. APC 9 for the Operation of Certain Painting Facilities at Its Twin Cities Assembly Plant**

It is hereby ordered and notice is hereby given that a hearing concerning the above-entitled matter will be held on May 31, 1978, at Highland Branch Library, 1974 Ford Parkway, St. Paul, Minnesota 55116, beginning at 9:30 a.m. and continuing until all persons can be heard.

The hearing will be held before William Seltzer, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8105, a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. § 15.0411 through Minn. Stat. § 15.052 and Minn. Reg. HE 201 through HE 222. Questions concerning discovery or other matters concerning this proceeding may be directed to Special Assistant Attorney General Jocelyn Furtwangler Olson, (296-7343), or Thomas Townsend, Division of Air Quality (296-7271), Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota 55113.

The purpose of this hearing will be to consider testimony and evidence bearing upon the application of Ford Motor Company for a variance of Minn. Reg. APC 9, "Control of Odors in the Ambient Air," for the operation of the following painting facilities located at its Twin Cities Assembly Plant, 966 South Mississippi River Boulevard, St. Paul, Minnesota:

- (1) Hood and fender prime oven
- (2) Hood and fender enamel oven
- (3) Body prime oven
- (4) Body enamel spray booth
- (5) Body enamel oven
- (6) Body tutone enamel oven
- (7) Oil house building

Ford Motor Company seeks a variance from the requirements of Minn. Reg. APC 9 until November 1, 1979.

The Minnesota Pollution Control Agency is authorized to hold such hearing and grant such a variance by Minn. Stat. § 116.07 subd. 5 (1976) and pursuant to its regulation, Minn. Reg. MPCA 6.

Any person who desires to become a party to this case must submit a timely petition to intervene to the Hearing Examiner, pursuant to Minn. Reg. HE 210, showing how that person's legal rights, duties, and privileges may be affected by the decision in this case. The petition must also set forth the grounds and purpose for which intervention is sought. A party to a case has the right to present evidence and argument with respect to the issues and to cross-examine witnesses. Interested persons may present oral or written statements at the hearing without becoming parties.

Any person desiring to intervene as a party must submit to the Hearing Examiner and serve upon all existing parties a Petition to Intervene by May 25, 1978. At the present time the representatives of parties to this proceeding who should be served with such Petition to Intervene are:

Mr. George Kircos  
Ms. Marcia J. Swinehart  
Attorneys for Ford Motor Company  
Office of General Counsel  
Ford Motor Company  
The American Road  
Dearborn, Michigan 48121  
(313) 322-2958  
(313) 323-3794

Ms. Jocelyn F. Olson  
Attorney for MPCA Staff  
Minnesota Pollution Control Agency  
1935 W. County Road B2  
Roseville, Minnesota 55113  
(612) 296-7343

A Notice of Appearance form, enclosed with this order, is to

## OFFICIAL NOTICES

be completed and returned to the Hearing Examiner by each person admitted as a party at least ten days before the hearing date. In addition, the Agency requests that the Notice of Appearance be served upon the existing parties to the case.

The procedural rules HE 201 through HE 222 are available for inspection at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, St. Paul, Minnesota 55155 (296-2874).

Copies of regulations and other documents pertinent to the proposed variance and application therefor are available for review by all interested persons during normal business hours at the Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota 55113.

Sandra S. Gardebring  
Executive Director

April 28, 1978

### **Department of Public Welfare Surveillance and Utilization Review Division**

#### **Notice of Intent to Solicit Outside Opinion Concerning the Proposed Rule DPW 64, Surveillance and Utilization Review**

Notice is hereby given that the Minnesota Department of Public Welfare is considering proposed DPW Rule 64, Surveillance and Utilization Review. This rule governs procedures to be used by the Surveillance and Utilization Review Division, Minnesota Department of Public Welfare, in the identification and investigation of exceptional utilization, suspected fraud, or abuse by participants in the Minnesota Medical Assistance program, the General Assistance Medical Care program, and/or the Catastrophic Health Expense Protection Program. The statutory authority for the rule is Minn. Stat. § 256B.04, subd. 10 (1976).

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Pat Nelson  
Department of Public Welfare  
Surveillance and Utilization Review Division  
P.O. Box 43208  
St. Paul, Minnesota 55164

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-7850.

All statements of information and comment must be received by May 21, 1978. Any written material received by the Department shall become part of the hearing record.

### **Minnesota State Retirement System**

#### **Board of Directors**

#### **Meeting Notice**

Regular quarterly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, May 19, 1978, at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

### **Department of Transportation Administration Division**

#### **Notice of Application and of Opportunity for Hearing on the Petition of Burlington Northern for Authority to Remove Approximately 475 Feet from the Southeasterly End of a Spur Track Located at Virginia, Minnesota**

Notice is hereby given that Burlington Northern, Inc. with offices at 176 East Fifth Street, Saint Paul, Minnesota 55101 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 (1977 Supp.) and § 218.041, Subd. 3 (10) (1977 Supp.) to remove approximately 475 feet from the southeasterly end of a spur track located easterly of the intersection of Second Street North and Fifth Avenue West in Virginia, Minnesota. The Petition recites:

"1. The Housing and Redevelopment Authority of the

## OFFICIAL NOTICES

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City of Virginia, Minnesota, has acquired the property . . . for construction of a senior citizen housing complex.

2. Your applicant has been requested to remove the spur track involved with that property. . . .

3. Removal of said spur track will not inconvenience any member of the shipping public and is necessary in order to accommodate the new use to which said property is to be dedicated."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before May 22, 1978. The objection should state specifically how the objector's interest will be adversely affected by the proposed action. Upon receipt of a written objection, the Commissioner will, with

respect to the named petitioner, set the matter down for hearing. If no objections are received, the Commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a party to this matter must submit a timely petition to intervene to the Hearing Examiner pursuant to Minn. Reg. HE 210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

Jim Harrington  
Commissioner

April 24, 1978.

STATE OF MINNESOTA  
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building  
408 St. Peter Street  
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(612) 296-8239

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