



STATE REGISTER

STATE OF MINNESOTA

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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 3			
24	Monday Dec 4	Monday Dec 11	Monday Dec 18
25	Monday Dec 11	Friday Dec 15	Monday Dec 25
26	Monday Dec 18	Friday Dec 22	Monday Jan 1
27	Friday Dec 22	Friday Dec 29	Monday Jan 8

*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 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, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

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MCAR AMENDMENTS AND ADDITIONS

The following is a listing of all proposed and adopted rules published in this issue of the *State Register*. The listing is arranged in the same order as the table of contents of the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend the rules contained in the MCAR set. Both proposed temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short term nature of their legal effectiveness. During the term of their legal effectiveness, however, adopted temporary rules do amend the MCAR. A cumulative listing of all proposed and adopted rules in Volume 3 of the *State Register* will be published on a quarterly basis and at the end of the volume year.

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Part 1 Agriculture Department

3 MCAR §§ 1.1331-1.1334 (proposed) 1217

TITLE 4 COMMERCE

Part 1 Commerce Department

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4 MCAR §§ 1.0226-1.0231 (adopted) 1213

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Through slaughter by market hunters and the U.S. Army, the huge herds of buffalo (or bison) which once grazed on Minnesota prairies were reduced to a few captive animals by 1900. They have since been reintroduced, by use of captive herds, in preserves and parks throughout the state. Buffalo are dark brown with thick, shaggy, almost black hair covering their shoulders, neck, forelegs and head. A mature bull may stand five to six feet high at the shoulder and weigh more than 2,000 pounds. (Drawing by Dan Metz, courtesy of Department of Natural Resources)

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 Commerce Banking Division

Adopted Rules Relating to Electronic Funds Transfer Terminals

The rules published at *State Register*, Volume 2, Number 49, pp. 2229-2233, June 12, 1978 (2 S.R. 2229) as proposed, are adopted with the following amendments:

4 MCAR § 1.0226 Authority, scope and purpose. ~~Laws of 1978, Ch. 469, Minn. Stat. § 47.71~~ authorizes the Commissioner of Banks to promulgate rules as are reasonably necessary to carry out and make effective the provisions and purposes of the Act relating to the establishment and operation of electronic financial terminals. The Act requires that rules be promulgated to govern application forms and require that technical standards be established. Rules 4 MCAR §§ 1.0226 to 1.0231 relate to the operation of

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electronic funds transfer terminals, the manner and information required in the submission of applications for authorization, establish minimum technical operation standards, and require disclosure of information to customers using such terminals. These rules establish an application procedure and guide to standards considered reasonable to accomplish the purpose of the Act. Further, the Act mandates the promulgation of rules to inform, guide and protect the consumer, retailers and financial institutions in the utilization of electronic financial terminal systems. These rules further set out specific requirements concerning the issuance of cards, disclosures of pertinent required information and reporting of data relating to financial transactions initiated at electronic financial terminals.

4 MCAR § 1.0227 Definitions. All terms herein in these rules which are defined in Laws of 1978, Ch. 469, Minn. Stat. §§ 47.61 through 47.74 shall have the meanings attributed to them therein. For the purpose of Laws of 1978, Ch. 469, Minn. Stat. §§ 47.61 through 47.74 and these rules, terms defined herein shall have the meanings given to them.

A. "Account Holder" means "customer".

A B. "Act" means Minn. Stat. §§ 47.61 through 47.74 (Laws of 1978, ch. 469), as enacted and subsequently amended.

B C. "Card" means the device used to activate an electronic financial terminal, including a credit card or debit card.

C D. "Card Issuer" means a financial institution or a person in conjunction with authorized by a financial institution providing the use of a terminal under a pre-authorized contractual agreement with to a customer to be activated by a card.

D E. "Control" means:

1. person having the ownership of greater than 50 percent ownership interest in the terminal or terminals applied for; or

2. any leasee leasehold interest in of the terminal or terminals; or

3. any managing the power to act as agent or card issuer appointed authorized by those persons having ownership or leasehold interests in the terminal or terminals for purposes of the Act and these rules.

E F. "Customer" means any person who has established a contractual relationship with a financial institution whereby that person is authorized to initiate any of those

functions permitted to be performed under the Act at an electronic financial terminal.

F G. "Operator" means any provider or retailer person who initiates or assists in the initiation of electronic financial terminal transactions on behalf of a customer. Operator does not include an employee of a financial institution, financial institution holding company or subsidiary thereof of the account holder customer. For purposes of 4 MCAR § 1.0228 C., operator does not include individual employees of a provider or retailer.

G H. "Person" means any individual, bodies body politic or corporate, partnerships or other unincorporated associations, including a financial institution, as defined in the Act.

H I. "Personal Identification Number Code" is the confidential code provided to the account holder customer which is necessary to the completion of a transaction at an electronic financial terminal.

I J. "Provider" means the person or persons having control over an electronic financial terminal under the Act.

J K. "Terminal" means an electronic financial terminal as defined in the Act.

K L. "Transaction" means each separate, identifiable, financial function performed at an electronic financial terminal as authorized under the Act.

4 MCAR § 1.0228 A. Any person, including a card issuer, seeking approval to act as a provider of a terminal or terminals at a specific retail location shall, not less than 45 days before the establishment of the terminal or terminals, file with the Commissioner a written application on a form provided by the Commissioner entitled ELECTRONIC FINANCIAL TERMINAL AUTHORIZATION APPLICATION. Such application shall include, but need not be limited to, the following request for information:

4 MCAR § 1.0228 A. 9. all agreements used or intended to be used relating to the ownership, operation and control of the terminal, including agreements with and disclosures to account holders customers required by the Act and 4 MCAR § 1.0230 A.

4 MCAR § 1.0228 D. The Commissioner shall be given written notice by the applicant of the termination of the use of a terminal operations at the location authorized not more than 10 days after termination of all regulated activity.

4 MCAR § 1.0229 A. 3 a. date and time of the transaction:

c. description of the transaction which may be in clear and understandable abbreviations or codes.

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d. identity of any customer's financial institution with whom funds are electronically transferred.

4. All financial transactions performed at a terminal as authorized by Section 3 of the Act shall be processed as if the transactions were conducted at the principal office of the financial institution having due regard for the ~~banking day or the established hours and days the financial institution is open for carrying on substantially all of the functions~~ reasonable time necessary for the transportation or transmission of data or funds deposited or received at the terminal in cash or checks to the point of verification by the financial institution. There shall be no differential in such time delay, if any, between the various permitted transactions initiated at a terminal unless acknowledged in writing by the customer. In the event cards meeting the requirements of the Act and these rules are outstanding under a pre-authorized agreement and in lieu of an acknowledgement in writing by the customer, such time differential shall be disclosed to the customer in writing before authorization for use of a terminal.

5. A personal identification ~~number~~ code shall be utilized as a means of verification of the authenticity of transactions to be completed at a terminal. The personal identification ~~number~~ code shall not be distributed until the financial institution issuing the card has received the customer's signed contract.

B. 3. fair, ~~and~~ equitable and non-discriminatory access to the terminal by other potential sharing financial institutions.

4 MCAR § 1.0230 A. Pursuant to Section 9 of the Act, the following information shall be disclosed in writing by the card issuer to its customer at the time the card is issued; or in the event cards meeting the requirements of the Act and these rules are outstanding, this disclosure shall be made before the customer is allowed to use a terminal.

2. the schedule of charges made by the financial institution for the customer's use of the terminal ~~and for each type of terminal connected activity for which charges are made.~~

4. the ~~schedule~~ frequency for sending periodic transaction statements to the customer.

5. a statement notifying the customer of the procedure to be used to give notice of error to the card issuer. Said disclosure shall include the manner in which notice of error is to be filed and with whom it is to be filed, and shall

include the mailing address and telephone number of the person to whom notice may be given.

6. the specific manner in which the agreement under which a card was issued may be terminated, either by the card issuer or by the ~~account holder~~ customer.

7. the customary time needed to complete terminal transactions with the financial institution clearly stating differential in time if any between the various permitted transactions initiated at a terminal.

8 7. where payment for goods or services is made by a transfer of funds through a terminal:

a. ~~the customary time needed to complete the transaction with the financial institution;~~

a b. whether the transaction may be reversed by the customer;

b e. the procedure by which the transaction may be reversed; and

c d. a statement that the payment for goods or services made in this manner shall not affect any of the rights, protections or liabilities in existing law concerning a cash or credit sale made by means other than through the use of a terminal.

9 8. a statement that the financial institution shall be liable for all unauthorized withdrawals unless the unauthorized withdrawal was:

10 9. a statement that any customer may bring a civil action against any person violating the consumer privacy and unauthorized withdrawal provisions of the Act and may recover, in addition to actual damages, or \$500, whichever is greater, punitive damages, together with the court costs and reasonable attorney's fees incurred.

11. a statement that to protect the privacy of customers using electronic financial terminals, including any supporting equipment, structures or systems, information received by or processed through such terminals, supporting equipment, structures or systems shall be treated and used only in accordance with applicable law relating to the dissemination and disclosure of such information. The person establishing and maintaining an electronic financial terminal, including any supporting equipment, structures or systems, shall take such steps as are reasonably necessary to restrict disclosure

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of information to that necessary to complete the transaction and to safeguard any information received or obtained about a customer or his account from misuse by any person manning an electronic financial terminal, including any supporting equipment, structures or systems.

C. A directory listing as permitted under the Act shall be made available by the applicant at the retail location of the terminal identifying the financial institutions using its services.

4 MCAR § 1.0231 A. A financial institution shall provide each ~~account holder~~ customer with a periodic transaction statement following each month in which a transaction occurs or at least quarterly, whichever is more frequent. The statement shall clearly indicate each transaction conducted

at a terminal and shall include, but need not be limited to, the following:

A 1. date of transaction.

B 2. amount of each transaction.

C 3. ~~description type~~ of each transaction with sufficient specificity to permit verification by the account holder without supporting documentation, which may be in clear and understandable abbreviations or codes.

4. location at which each transaction occurred.

5. identity of any financial institution with whom funds were electronically transferred.

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 Agriculture Proposed Rules Governing the Purchase of Milk on the Basis of Protein

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Administration Building, Room 116A, 50 Sherburne Avenue, Saint Paul, Minnesota on January 15, 1979, commencing at 10:00 a.m., or as soon thereafter as possible; and also at the Houston County Courthouse, 304 South Marshall Street, Caledonia, Minnesota on January 16, 1979, commencing at 7:00 p.m., or as soon thereafter as possible 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 Howard L. Kaibel, Jr., Office of Hearing Examiners, 1745 University Avenue, Room 300, Saint Paul, Minnesota 55104, phone (612) 296-6910 either before the hearing or after the hearing until the record is closed. The record will remain open for five working days after the public hearings end or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

The proposed rules, if adopted, would establish rules



Theodore Christianson (1883-1948) was a lawyer, editor and historian as well as 3-term governor of Minnesota. Born in Lac qui Parle, he graduated from the University of Minnesota in 1906 and established a law practice in Dawson in 1909, where he edited the *Dawson Sentinel* until 1925. His two-volume work, *A History of the State and Its People*, was published that year, coinciding with his election as governor. During his first term, Christianson established the Commission of Administration and Finance.

which would allow the purchasing of whole milk on the basis of protein contained therein in addition to milk fat per hundredweight. Said rules would, among other things, relate to the testing for protein, the licensing of testers, and the basis for payment. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Agriculture, 420 State Office Building, Saint Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing. The department's authority to promulgate the proposed rules is contained in Minn. Stat. § 32.25 (1976).

Notice: 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

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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).

Notice is hereby given that 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 Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after lobbying commences. 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 \$250.00 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 \$250.00 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 (612) 296-5616.

November 17, 1978

Bill Walker
Commissioner of Agriculture

Rules as Proposed (All New Material)

CHAPTER 58 Purchase of Milk on the Basis of Protein

3 MCAR § 1.1331 General.

A. Purpose and authority. The rules contained herein are prescribed pursuant to Minn. Stat. § 32.25 by the commissioner to provide an optional method for the purchasing of whole milk, the purchase price of which shall be calculated upon the basis of 100 pounds of whole milk at 3.5 pounds of milk fat and 3.2 pounds of protein per hundredweight.

B. Definitions. For purposes of these rules the following definitions and those in Minn. Stat. § 32.01 shall apply:

1. "Producer" means any person who operates a dairy herd or herds producing milk commercially and whose milk is sold to, or received or handled by, a purchaser as defined in this rule.

2. "Purchaser" means any person purchasing whole milk from a producer and defined as a dairy plant in Minn. Stat. § 32.01, subd. 6.

3 MCAR § 1.1332 Criteria for purchasing milk on the basis of protein.

*ALTERNATIVE "1" FOR 3 MCAR § 1.1332A.:

A. Any purchaser may base the price paid for such milk on both the milk fat and protein content of such milk, provided:

1. The purchase price is determined by the declared purchase price of 100 pounds of whole milk calculated at 3.5 pounds of milk fat and 3.2 pounds of protein content per hundredweight;

2. That when the milk fat test or the protein test of such whole milk varies from the aforementioned weights per hundredweight, a uniform adjustment in the declared purchase price shall be made for each one-tenth of one percent of milk fat or protein above or below the aforementioned weights;

*ALTERNATIVE "2" FOR 3 MCAR § 1.1332 A.:

A. Any purchaser may base the price paid for such milk on both the milk fat and protein content of such milk, provided:

1. The purchase price is determined by the declared purchase price for 100 pounds of whole milk calculated at 3.5 pounds of milk fat and 3.2 pounds of protein content per hundredweight;

2. That price adjustments for milk fat shall be set pursuant to Minn. Stat. § 32.25, subd. 1;

3. That when the protein test of such whole milk varies from the 3.2 pounds per hundredweight, a uniform adjustment in the declared purchase price shall be made for each one-tenth of one percent of protein above 3.2 pounds per hundredweight;

*ALTERNATIVE "3" FOR 3 MCAR § 1.1332 A.:

A. Any purchaser may base the price paid for such milk on both the milk fat and protein content of such milk, provided:

1. The purchase price is determined by the de-

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clared purchase price of 100 pounds of whole milk calculated at 3.5 pounds of milk fat and 3.0 to 3.2 pounds of protein content per hundredweight;

2. That when the milk fat test or the protein test of such whole milk varies from the aforementioned weights per hundredweight, a uniform adjustment in the declared purchase price shall be made for each one-tenth of one percent of milk fat or protein above or below the aforementioned weights;

NOTE: 3 MCAR 1.1331 A. would read:

“ . . . 3.5 pounds of milk fat and 3.0 to 3.2 pounds of protein per hundredweight.”

B. The purchaser shall not discriminate in the buying of such milk pursuant to Minn. Stat. § 32.11 and all producers selling to such a purchaser shall be subject to the provisions of this rule.

3 MCAR § 1.1333 Testing procedures.

A. Samples collection and handling. Samples to be used for the testing of protein content shall be collected and handled in the same manner as samples used for bacterial tests as prescribed in “Standard Methods for the Examination of Dairy Products”, Thirteenth Edition, published by the American Public Health Association. The minimum size for a fresh milk sample shall be two ounces (0.0592 liter).

B. Sample testing.

1. Only the following methods, as prescribed by the Official Association of Analytical Chemists, shall be used in the testing of whole milk for protein content pursuant to these rules:

a. Kjeldahl, Method No. 1.049 and 16.036, total nitrogen;

b. Dye binding, Method No. 16.037, acid orange 12;

c. Pro-milk method for determination of protein in milk, amido block 10B, Journal of the Official Methods of Analysis of the Association of Analytical Chemists (Vol. 58, No. 4), 1975;

d. Infra-red. Milk Analysis, Method No. 16.097 and 16.080, part 2 protein; or

e. Any other method of equal or greater accuracy approved by the Official Association of Analytical Chemists and approved by the commissioner.

2. Only testing equipment accurately calibrated as prescribed by the methods for calibration set forth in the above cited methods shall be used on conducting sample testing for protein content pursuant to these rules.

3. The commissioner may inspect and test any testing equipment with standardized solutions to determine their accuracy.

4. Frequency of sampling and testing.

a. When the calculation of protein content for payment for whole milk purchased pursuant to these rules is based on a one (1) month period of production, four (4) or more tests results on random samples taken from different deliveries shall be used to compute the arithmetic average of those test samples.

5. Sample retention and handling. All samples collected and used for protein testing pursuant to these rules shall be held at temperatures of 32°F to 40°F until tested and shall be returned to that temperature within two (2) hours of the last test made on the sample. All samples shall be retained at the place of testing until 3:00 p.m. of the day following the last testing date of the sample.

C. Test records.

1. Purchasers shall provide producers with a statement of the protein content of the milk with or in each settlement statement.

2. When whole milk is found to be abnormal pursuant to 3 MCAR § 1.1188, the purchaser's records shall indicate the results of the confirmatory tests. Only confirmatory tests approved pursuant to 3 MCAR § 1.1188 shall be used in determining the ineligibility of whole milk purchased on a protein basis.

3. All test records and results for protein content pursuant to these rules and the computation of payments to producers selling whole milk on a protein basis shall be retained by the purchaser for a period of not less than one (1) year. All records relative to such tests and payments shall be available for inspection during normal working or other reasonable hours by persons authorized by the commissioner.

3 MCAR § 1.1334 Licensed testers.

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A. All persons engaged in the sampling and/or testing of whole milk to determine its value for payment to producers shall be licensed by the commissioner.

B. Any person desiring to secure such a license shall make application on forms provided by the commissioner. Before a license is issued, the commissioner shall determine that the applicant is competent and qualified to use such testing apparatus for determining protein content of whole milk and to make accurate tests with them.

C. Every license issued by the commissioner shall be for a period ending on the December 31 following issuance and shall not be transferrable.

D. The fee for each initial license shall be \$15 and each renewal thereof shall be \$6 and shall be paid to the commissioner before any license or renewal thereof is issued.

E. The commissioner shall suspend or cancel any license issued pursuant to these rules, after notice and hearing, found to be in violation of Minn. Stat. § 32.25 or these rules.

*Testimony will be received on all three alternatives. Based upon the testimony at the hearings, one alternative will be promulgated by the commissioner.

Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Proposed Rule Relating to Classes of Buildings with Respect to Which Persons Performing Archi- tectural and Professional Engineering Services May Be Exempt from Licensure Requirements and Proposed Amendments to Rule Relating to Licensure Requirements for Professional Engineers

Amended Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter, originally scheduled to be held on De-

ember 6, 1978, has been rescheduled and will be held in the Department of Commerce Hearing Room at 500 Metro Square Building, Seventh and Robert Streets, Saint Paul, Minnesota on January 24, 1979 at 9:30 AM and continuing until all representatives of associations or interested groups or persons have had an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. 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 A. Beck, Office of Hearing Examiners, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, (612) 296-8114, the Hearing Examiner appointed to hear this matter, either before the hearing or within five (5) working days after the close of the hearing. The Hearing Examiner may extend the time for receipt of written comments for a period not to exceed twenty (20) calendar days from the date of the hearing.

The new rule proposed for adoption, if adopted, would establish classes of buildings with respect to which persons performing architectural and professional engineering services may be exempt from licensure requirements. The proposed amendments to the rule relating to the licensure requirements for professional engineering, if adopted, will provide for the admission of candidates to the professional practice examination with two years of qualifying experience before graduation in those cases where the higher education of the candidate was interrupted. Subject matter included in examinations is removed because such information is frequently changed and is provided to each candidate upon application for admission to a particular examination. The proposed rule and amendments were published in the *State Register* at 3 S.R. 1008. One free copy of the proposed rules in their entirety may be obtained by writing to Lowell E. Torseth, Executive Secretary, Board of Architecture, Engineering, Land Surveying and Landscape Architecture, 500 Metro Square Building, St. Paul, Minnesota 55101. Additional copies of the rules will be available at the door on the day of the hearing.

The rule and amendments are proposed pursuant to the authority vested in the Board of Architecture, Engineering, Land Surveying and Landscape Architecture by the provisions of Minn. Stat. 326.06, as amended by Minn. Laws 1978, ch. 577, Section 3.

It is not anticipated that adoption of the proposed rule and amendments will result in the expenditure of public moneys by local public bodies.

Any person may request notification of the date on which the Hearing Examiner's report will be available, after which date the Board may not take any final action on the rules for a period of five (5) 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

PROPOSED RULES

Board. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's report), or to the Board (in the case of the Board's submitted or resubmission to the Attorney General.)

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Board's office and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the Board at the hearing justifying both the need for and the reasonableness of the proposed rule and amendment. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiner at a minimal charge.

Minn. Stat. §§ 10A.01-10A.34 require each lobbyist to register with the Ethical Practices Board within five (5) days after commencing lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, 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.

"Lobbyist" does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivery testimony; or

(f) Stockholder of a family farm corporation as defined in section 500.24, subdivision 1, who does not spend over \$250, excluding his own travel expenses, in any year in communicating with public officials.

Questions regarding the registration of lobbyists should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone number (612) 296-5615.

November 29, 1978

Lowell E. Torseth
Executive Secretary

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

SUPREME COURT

Decisions Filed Friday, December 1, 1978

Compiled by John McCarthy, Clerk

48322/286 Susan J. Wanshura vs. State Farm Life Insurance Company, et al, Appellants. Hennepin County.

A policy of insurance may be constructively delivered to the insured when the insurer delivers the policy to its agent and the only remaining acts of the agent are ministerial.

Tender of premium by the insured satisfies a condition of the insurance contract that the premium be paid before the policy is effective.

Under a "continued insurability" clause, an applicant remains insurable if (1) the disease or physical condition causing death existed at the time of the insurer's medical examination, and (2) this disease or condition was detectable, even if not manifested. He is not insurable, however, if (1) he has knowledge of a disease or adverse physical condition at or prior to the time the policy is delivered, and (2) either (a) the disease or condition occurred after the medical examination, or (b) the disease or condition existed at the time of the medical examination but it was not detectable at that time.

Affirmed. Todd, J. Took no part, Otis, J.

48168/304 Paul Hjelm, et al vs. Roger Bergman, Appellant. Isanti County.

Under the facts of this case, the tender of payment by the

contract vendee precluded effective cancellation of the contract for deed.

The trial court incorrectly determined allocation of taxes and interest between the parties.

Affirmed in part; reversed in part. Todd, J. Took no part, Otis, J.

47960/303 State of Minnesota vs. Larry Gene Merrill, Appellant. Hennepin County.

Under the facts of this case, it was proper for the trial court to submit instructions to the jury that defendant could be guilty of first or second degree murder but to deny defendant's request for jury instructions on the lesser included charges of third degree murder or first degree manslaughter.

Defendant's inculpatory statements made after arrest but after Miranda warnings were given were not involuntarily induced by the police and thus are admissible.

Because defendant's warrantless arrest was based upon probable cause to believe that defendant had been involved in the crime, the arrest was legal, and therefore statements made by defendant after his arrest are admissible.

No prejudicial error resulted from search of defendant's apartment conducted prior to issuance of search warrant.

The affidavit for a search warrant to search defendant's apartment was adequate, and the search was therefore not illegal.

The evidence presented at trial was sufficient to justify a verdict of murder in the first degree.

Affirmed. Yetka, J.

STATE CONTRACTS

Pursuant to the provisions of Laws of 1978, ch. 480, 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.

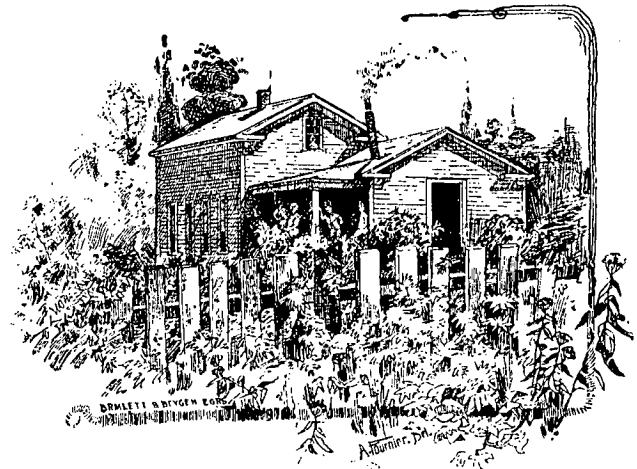
Department of Health Family Planning Unit

Notice of Request for Proposals for a Family Planning Public Attitude Survey

The Minnesota Department of Health is requesting proposals from public and private organizations to develop and implement a project to survey the attitudes of Minnesota residents before and after implementation of family planning public information campaign. Proposals must be submitted to the Minnesota Department of Health no later than 4:30 p.m. on December 29, 1978.

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

Judi Kapuscinski, Supervisor
Family Planning Unit
Minnesota Department of Health
717 S.E. Delaware Street
Minneapolis, MN 55440



This dwelling stood on the West Bank of the Falls of St. Anthony in 1850, and is believed to have been the first permanent residence in Minneapolis. (Reprinted from *An Illustrated History of Minnesota*, T. H. Kirk, 1887)

Housing Finance Agency Home Improvement and Mortgage Loan Division

Notice of Request for Proposals for Home Improvement Loan Servicing

The Minnesota Housing Finance Agency is seeking proposals for the performance of servicing and collection activities for the Agency's home improvement loans. The current portfolio includes 17,500 FHA Title I insured loans with a principal balance of approximately \$70 million, and is currently being serviced by National Escrow Corporation. Additional loans are being added at an annual rate of about 5,800 with an average principal amount of \$5,200.

The Agency is seeking full servicing, including collection of payments, preparation of reports and accounting documents, and follow-up on delinquent accounts in accordance with FHA guidelines and procedures. The proposal must include the following information:

1. Full servicing costs including any set-up charges, monthly charges, and special charges for storage of loan files, annual statements, coupons, etc.
2. Your current servicing activities on home improvement loans including number of loans, dollar volume, and delinquency statistics. Copies of typical reports should

be included. A detailed description of delinquency follow-up and collection procedures is also required.

3. Current financial statements of your firm. The Agency reserves the right to require any insurance, bonds, or other security devices deemed necessary to protect its interests.

Evaluation and award will be based on the above factors. Proposals must be received in writing by the Agency not later than 1:00 p.m. Tuesday, December 26, 1978.

General inquiries and proposals should be directed to:

Mary Tingerthal
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, MN 55101
612-296-8844

Department of Transportation Bureau of Operations

Notice of Availability of Contract for Preparation of Environmental Statements and Design Study Reports

The Minnesota Department of Transportation intends to engage the services of a qualified consultant to prepare the Draft and Final Environmental Statements and the Design Study Report for the Segment of Trunk Highway No. 60 lying generally between St. James and Worthington, Minnesota.

The estimated fee range for this project is \$300,000 to \$400,000.

Firms interested in submitting a proposal should contact B. E. McCarthy for detailed information relating to the scope, form and content of the proposal. Firms desiring consideration should respond by 4:30 p.m., December 18, 1978.

This is not a request for proposal. Send your response to:

B. E. McCarthy
Consultant Services Engineer
Room 612B
Transportation Building
St. Paul, Minnesota 55155
Telephone (612) 296-3051

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.

Ethical Practices Board

Response to Request for Advisory Opinion Concerning Campaign Finance Registration

The Ethical Practices Board has answered by letter rather than by advisory opinion the request for an advisory opinion from the Minnesota State Bar Association published in Volume 3, Number 14 of the *State Register*, October 9, 1978, concerning Campaign Finance Registration.

November 13, 1978

Mr. David R. Brink
President
Minnesota State Bar Association
100 Minnesota Federal Building
Minneapolis, MN 55402

Dear Mr. Brink,

At the October 30, 1978, Board meeting on a motion to require the Minnesota Bar Association to register as a political fund, the four members participating in the decision voted 3-1 to require the Minnesota Bar Association to register and report as a political fund. Since Minn. Stat. § 10A.02, subd. 3 requires a concurring vote of four members of the Board to decide any matter before it, the motion failed. In 1978, therefore, the Minnesota Bar Association will not be required to register and report as a political fund, nor can the Board answer your request for an advisory opinion because of the Board's inability to obtain four votes to provide such guidance.

If you have any questions, you may contact me.

Sincerely yours,
B. Allen Clutter, Executive Director

Response to Request for Advisory Opinion Concerning Campaign Finance — Distribution of State Election Campaign Funds to Minor Parties

The Ethical Practices Board has answered by letter rather than by advisory opinion the request for an advisory opinion from Gary Prevost, Assistant Treasurer, Minnesota Socialist Workers 1978 Campaign Committee, published in Volume 3, Number 21 of the *State Register*, November 27, 1978, concerning Campaign Finance — Distribution of State Election Campaign Funds to Minor Parties.

December 1, 1978

Mr. Gary Prevost
Box 6177
Collegeville, Minnesota 56321

Dear Mr. Prevost,

The board reviewed your letter at its meeting on November 28, 1978, and concluded that money for legislative races from 1976 and 1977 tax returns if not distributed to candidates in the 1978 general election year shall, by law, revert to the General Fund of the State. Additionally, all money not allotted to minor party statewide political offices in 1978 from previous years shall revert to the General Fund of the State.

Sincerely yours,
B. Allen Clutter, Executive Director

Department of Health Health Manpower Division

Notice of Intent to Solicit Outside Opinion on Proposed Rules Relating to Registration of Physicians' Assistants

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6 (Supp. 1977), that the Minnesota Commissioner of Health will propose the adoption of new rules relating to the Registration of Physicians Assistants.

All interested parties desiring to submit data or views relating to these proposed rules should address their com-

ments (either written or oral) to Marie Scheer, Health Manpower Division, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, telephone (612) 296-5532. Material and comments submitted for consideration should be pertinent to the matter at hand.

Any materials submitted shall be reviewed and considered by the commissioner 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 office of the Secretary of State in accordance with the provisions of the Administrative Procedures Act.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rulemaking 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, telephone (612) 296-5615.

November 27, 1978.

Warren R. Lawson, M.D.
Commissioner

Department of Transportation

Notice of Application and Opportunity for Hearing Regarding Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove Track No. 160 Located at Worthington, Minnesota

Notice is hereby given that the Chicago and North Western Transportation Company, with offices at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402 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 retire and remove Track No. 160 located at Worthington, Minnesota.

The petition recites among other matters that:

“The subject track is no longer needed for rail transportation service, and constitutes a continuing and burdensome maintenance expense. The track is not used at the present time and there is no present prospect that the subject track will be needed in the future. The only shippers, patrons or members of the public who might have any interest in the retention of the tracks or facilities, or who have used the same to any substantial degree within the past several years is Rickbeils, Inc. of Worthington, Minnesota.”

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 January 3, 1979. 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. Rule 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

OFFICIAL NOTICES

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.

December 1, 1978

Jim Harrington
Commissioner of Transportation

Errata

1. Proposed rules of the Department of Commerce, Board of Architecture, Engineering, Land Surveying, and Landscape Architecture, published at Volume 3, Number 19, pp. 1008-1014, November 13, 1978 should be corrected as follows:

At 3 S.R. 1012, Rule AE&LS 10 A., last line, change "he/she" to "he/she" and at A.3., second footnote, change "~~deleted as of January 1, 1973.~~" to "~~deleted as of January 1, 1973.~~"

At 3 S.R. 1013, Rule AE&LS 10 C.2., second line, do not underline "is an ex-" and at 10 E., change "~~allowed~~ permitted to take the Fundamentals of Engineering ~~fundamentals~~ examination (EIT)." to read "allowed permitted to take the Fundamentals of Engineering ~~fundamentals~~ examination (EIT)."

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