



# STATE REGISTER

STATE OF MINNESOTA

RULES

PROPOSED RULES

SUPREME COURT

STATE CONTRACTS

OFFICIAL NOTICES

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# STATE REGISTER

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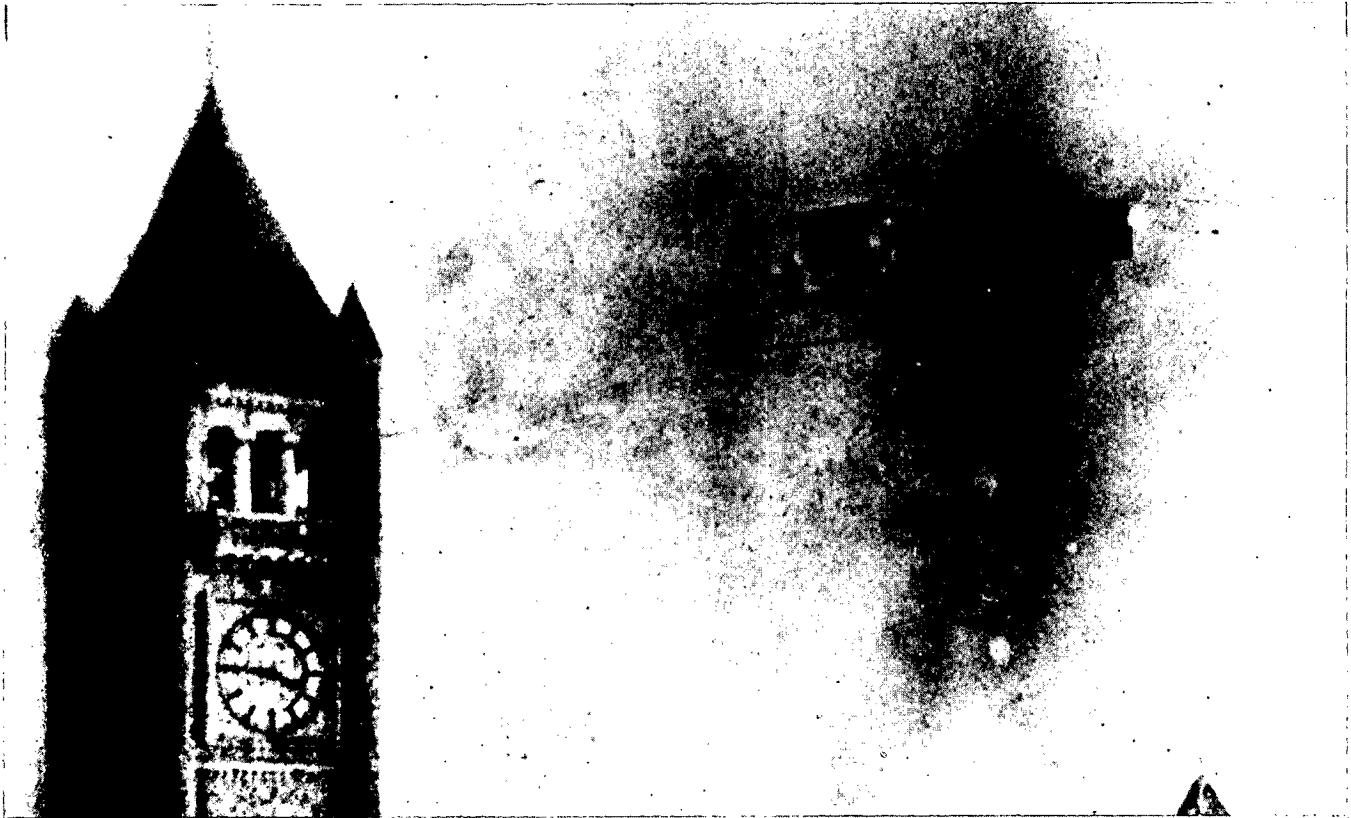
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Alexander T. Heine dazzled crowds packing Minneapolis downtown rooftops on Sunday, Jan. 12, 1913 in -19° temperatures as he flew his pusher type biplane past the court house tower. Heine, a veteran Minneapolis aviator and the first Minneapolis manufacturer of airplanes, cruised over the city and circled the court house three times, a feat never before accomplished. Fourteen years later, another Minnesotan, Charles Lindbergh, crossed the Atlantic in a record setting solo in his plane, the Spirit of St. Louis. (Courtesy of Minnesota Historical Society)

# 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 Commerce Board of Architecture, Engineering, Land Surveying and Landscape Architecture

### Adopted Rules Relating to Exempt Classes of Buildings and Examination of Engineering Applicants

The rule and amendment to existing rule proposed and published at *State Register*, Volume 3, Number 13, pp. 1008-1014, November 13, 1978 (3 S.R. 1008) are adopted as proposed, with the following amendments:

#### AE&LS 22 Exempt classes of buildings.

B.2.a.(1) change the load on its mechanical or electrical systems or change the live or dead load on its structural systems, adversely affecting their ability to perform, in either case, in such a manner that a violation of the Uniform Building Code, 1976 edition, might occur,

B.2.a.(2) adversely change the building's access or exit pattern, or in such a manner that a violation of the Uniform Building Code, 1976 edition, might occur, or

B.2.a.(3) change the Uniform Building Code (UBC) use occupancy classification of the building.

B.2.b. Any remodeling or renovation, of any kind, in a building in the UBC use occupancy classes and consistent with the size, dwelling unit, and number of stories and basement construction type thresholds specified in Table 1.

B.3. Classes of buildings exceptions. Any privately owned new construction or of new addition to a building in the specified UBC use occupancy classes and consistent with the size, dwelling unit, and number of stories and basement construction type thresholds specified in Table 1. Provided that an exemption under this paragraph shall not apply:

B.3.a. for a second new building to be constructed by the same person on the same parcel or a contiguous parcel to a new building previously exempted hereunder or for a second addition to the same building where a prior addition was exempt hereunder, in either case, within twenty-four calendar months after the date of building permit issuance. Same person means the same owner or same general contractor, as, or ownership or general contractor entity having one or more participants in common with, the owner or general contractor of the first building. The person seeking a building permit shall certify that the same person has not utilized this exemption within the prior twenty-four month period. Parcel means a non-subdivided tract of land.

#### C. Definitions.

1. Definitions. All terms used herein shall be as defined in the Uniform Building Code, 1976 edition, unless otherwise specified in these rules. The abbreviation 'UBC' as used in this rule means the Uniform Building Code, 1976 edition.

2. Use. Occupancy. Use Occupancy shall be specified by the owner and verified by the building official in the manner provided in the UBC.

#### D. General provisions.

2. Nonexclusivity. Non-applicability of exemptions. Notwithstanding the exceptions in subsection B.3. the responsible building official shall may require plans and specifications to be designdd and prepared by a licensed architect

**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."

# RULES

or engineer, if he finds a hazard to life, health, safety, or welfare due to the unusual circumstances of the building or structure or an unusually large number of potential occupants in relation to square footage for a particular use. ~~Nothing herein shall preclude or supercede any provisions of other applicable laws or regulations.~~

3. Nonexclusivity. Nothing herein shall preclude or

supersede any provisions of other applicable laws or regulations.

4. Severability. If any provision of this rule is held invalid such invalidity shall not affect other provisions of this rule which can be given effect without the invalid provision, and to this end the provisions of this rule shall be deemed severable.

TABLE 1

Use Occupancy Classification	Number of Stories and Basement Construction Type	Maximum Gross Square Footage (GSF) or Dwelling Units (whichever is less)
(i) Warehouse (storage rooms) for combustible or non-combustible goods	one story, no basement	5000 GSF
(ii) Retail or wholesale stores, paint stores without bulk handling	two story and basement	1500 GSF
(iii) Office buildings	two story and basement	2250 GSF
(iv) Factories and workshops using materials that are not highly flammable	one story, no basement	3000 GSF
(v) Aircraft hangars where no repair work is done except exchange of parts and maintenance requiring no open flame, welding, or the use of highly flammable liquids	one story, no basement	3000 GSF
(vi) Lodging houses	two story and basement	5 rooms or 1500 GSF
(vii) Eating and drinking establishments	two story and basement	Seating for not more than 20 persons or 1000 GSF
(viii) Apartment houses	two story and basement or three story including half basement	4 dwelling units or 5000 GSF
(ix) Garages, carports, and sheds used as accessories	one story, no basement	1000 GSF
(x) Convents and monasteries	two story and basement	10 dwelling units or 3000 GSF

No use of structural concrete, poured in place, for roofs and supported floors

## AE&LS 10 Examination of engineer applicants.

[The proposed amendments to this rule have been severed for further consideration by the agency based on the findings of the Office of the Attorney General.]



## Department of Commerce Insurance Division

### Notice of Extension of Adopted Temporary Rules Governing Minimum Anticipated Loss Ratios for Accident and Health Insurance Policies

Notice is hereby given that the temporary rules governing minimum anticipated loss ratios for Accident and Health insurance policies, adopted on December 27, 1978 and published at *State Register*, 3 S.R. 1078, *et seq.* (amended by 3 S.R. 1204 and 3 S.R. 1430, *et seq.*) are hereby extended for an additional 90 days.

Pursuant to this extension, the temporary rules shall remain in effect until June 25, 1979.

Michael D. Markman  
Commissioner of Insurance

## Department of Natural Resources

### Adopted Rules for Lower St. Croix Water Surface Use

The rules published at *State Register*, Volume 2, Number 48, pp. 2163-2164, June 5, 1978 (2 S.R. 2164) are now adopted, with the following amendments:

#### 6 MCAR § 1.2220 (NR 2220) Lower St. Croix water surface use.

A. Policy and authority. These rules are authorized by Minn. Stat. § 361.26, subd. 2, and are promulgated in order to promote the full use by all of the people, now and in the future, of the water surface of the Lower St. Croix River in a manner consistent with safety for persons and property and with the enjoyment of the scenic and recreational values which caused the river to be designated a National Scenic Riverway.

B. Scope. These rules apply to the waters of the Lower St. Croix River from the dam at Taylors Falls to its confluence with the Mississippi River.

C. Definitions. For the purpose of these rules the word "shall" is mandatory, not permissive, and certain words or terms shall be interpreted as follows:

1. "Mile" means distance in miles above the confluence of the St. Croix River with the Mississippi River.

2. "Motorboat" means any watercraft propelled in any respect by machinery, including watercraft temporarily equipped with detachable motors.

3. "Slow-no-wake" means operation of a motorboat at the slowest possible speed necessary to maintain steerage.

4. "Slow Speed" means operation of a motorboat at a leisurely speed, less than planing speed, whereby the wake or wash created by the motorboat is minimal.

5. "Watercraft" means any contrivance used or designed for navigation on water other than (i) duck boat during the duck hunting season, (ii) rice boat during the harvest season, or (iii) seaplane.

#### D. Restricted speed zones.

1. No motorboat shall at any time be operated in excess of a slow speed from the dam at Taylors Falls to the sandbars located approximately at mile 31.0.

2. No motorboat shall be operated in excess of a slow-no-wake speed in the following areas:

a. At the narrows located approximately at mile 28.6, which is 0.4 miles downstream from the Arcola high bridge.

b. Between the Coast Guard navigational buoys designating location of the navigation channel from the railroad swing bridge located at approximately mile 17.3 to the south side of the southern-most island in the chain of islands located at approximately mile 16.5.

c. Between the Coast Guard navigational buoys designating the Kinnickinnic River Delta Narrows from approximately mile 6.6 to approximately mile 6.0.

d. At the Prescott Narrows from the north side of U.S. Highway #10 Bridge located approximately at mile 0.3 to the confluence of the St. Croix River with the Mississippi River.

**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."

# RULES

e. Within 100 feet of shore (including the shores of islands) and of swimmers, from sandbars located approximately at mile 31.0 to the confluence of the St. Croix River with the Mississippi River.

3. Any motorboat designated for law enforcement shall be exempt from provision D. of this regulation in circumstances involving emergencies or violation of law.

## E. Water skiing.

1. No watercraft towing a person on water skis, aquaplane, or similar device shall be operated between sunset and sunrise on the St. Croix River from the dam at Taylors Falls to its confluence with the Mississippi River.

2. No watercraft towing a person on water skis, aquaplane, or similar device shall be operated at any time in any zone designated a restricted speed zone under provision D. of this regulation; provided, however, that any watercraft

launching or landing a person on water skis, aquaplane, or similar device by the most direct route to open water shall be exempt from provision D.2.(d)(e) of this regulation.

3. From Memorial Day through Labor Day, inclusive, no watercraft towing a person on water skis, aquaplane, or similar device shall operate after 12:00 noon on Saturdays, Sundays, and legal holidays, from the sandbars located approximately at mile 31.0 to the upper end of the federal nine-foot navigation channel approximately at mile 24.5.

F. Penalties. Any person violating any of the provisions of this regulation shall be guilty of a misdemeanor.

## G. Effective date

~~Beginning on Saturday, May 14, 1977, this rule is in effect whenever similar laws or regulations of the State of Wisconsin are in effect for the same reach of the St. Croix River.~~

# 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 Natural Resources

### Proposed Rules Governing Snowmobile Emission Standards

#### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Weyerhaeuser Room of the Minnesota Historical Building, 690 Cedar

# CALENDAR

## Public Hearings on Proposed Agency Rules

April 2, 1979

Date	Agency and Rule Matter	Time and Place
Apr 12	Pollution Control Agency Control of Pollution from Animal Feed Lots	10:00 a.m., Bd. Rm., Pollution Control Agency, 1935 W. County Rd. B-2, Roseville, MN
	Hearing Examiner: Howard Kaibel	

Street, St. Paul, Minnesota, on May 2, 1979, at 10:00 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. Written material may be submitted and recorded in the hearing record for 5 working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The rules are authorized by Minn. Stat. § 584.86.

## PROPOSED RULES

The proposed rules, if adopted, would repeal the requirement that snowmobiles made after July 1, 1979, will emit no more than 73 decibels of noise when measured at full-throttle acceleration at 50 feet from the machine. The applicable noise limit will be 78 decibels, which has been in effect since April 1, 1975.

The proposed rules would require each manufacturer to certify compliance with the proposed noise level by conspicuously attaching to each snowmobile a label showing that the machine conforms to standards set by the Snowmobile Safety Certification Committee; or by submitting a letter to the Commissioner showing an evaluation of the noise levels by a competent independent testing laboratory.

The proposed rules also provide that any manufacturer, who certifies that a new snowmobile can meet the proposed 78 sound level imposed by these rules, shall be guilty of a misdemeanor for each machine so certified which does not meet the applicable sound level limitation.

Under Minn. Stat. § 10A.01, subd. 11 (1978), a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute, "lobbyist" means any individual engaged for pay or other consideration or authorized by another individual or association to spend money who spends more than five hours of any month or more than \$250 not including 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 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: public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; 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; individual in the course of selling goods or services to be paid for by public funds; news media or their employees or agents acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments or paid advertisements which directly or indirectly urge official action; paid expert witness whose testimony is requested either by the body before which he is appearing or one of the parties to a proceeding, but only to the extent of preparing or delivering testimony; or stockholder of a family farm corporation as defined in

Minn. Stat. § 500.24, subd. 1, who does not spend over \$250, excluding travel expenses, in any year in communicating with public officials.

Questions regarding lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota, 55155; telephone (612) 296-1720.

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 the rules for a period of 5 working days. Any person may request notification of the date on which the hearing record has been submitted to the Attorney General by the Agency. If you desire to be 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 the 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(s). Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

One free copy of the proposed amendments may be obtained by writing to Department of Natural Resources, Office of Regulatory Services, Box 6, Centennial Office Building, Saint Paul, Minnesota, 55155. Additional copies will be available at the door on the date of the hearing.

### Amendments as Proposed

**6 MCAR § 1.0057 E.4.a.** No snowmobile manufactured on or after April 1, 1975, ~~for sale~~ in Minnesota, except a snowmobile designed for competition purposes only, shall be sold, ~~or offered for sale,~~ or operated unless it is so equipped ~~that overall noise emission does not exceed and has been certified by the manufacturer as being able to conform to a sound level limitation of not more than~~ 78 decibels on the A scale at 50 feet.

**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."

## PROPOSED RULES

~~6 MCAR § 1.0057~~ E.4.b. No snowmobile manufactured on or after July 1, 1979, for sale in Minnesota, except a snowmobile designed for competition purposes only, shall be sold or offered for sale, unless it is so equipped that overall noise emission does not exceed 73 decibels on the A scale at 50 feet.

~~6 MCAR § 1.0057~~ E.4.c. At a time when the state of the art of noise control technology permits, and after promulgation of a regulation in the manner prescribed by law, the standard for snowmobile noise shall not exceed 60 decibels on the A scale at 50 feet.

6 MCAR § 1.0057 E.5. Noise levels established herein shall be determined according to SAE Recommended Practice J192 entitled "Exterior Sound Levels for Snowmobiles."

In certifying that a new snowmobile complies with the noise limitation requirements of this rule, a manufacturer shall make such a certification based on measurements made in accordance with the SAE Recommended Practice J192(a), as amended or with such other standards for measurement of sound level as the department may adopt.

6 MCAR § 1.0057 E.6. No snowmobile or snowmobile muffler shall be sold or offered for sale in Minnesota unless its maker shall have previously furnished the Commissioner with a certificate of compliance certifying that all such snowmobiles or mufflers made by that maker meet or exceed the applicable noise level restrictions established by these rules. The certification of compliance required in the foregoing shall be in the form of either a "Snowmobile Safety

Certification Committee" label conspicuously attached to the machine showing certification by the Snowmobile Safety and Certification Committee, Inc., or a letter with test results showing an evaluation of the noise levels by a competent independent testing laboratory. Snowmobiles or snowmobile mufflers intended for competition purposes only shall be exempt from this rule provided a separate placard identifying that such snowmobile is not so equipped is conspicuously and permanently affixed thereto.

6 MCAR § 1.0057 E.7. Except for organized events as authorized by Minn. Stat. § 84.871, no snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total engine noise level above that emitted by the snowmobile as originally equipped, regardless of date of manufacture.

### 6 MCAR § 1.0058 Penalties.

A. Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor, and be punished by a fine of not more than \$300, or by imprisonment for not more than 90 days, or both.

B. A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by these rules shall be subject to the penalty provisions of subsection (a) for each machine so certified which does not meet the applicable sound level limitation.

~~6 MCAR § 1.0059~~ ~~Repeal~~ Conservation Regulations 54-59 relating to snowmobiles are hereby repealed.

## SUPREME COURT

### Decisions Filed Friday, March 23, 1979

48402/403 Thomas A. Rausch, et al, Plaintiffs, vs. Beech Aircraft Corporation, Elliott Flying Service, Inc., third party plaintiff, Appellant, vs. Elan Industries, Inc., and American Motorists Insurance Company, garnishee. Ramsey County.

Contractual obligation to pay attorneys fees in personal injury actions based on plane crash is not covered by insur-

ance policy excluding coverage for liability arising out of the use of an aircraft.

Affirmed. Sheran, C. J. Took no part, Otis, J.

48172 Gerald Haagenon, and His Wife, Jeanette Haagenon vs. National Farmers Union Property and Casualty Company, Appellant. Hennepin County.

There is sufficient evidentiary support for the jury's finding that plaintiff insured was injured while entering into a motor vehicle while the vehicle was being used as a motor vehicle, so that plaintiff's injuries are covered under the

## SUPREME COURT

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no-fault provision of the insurance contracts on his motor vehicles.

Plaintiffs, husband and wife, are not entitled to damages for the intentional infliction of emotional distress or punitive damages based upon defendant insurer's nonpayment of claims under the insurance contracts, for defendant's breach of contract was not accompanied by an independent tort.

Plaintiff insured is, however, entitled to a 10-percent statutory penalty for delay in payment of no-fault benefits, Minn. St. 65B.54, subd. 2, the trial court, upon remand, to determine the earliest date plaintiff gave reasonable notice of a possible claim of right and to calculate the penalty from that date.

Affirmed in part; reversed in part and remanded. Peterson, J. Took no part, Otis, J.

**48572/55 State of Minnesota on Behalf of Jodi Ann Ortloff, petitioner, Michael Lynn Hanson, Appellant. Pennington County.**

Complainant's attorney did not commit prejudicial misconduct in asking defendant whether he had ever requested a blood test; the answer sought by complainant's counsel was relevant and the rationale of *State v. Andrews*, 297 Minn. 260, 212 N. W. 2d 863 (1973) did not apply in this paternity action.

The other arguments raised by defendant are also not persuasive, except we must remand to the district court the issue of whether the court awarded an excessive amount for expenses related to the pregnancy and maintenance of the mother because the basis upon which the court computed that amount is unclear.

Affirmed in part, remanded in part. Peterson, J.

**49278/368 In re Complaint of Judge John T. McDonough, Judge of County Court for Washington County. Supreme Court.**

Judge of Washington County Court is censured for numerous violations of Code on Judicial Conduct and ordered to forfeit 3 months' salary as a fine.

Recommendation modified. Kelly, J. Sheran, C. J., concurring in part, dissenting in part. Stone, J., concurring specially. Took no part, Wahl, J.

**48614/47 State of Minnesota vs. Larry Eugene Tungland, Appellant. Martin County.**

Defendant, by parking his automobile on private land without permission, leaving intoxicating liquor in the vehicle in open view, and leaving the doors unlocked and the

keys in the ignition, demonstrated objectively that, for the time being at least, he did not have any reasonable, legitimate expectation of privacy in the passenger area of his vehicle, and accordingly the police did not violate defendant's Fourth Amendment rights in entering the vehicle and searching a bag that was in open view.

A comment by the prosecutor alluding to the fact that a friend of defendant did not testify was improper but not prejudicial.

Affirmed. Kelly, J.

**48271/372 Manny Fingerhut, et al, Appellants, vs. Commissioner of Revenue. Hennepin County.**

The 1961 revision of the Minnesota Income Tax Act considered in its entirety does not permit a 100-percent deduction of net long-term capital gain income.

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

**48566/395 Jane J. Laikola, a.k.a. Jane J. Kokesh, Widow of Gerald Laikola, Deceased Employee, Jane Laikola, as Mother and Natural Guardian of Andrea Laikola, a Minor, petitioner, Relator, and Laurel Laikola, Widow of Gerald Laikola, Deceased Employee, vs. Engineered Concrete, Employer, American Universal, Insurer. Workers' Compensation Court of Appeals.**

Common-law marriages, which are void in Minnesota, cannot be consummated by Minnesota residents who temporarily visit in a state that allows common-law marriages.

Affirmed, Todd, J.

**47902/411 State of Minnesota vs. Forrest Wayne Kjeldahl, Appellant. Anoka County.**

Prison disciplinary proceedings do not bar a subsequent criminal prosecution for escape either under the constitutional constraints of double jeopardy or the statutory provisions against serialized prosecutions.

Specific intent is not a required element of the crime of escape. The only intent required is that intent to do the act which results in the departure from custody.

Affirmed. Scott, J.

**48785 State of Minnesota vs. Joseph Stroebe  
49167/43 Cox, Appellant. Dakota County.**

The record contains sufficient evidence for the district court

## SUPREME COURT

to have reasonably found that the defendant intentionally and with premeditation attempted to effect the death of his wife by his actions, which were "a substantial step toward and more than preparation for the commission of the crime" of first degree murder.

The evidence supports the district court's finding that the defendant's action of removing the tape from his wife's hands and feet occurred only after she regained consciousness in her automobile in the garage with the motor running and put the car in gear, moving it forward and creating a disturbance that might have attracted attention, and therefore his conduct cannot be characterized as a "good faith" abandonment of the crime.

Affirmed. Scott J.

**48253/287 Bernice B. Johnson vs. Bryce B. Johnson, Appellant. Hennepin County.**

The trial court's valuation of certain real property in a marriage dissolution proceeding was not clearly erroneous where it lay within a reasonable range of figures substantiated by the evidence.

Although the time of acquisition of marital assets is a factor to consider in an equitable division of property, the trial court did not err by refusing to exclude from disposition property acquired by one spouse after commencement of the dissolution proceeding.

In order to correctly value the interest of a joint venturer for the purpose of property division in a dissolution proceeding, the capital account must be valued separately from the real and personal assets of the joint venture.

The trial court did not err by failing to adjust the property award to accommodate for taxes where no evidence on the issue was presented at trial or submitted to the trial court prior to its award.

Affirmed in part, reversed in part, and remanded for modification of the judgment. Wahl, J. Took no part, Otis, J.

**48145/321 J. Bradley Asp, d.b.a. Pride of Craftsman vs. James R. O'Brien, Appellant, Southside Lumber Company, et al.**

The evidence in this case supports the trial court's finding that plaintiff substantially performed the contract.

The trial court did not err in using diminution of value as the measure of damages in this case.

Since the property owner successfully limited recovery on foreclosure of a mechanic's lien so that the amount recov-

ered by the lienholder was small in comparison to the attorney's fees is reduced from \$2,500 to \$1,000.

Affirmed in part, reversed in part and remanded for modification of judgment. Wahl, J. Took no part, Otis, J.

**48498/407 Mandus Olson, d.b.a. Northstar Supply Company, vs. Robert Rugloski, and State Automobile and Casualty Underwriters, Appellant, and Robert Rugloski, vs. Daniel M. Rooke, et al. Ramsey County.**

When an insurer unreasonably refuses to pay or delays payment of undisputed insurance proceeds, it has breached the insurance contract and is liable for the damages that are a direct and proximate result of the breach.

Affirmed in part, reversed in part. Wahl, J. Took no part, Todd, J.

**48863  
49108/30 Larry Prahm and Roger Prahm, d.b.a. Prahm Brothers Bridge Company, vs. Rupp Construction Company, defendant and third party plaintiff, vs. Great American Insurance Company, third party defendant, Appellant. Murray County.**

An insurer is required to defend a suit brought against its insured when the suit is not clearly within an exclusionary clause of the policy. When an insurer is obligated to defend its insured and contests coverage in the same suit, the insurer must pay reasonable attorney's fees for its insured rather than conduct the defense itself.

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

**49126/122 Mark Gassert, a minor, by Howard Gassert, individually, and as father and natural guardian of Mark Gassert, Plaintiff, vs. Commercial Mechanisms, Inc., et al, Dudley Sports Company, etc., et al, Independent School District No. 97 of Minnesota. Carlton County.**

The Missouri corporation survival statute does not preclude suit on a claim arising subsequent to the corporation's dissolution where the acts of the corporation giving rise to the alleged liability occurred prior to dissolution and the suit is commenced within the two-year statutory period.

Affirmed. Wahl, J.

**48775  
48927  
48928/3 Muriel Donaldson, vs. Mankato Police-  
men's Benefit Association, Appellant.  
Blue Earth County.**

## SUPREME COURT

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Where wife brought an action for divorce but abandoned any intent to complete it, she had not applied for divorce within the meaning of widow's pension statute.

The evidence justified a finding that the husband's absence from the wife's residence was temporary and for purposes of health.

Unpaid pension payments draw interest from the time they become due.

Affirmed in part; reversed in part; and remanded for computation and inclusion of interest. Kennedy, J. Took no part, Sheran, C. J. and Otis, J.

**48633/103 Bud Wayne Davis, Appellant, vs. Farmers Union Grain Terminal Association. St. Louis County.**

Defendant's motion for a directed verdict was properly granted because even accepting the inference that defendant's premises had as much grain dust, and no more, than other elevators complying with state and Federal regula-

tions, this is not sufficient to establish a violation of Wisconsin's "safe-place statute."

Affirmed. Per Curiam.

## Order Filed Tuesday, March 13, 1979

**49337 Lester L. Layton, Jr., et al, vs. Legislative Audit Commission of the State of Minnesota, et al, Appellants. Supreme Court.**  
**49346/Sp.**

Legislative auditor may not be imprisoned pursuant to contempt order of September 12, 1978, until district court has considered specified questions relating to the procedural regularity of the order and authority of the district court and until the legislative auditor has had an opportunity to secure appellate review of the district court's resolution of the question.

Dismissed and remanded. Sheran, C. J.

## STATE CONTRACTS

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Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any

consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

### Department of Agriculture Shade Tree Program

#### Notice of Request for Proposals for Media, Display and Graphic Design Contract

The Department of Agriculture Shade Tree Program hereby announces availability of Request for Proposal forms for professional/technical services. These services include the following:

1. Production of radio and television public service an-

nouncements: Responders should prepare two proposals, one for up to \$7,500 and one up to \$12,500.

2. Design of a multi-use press kit: Price cannot exceed \$500.

3. Design and production of a mobile display: Price cannot exceed \$4,000.

The Department will accept proposals for the above services individually or in combination.

The contract(s), if awarded, will be awarded on or before May 1, 1979, and will extend through June 30, 1979. Proposal submissions must be received at or before 4:00 p.m., April 25, 1979. This request does not obligate the state to

## STATE CONTRACTS

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complete the project and the state reserves the right to cancel solicitation if it is considered in its best interest.

Request for Proposal forms can be obtained by writing the Minnesota Shade Tree Program, Room 600, Bremer Building, St. Paul, MN 55101 or calling 612/296-8580.

### **Department of Economic Development Tourism Division**

#### **Notice of Request for Proposals for Advertising Services**

Applications and proposals are being accepted for advertising services for the Tourism Division of the Department of Economic Development.

The Department is accepting applications and proposals for its 1980 fiscal year advertising program. The Tourism Division anticipates a \$400,000 budget for media advertising, which will include production costs and agency fees.

The contract will run from July 1, 1979, to June 30, 1980. Those agencies interested in submitting a proposal should contact Hank Todd, Director of Tourism, Minnesota Department of Economic Development, 480 Cedar Street, Saint Paul, Minnesota 55101, (612) 296-5027 for an application. Proposals and applications will be accepted until April 23, 1979.

### **Department of Public Welfare Anoka State Hospital**

#### **Notice of Request for Proposals for Services to be Performed on a Contractual Basis**

Notice is hereby given that the Anoka State Hospital, Mental Health Division, Department of Public Welfare, is seeking the following services for the period July 1, 1979 through June 30, 1980. These services are to be performed as requested by the Administration of the Anoka State Hospital.

1) Services of two separate & distinct psychiatrists to work approximately 26 hours per month treating patients

but to also include attendance at medical staff meetings, participation in Anoka State Hospital's Utilization Review activities, appearances at Special Review Board hearings and probate court hearings off campus and meetings with county social workers. The estimated amount of the contracts will not exceed \$16,560.00 per contract.

2) Services of an organization to perform diagnostic laboratory procedures as requested by Anoka State Hospital personnel, provide consultant and education seminars and technical coverage designated to meet laboratory diagnostic requirements of Anoka State Hospital personnel and to perform admission profiles on each patient unless otherwise stated. The estimated amount of the contract will not exceed \$77,000.00.

3) Services of an organization to furnish psychiatric consultants two days per week (approximately 69 hours per month) to include diagnosis on admission, formulation of individualized treatment plans, conduct clinics, meet with unit staff, emergency psychiatric consultation by phone, attendance at medical staff meetings and the submission of periodic reports of patients and time record keeping. The estimated amount of the contract will not exceed \$40,020.00.

4) Services of a radiologist to work approximately 36 hours per month to interpret and dictate x-rays, do fluoroscopy examinations, consult with medical staff regarding problem patients. Consultant will not inject radiopaque dyes as part of the procedure. The estimated amount of the contract will not exceed \$14,645.00.

Responses for the above services must be received by April 23, 1979. Direct inquiries to:

Vince T. Graupmann, Assistant Administrator  
Anoka State Hospital  
Box 511  
Anoka, MN 55303

### **Department of Public Welfare Brainerd State Hospital**

#### **Notice of Request for Proposals for Services to be Performed on a Contractual Basis**

Notice is hereby given that the Brainerd State Hospital, Mental Health Division, Department of Public Welfare, is seeking the following services for the period July 1, 1979,



through June 30, 1980. These services are to be performed as requested by the Administration of the Brainerd State Hospital.

1) To perform laboratory services including post mortem examinations. The estimated amount of the contract will not exceed \$31,000.

2) Services of a physician to provide "on call" service for acute ward, make hospital rounds, and conduct clinics. The estimated amount of the contract will not exceed \$23,830.

3) Services of a radiologist to interpret x-rays taken at Brainerd State Hospital or special x-rays done under his direction at St. Joseph's Hospital, Brainerd, MN. The estimated amount of the contract will not exceed \$17,200. Responses for the above services must be received by April 23, 1979. Direct inquiries to:

Elmer O. Davis, Assistant Administrator  
Brainerd State Hospital  
Box 349  
Brainerd, MN 56401  
(218) 828-2203

## State Planning Agency Environmental Planning Division

### Notice of Request for Proposals for Contractual Services for Two (2) Multi-media Technical Information Programs

Notice is hereby given that the State Planning Agency, Environmental Planning Division is accepting proposals for contractual services in the production of two multi-media units that will convey technical information about two of the division's programs. The first unit will be concerned with "Study Areas for Power Plant Siting" and the second will be about "The Post Designation Program."

The contractors must have demonstrated ability to interpret technical material and a full range of media production capabilities. Work must be completed on the units by June 30, 1979. Production specifications, technical requirements, and proposal format are available upon request.

Firms desiring consideration must submit final proposals in specified agency format by 4:30 p.m., April 23, 1979. All inquiries and proposals should be submitted to: Richard Woodbury, 200 Capital Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101. (Telephone number is (612) 296-2289.)

# 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 Education Management/Legislative Relations Division

### Notice of Intent to Solicit Outside Opinion Regarding the Length of the School Day and Community-based Programs for Secondary School Students

The State Department of Education is considering making a study of the existing State Board of Education rule, EDU 44, relating to the length of the school day for secondary school students and what the criteria should be for approval of community-based programs. Anyone who wishes to offer suggestions relating to the revision of this rule and the content of the criteria should contact Dr. E. Raymond Peterson, Associate Commissioner of Education, State Department of Education, 709 Capitol Square Bldg., St. Paul, MN 55101.

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

All material to be considered in the original draft should be submitted by May 1, 1979.

## Pollution Control Agency

### Notice of Hearing for the Application by the City of Sabin for a National Pollutant Discharge Elimination System (NPDES) Permit and State Disposal System (SDS) Permit for a Proposed Municipal Wastewater Treatment Facility

It is hereby ordered and notice is hereby given that a public hearing concerning the above-entitled matter will be held by the Pollution Control Agency (PCA) pursuant to Minn. Stat. § 115.03 subd. 1(h) (1978) and Minn. Rule WPC 36(k) on April 26, 1979, at the City Hall of Sabin,

Minnesota, commencing at 10:00 a.m. An evening session will be held commencing at 7:00 p.m., also on April 26, 1979, at the City Hall, Sabin, Minnesota, in order to provide an opportunity to speak to those who cannot attend the day session. If necessary, the hearing shall be continued at 9:00 a.m. on Friday, April 27, 1979, at the City Hall, Sabin, Minnesota, and thereafter until all persons have had an opportunity to speak.

The purpose of the hearing will be to consider the objections of residents of Kurtz, Minnesota, and others to the City of Sabin's application to the Pollution Control Agency for a National Pollution Disposal Elimination System (NPDES) and State Disposal System Permit (SDS) and the issuance of the proposed permit. The public notice for the NPDES and SDS permit, MN 0049656, was issued on December 12, 1977, in accordance with the provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*; Minn. Stat. chs. 115 and 116 (1978); and Minn. Rule WPC 36.

The City of Sabin is seeking to construct and operate a stabilization pond facility in order to handle sewage and wastewater. The issues that will be considered at the hearing are: (1) the appropriateness of the proposed location of the discharge of the City of Sabin's proposed Wastewater Treatment Facility to County Ditch No. 32 which flows into the Red River; (2) the potential effects of the discharge on the water quality of the waters receiving the discharge; (3) the appropriateness of the chosen treatment and disposal methods; and (4) such other issues germane to the environmental impact of the proposed stabilization pond facility as may be determined during the course of a prehearing conference.

Please be advised that these issues may, without further notice, be modified and/or amended by the Hearing Examiner during prehearing conferences. Additionally, prehearing conferences may result in the establishment of foundation for witnesses and exhibits and, furthermore, may lead to a settlement of the issues surrounding the permit issuance. A prehearing conference is currently scheduled for Friday, March 23, 1979, at 10:00 a.m., through a telephone conference call. Those interested in participating in the prehearing conference should be either at the office of Joel Johnson, Attorney for the City of Sabin, Dosland, Dosland, Nordhogen & Mickelberg, American Bank and Trust Company Building, Moorhead, Minnesota 56560, or at the office of Robert C. Moilanen, Attorney for PCA Staff, Pollution Control Agency, 1935 West County Road B2, Rose-

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ville, Minnesota 55113, no later than 10:00 a.m. on Friday, March 23, 1979. An additional prehearing conference may be scheduled after March 23, if requested by the parties.

In accordance with Federal and State law, the Pollution Control Agency proposes to issue an NPDES and SDS permit for this facility. The permit will be issued for a term of approximately five years.

The determination to issue the permit is tentative. Interested persons are invited to submit written comments to the PCA in regard to the proposed permit. Comments should be submitted in person or by mail by March 26, 1979. These comments should be delivered or mailed to:

Mr. Larry Zdon  
Permits Section  
Division of Water Quality  
Pollution Control Agency  
1935 West County Road B2  
Roseville, Minnesota 55113  
(612) 296-7383

The number PCA 79-006-HK should appear next to the above address on the envelope and on each page of any submitted comments. Any written comments received will be offered to the hearing examiner as part of the hearing record.

The application, proposed permit, fact sheet, comments received and other documents may be inspected and copied, at the address noted above, any time between 9:30 a.m. and 3:30 p.m., Monday through Friday. A copy of the fact sheet or draft permit will be mailed to any interested person upon written request. Further information regarding the application or proposed permit may be obtained by contacting Mr. Larry Zdon at the above address or by contacting Willis Mattison of the Pollution Control Agency, Regional Office, 116 E. Front Street, Detroit Lakes, Minnesota 56501.

The hearing will be held before Mr. Howard Kaibel, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8107, a hearing examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented throughout the proceeding by legal counsel, by themselves, or by a person of their choice (if such representation is not otherwise prohibited as the unauthorized practice of law). The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411 through 15.042, 9 MCAR §§ 2.201-2.299 and Minn. Rules MPCA 1-13, to the extent that the latter rules do not conflict with 9 MCAR § 2.201-2.299.

The above-cited procedural rules are available for inspection at the Office of Hearing Examiners and the Pollution Control Agency or may be purchased from the Documents Section of the Department of Administration, 140 Centen-

nial Building, St. Paul, Minnesota 55155, (612) 296-2874. The rules provide generally for the procedural rights of the parties. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Robert C. Moilanen, Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota 55113, (612) 296-7702.

Any person desiring to intervene as a party must submit to the hearing examiner and serve upon all existing parties a Petition to Intervene, pursuant to 9 MCAR § 2.210, by April 16, 1979. The petition must show 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 and indicate the petitioner's statutory right to intervene if one should exist. A party to a case has the right to present evidence, rebuttal testimony, and argument with respect to the issues and to cross-examine witnesses. Further, parties may be entitled, pursuant to 9 MCAR § 2.216, to issuance of subpoenas requiring the attendance of witnesses and the production of documents relevant to any matter involved in the hearing. Interested persons may present oral or written statements at the hearing without becoming parties at the discretion of the hearing examiner in accordance with 9 MCAR § 2.210(e), but may not cross-examine witnesses. At the present time the representatives of parties to this proceeding who should be served with such Petition to Intervene are:

Mr. Joel Johnson  
Attorney for the City of Sabin  
Dosland, Dosland, Nordhougen & Mickelberg  
American Bank and Trust Company Building  
Moorhead, Minnesota 56560

Mr. Robert C. Moilanen  
Attorney for PCA Staff  
Pollution Control Agency  
1935 West County Road B2  
Roseville, Minnesota 55113  
(612) 296-7708

Mr. Larry Ward  
Opposition Coordinator  
Route 2  
Moorhead, Minnesota 56560

All persons are advised that, if they intend to appear as parties at the hearing scheduled for April 26, 1979, at 10:00 a.m., the Notice of Appearance form enclosed with this order must be completed and returned to the hearing examiner within 20 days of the date of service of the notice of and order for hearing. Should a party fail to appear at the hearing, the allegations made in this order may be taken as true, or the issues set out may be deemed proved, with the consequence that the proposed permit may be issued in its

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present form. Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the hearing examiner at least five days prior to the hearing. A copy of the request must be served on the agency and any other parties.

March 13, 1979

Terry Hoffman  
Executive Director

### **State Planning Agency Health Planning Division**

#### **Notice of Application for Renewal of Designation as the State Health Planning and Development Agency**

Notice is hereby given that the State Planning Agency is applying for full designation as the State Health Planning and Development Agency pursuant to P.L. 93-641, the National Health Planning and Resources Development Act of 1974. The State Planning Agency has available April 11, for public examination and copying, its proposed State Administrative Program which will be submitted under Title 42, Code of Federal Regulations, Part 123, published for the designation and funding of state agencies.

Under provision of this Act, the agency proposes to administer the required state health planning and development functions according to its State Administrative Program.

Oral and written comments on the proposed State Administrative Program will be received at the April 18 meeting of the Minnesota Statewide Health Coordinating Council scheduled for 9:30 a.m. at the Veterans Service Building, 29 West 12th Street and Columbus Avenue (between Wabasha and Iglehart), St. Paul, Minnesota. Written statements may also be submitted to the State Planning Agency, State Health Planning and Development Agency, Room 101 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101. Comments must be received by April 20, 1979. For additional information, call the State Planning Agency at (612) 296-2407.

## **Department of Transportation**

### **Notice of Application and Opportunity for Hearing Regarding Petition to Retire and Remove Track No. 122A, 265 Feet Long Including One Turnout, and the Easterly 575 Feet of Track No. 116, All Located at Minneapolis, Minnesota**

Notice is hereby given that Chicago and North Western Transportation Company with attorneys 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 and § 218.041, subd. 3 (10) to retire and remove Track No. 122A, 265 feet long including one turnout, and the easterly 575 feet of Track No. 116, all located at Minneapolis, 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."

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 April 23, 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. 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

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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.

March 21, 1979

Richard P. Braun  
Commissioner

### Office of the Secretary of State

#### Open Appointment Process: Notice of Openings on State Agencies — Application Procedures

Pursuant to Laws of 1978, ch. 592, the legislature has implemented an Open Appointment process by which the public is informed of openings on state multi-member agencies (boards, commissions, councils) created by statute and having statewide jurisdiction.

Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul, MN

55155, (612) 296-3266. Contact the Secretary of State for the Open Appointment Process information brochure and specific agency related information. **Application deadline is Friday, April 20, 1979.**

**Early Childhood and Family Education Advisory Task Force:** Two openings. Requires one person knowledgeable in the field of health and one parent of a young child or children. Members are expected to review grant proposals and attend bimonthly meetings, primarily days, approximately 4 to 6 hours, in the St. Paul Capitol Square Building. The Council on Quality Education (CQE) is the Appointing Authority and members are reimbursed for expenses.

**Council on the Economic Status of Women:** One vacancy. The Council studies, reports, and makes recommendations on the economic status of women. Meetings are held once a month for approximately 4 hours in various locations, but most often in St. Paul. Members receive \$35 per diem plus expenses. The Governor is the appointing authority.

**Higher Education Facilities Authority:** One vacancy. Applicants must be an expert in financing. Members assist institutions of higher education in the construction, financing and refinancing of projects. Meetings are held on the fourth Tuesday of every month at 3:00 p.m. Members are reimbursed for travel expenses and receive per diem of \$35. The Governor is the appointing authority.

STATE OF MINNESOTA  
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building  
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## ORDER FORM

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