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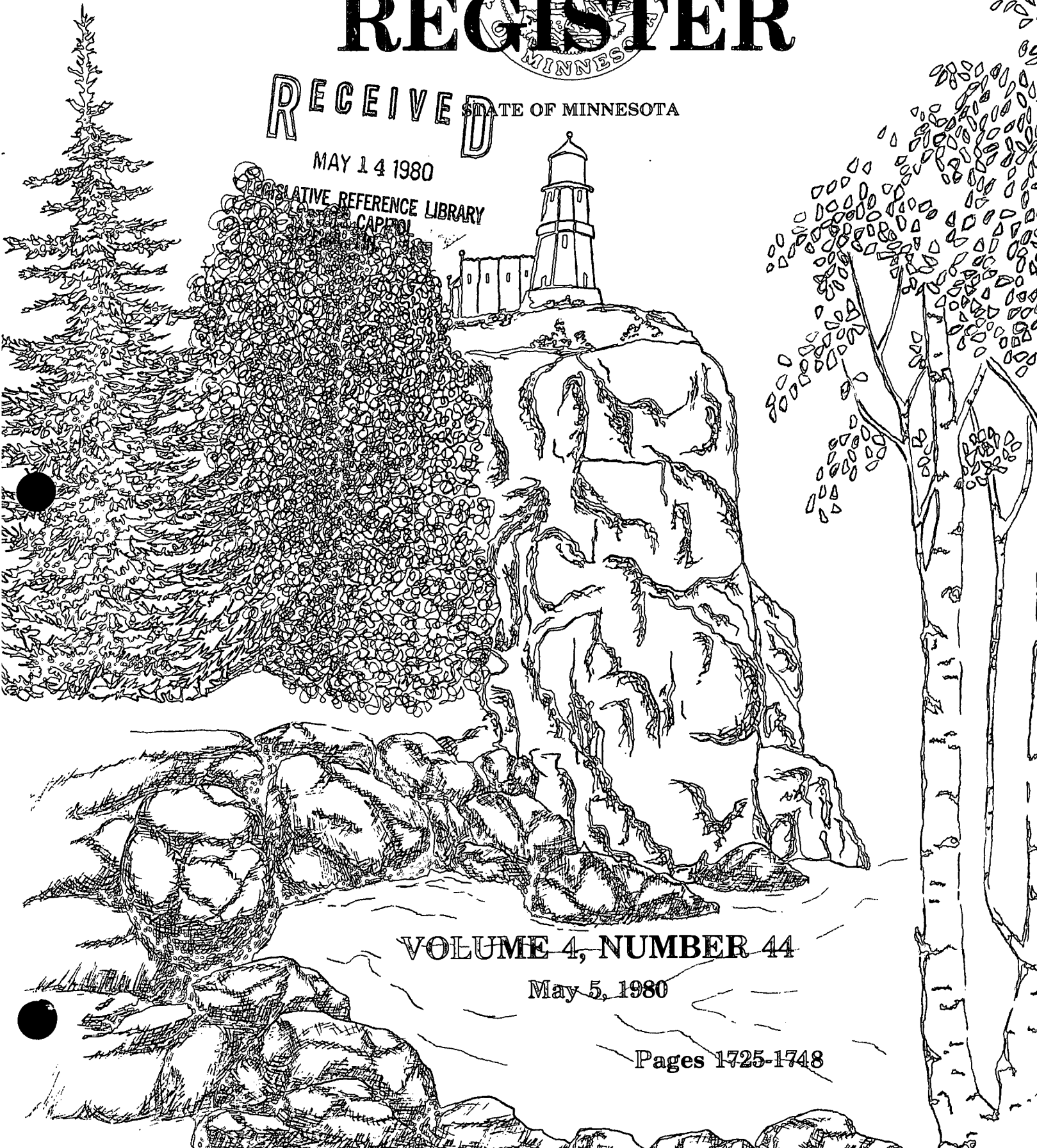
STATE REGISTER



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VOLUME 4, NUMBER 44

May 5, 1980

Pages 1725-1748



Volume 4 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 4			
45	Monday Apr 28	Monday May 5	Monday May 12
46	Monday May 5	Monday May 12	Monday May 19
47	Monday May 12	Monday May 19	Monday May 26
48	Monday May 19	Friday May 23	Monday June 2

*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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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Inclusive listing for Issues 40-441728

PROPOSED RULES

Public Hearings on Agency Rules

May 12-16, 19801729

Livestock Sanitary Board

Control of Pseudorabies1729

ADOPTED RULES

State Planning Agency

Office of Local and Urban Affairs

Administration of State Assistance to Regional Development Commissions1731

TAX COURT

State of Minnesota, Hennepin County, Basic Bible Church of America, Chapter 8035, Petitioner, v. County of Hennepin, Respondent1732

SUPREME COURT

Opinions Filed Friday, April 25, 19801735

STATE CONTRACTS

Corrections Department

Health Care Unit

Professional/Technical Services Contracts: Pharmacist, Radiologist, Registered Dietitian, Psychiatrists, Behavior Therapist1736

Energy Agency

Conservation Division

Development of An Energy Accounting Procedures Manual and Training Plan for Local Units of Government and School Districts1737

Health Department

Health Systems Division

Emergency Medical Services Section

Minnesota Poison Information Center Services, Information and Referral Service1737

Natural Resources Department

Minerals Division

Sale of State Horticultural Peat Lease1737

Public Welfare Department

Personnel Division, Executive Office

Classification Study1738

Public Welfare Department

Brainerd State Hospital

Professional Services: Laboratory, "On Call" Physician, Radiologist1738

Public Welfare Department

St. Peter State Hospital Complex

Professional Services: Psychologists, Internist, Psychiatrists1738

OFFICIAL NOTICES

Commerce Department

Insurance Division

Meeting Notices, Minnesota Comprehensive Health Association1739

Economic Security Department

Employment and Training Division

Meeting Notice, Balance of State Advisory Council1739

Education Department

Special Services Division

Outside Opinion Sought on Rules for Providing Equal Opportunity in Athletics1740

Ethical Practices Board

Request for Advisory Opinion Regarding Office Equipment Purchased in Election Year1740

Governor's Council on Employment and Training

Meeting Notice1740

Health Department

Health Systems Division

Emergency Medical Services Section

Notice of Openings on Minnesota Poison Information Service Advisory Council1740

Metropolitan Transit Commission

Consultant Services for Subregional Transit Planning Project1741

Natural Resources Department

Outside Opinion Sought on Rules Relating to Reclamation of Mineral Exploration Sites1741

Pollution Control Agency

Application by the University of Minnesota for A Variance from WPC 22, AND FOR A State Disposal System Permit, to Conduct A Research and Demonstration Project for Aquifer Thermal Energy Storage1741

Public Safety Department

Fire Marshal Division

Outside Opinion Sought on Revision of Minnesota Uniform Fire Code1743

Public Service Department

Public Service Commission

Outside Opinion Sought on Implementation of FERC Cogeneration and Small Power Production Rules1743

Public Welfare Department

Mental Health Bureau

Outside Opinion Sought on Approval of Mental Health Centers and Clinics for Insurance Reimbursement1744

Transportation Department

Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove Tracks Numbered 90, 95, 100, 102, 105, 107 and An Unnumbered Track All with One Turnout, Also Known as "Levee Line," at St. Paul, MN1745
Notice of Appearance1745
Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove ICC Track No. 21 Located at Duluth, MN1746

NOTICE

How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION**. Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Proposed new rules (including Notice of Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issue 27-38, inclusive	

The listings are arranged in the same order as the table of contents of the MCAR.

MCAR AMENDMENTS AND ADDITIONS

TITLE 2 ADMINISTRATION

Part 3 Retirement System

2 MCAR §§ 3.5001-3.5008, DCP I-VII (proposed) 1665

TITLE 3 AGRICULTURE

Part 2 Livestock Sanitary Board

3 MCAR § 2.024 (proposed) 1730

TITLE 4 COMMERCE

Part 1 Commerce Department

4 MCAR §§ 1.9285-1.9299 (adopted temporary extended) 1712

TITLE 5 EDUCATION

Part 1 Education Department

5 MCAR §§ 1.0100-1.0105, 1.01051, 1.0106-1.0110, 1.01101-1.01102, 1.0111-1.0118 (adopted) 1607

TITLE 6 ENVIRONMENT

Part 2 Energy Agency

6 MCAR § 2.2204 (proposed) 1597

Part 4 Pollution Control Agency

SW 11 (6 MCAR § 4.6011) (adopted) 1693

TITLE 7 HEALTH

Part 1 Health Department

7 MCAR §§ 1.022, 1.032 (adopted) 1690
7 MCAR §§ 1.442-1.444 (adopted) 1608

TITLE 10 PLANNING

Part 1 State Planning Agency

10 MCAR §§ 1.401-1.404 (adopted) 1731

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety Department

11 MCAR §§ 1.4092-1.4098 (proposed) 1633

TITLE 12 SOCIAL SERVICES

Part 2 Public Welfare Department

12 MCAR § 2.014 (extended temporary) 1609
12 MCAR § 2.047 (withdrawn) 1606
12 MCAR § 2.200 (adopted temporary) 1642

Part 3 Housing Finance Agency

12 MCAR §§ 3.002, 3.052, 3.063, 3.070-3.074 (adopted) 1692
12 MCAR §§ 3.081-3.085 (proposed temporary) 1688
12 MCAR §§ 3.152-3.153, 3.156 (adopted temporary) 1692

TITLE 13 TAXATION

Part 1 Revenue Department

13 MCAR §§ 1.0021-1.0026 (proposed) 1637

TITLE 14 TRANSPORTATION

Part 1 Transportation Department

14 MCAR §§ 1.4025-1.4030 (proposed) 1677
14 MCAR § 1.5050 (adopted) 1643

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 rule or amendment. 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.

Public Hearings on Agency Rules May 12-16, 1980

Date	Agency and Rule Matter	Time & Place
May 15	Department of Public Safety Administration of Driver License Laws Pertaining to Physical or Mental Qualifications Hearing Examiner: Phyllis Reha	1:00 p.m., Room B9, Transportation Building, John Ireland Boulevard, St. Paul, MN 55112
May 15	Department of Revenue Ad Valorem (Property) Taxes Imposed on Railroad Companies Hearing Examiner: Jon L. Lunde	9:00 a.m., Room 51, Ground Floor, State Office Building, Wabasha Street & Park Avenue, St. Paul, MN

70 Metro Square, St. Paul, Minnesota 55101. Additional copies will be available at the hearing.

Statutory authority to promulgate the proposed rules is vested in the Livestock Sanitary Board by Minn. Stat. § 35.03 (1978). Adoption of the amended rule will not require the expenditures of additional public monies by local public bodies.

Relevant statements or written material may be submitted for the record at the hearing or to the hearing examiner, Richard Luis, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, phone (612) 296-8114 before the hearing or within five working days after the public hearing or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within 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, phone 612-296-5615.

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 rule 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 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

Livestock Sanitary Board Proposed Amendment of Rules Governing Control of Pseudorabies

Notice of Hearing

Notice is hereby given that a public hearing in the above entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), in Room D Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota, commencing at 9:30 a.m., or as soon thereafter as possible, Thursday, June 5, 1980, and continuing until all interested or affected persons have had an opportunity to be heard.

The Livestock Sanitary Board proposes to amend rule 3 MCAR § 2.024 Control of Pseudorabies, to provide for quarantining swine herds in which swine reacting to an official pseudorabies test are disclosed. This amendment is necessary so that the Minnesota rule is in agreement with the federal regulations governing interstate movement of swine.

A free copy of the proposed amended rule is available and can be obtained from the Minnesota Livestock Sanitary Board, LL

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

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.

May 5, 1980

J. G. Flint, D.V.M.
Secretary and Executive Officer

Amendments as Proposed

3 MCAR § 2.024 Control of pseudorabies.

B. General requirements.

1. Veterinarians shall report all cases of pseudorabies they diagnose and all cases suspected of being pseudorabies.

2. All pseudorabies tests will be at owner's expense except tests conducted to release quarantines which may be made by veterinarians of the Board or USDA if personnel and funds are available.

3. All swine tested shall be individually identified by ear tag, tattoo, registration number or other identification which makes individual swine readily identifiable and the identification entered on the test chart.

4. Quarantines will be established by the Board as authorized in Minn. Stat. ch. 35.05 (1978) on all swine herds in which a reactor is disclosed or a clinical diagnosis or a laboratory diagnosis, other than a diagnosis based only on serological tests, of pseudorabies is made. The quarantine will be served on the owner.

~~5. Quarantines will be established by the Board on individual swine positive on serological tests in herds which do not show clinical signs or have laboratory confirmation of pseudorabies. The quarantine will be served on the owner.~~

~~5. 6- Quarantined swine and swine from quarantined herds may be moved only to slaughter accompanied by a shipping permit or notice of shipment issued by an accredited veterinarian or the Board. When it can be established that the quarantined herd only produces pigs for sale as feeders, that no breeding stock has been sold and there are no clinical signs of pseudorabies in the herd, the individually identified feeder pigs may be sold for movement for finishing under quarantine on premises where there are no breeding swine. These quarantined feeders can be sold only for slaughter.~~

~~6. 7- Quarantines on swine herds will be released when all quarantined swine have been sold for slaughter or:~~

~~a. Reactor swine have been removed from the premises for slaughter with a shipping permit or notice of shipment and~~

~~b. The premises have been cleaned and disinfected and~~

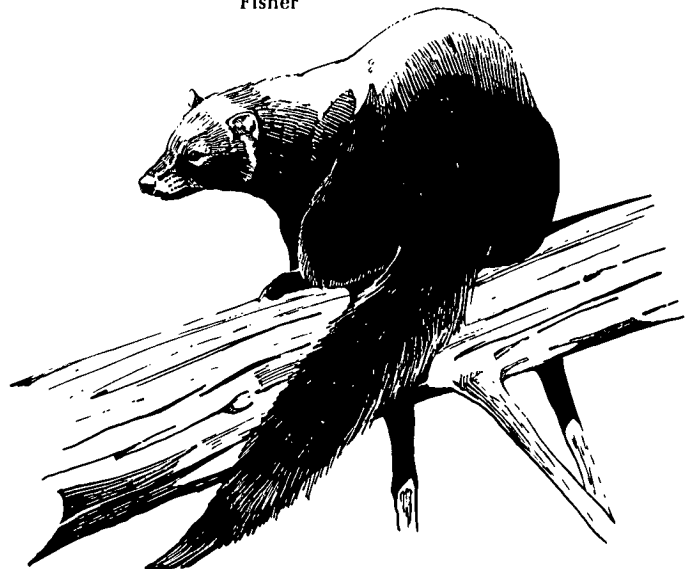
~~c. All swine six months of age and over have passed a negative official pseudorabies test at least 30 days after the reactors were shipped.~~

Following a depopulation, no swine should be allowed on the premises for 30 days.

~~8. Quarantines on individual test positive swine will be released when the swine have been sold for slaughter or have been retested and found to be negative for pseudorabies.~~

~~7. 9- Livestock, other than swine, determined to have pseudorabies and livestock, other than swine, exposed to pseudorabies infected animals will be quarantined. The quarantine will be released 21 days after the diagnosis or exposure if there are no signs of pseudorabies in the quarantined livestock.~~

Fisher



THE FISHER is a large, dark relative of the marten. Omnivorous, it usually preys upon small rodents, rabbits and porcupine. In fact, the fisher seems to be the only northwoods predator that seeks out the porcupine. It flips the animal onto its back and bites into its soft throat and belly, usually avoiding the sharp quills.

The fisher has a long gestation period (about 50 weeks). Within days after giving birth to two to four young, the female will seek out a new mate.

Rare for many years, the fisher is now more abundant in northeastern Minnesota where conifer forests are near maturity. Trapping season for fisher reopened in 1977; it had been closed since 1931.

ADOPTED 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 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.

State Planning Agency Office of Local and Urban Affairs

Adopted Rules Regarding Administration of State Assistance to Regional Development Commissions

The rules (10 MCAR §§ 1.401-1.404) proposed and published at *State Register*, Volume 4, Number 21, pp. 845-854, November 26, 1979 (4 S.R. 845) are adopted with the following amendments.

Amendments as Adopted

10 MCAR § 1.403 Procedures for approving RDC work programs.

A. Application process.

1. Consultation process.

c. Factors to be considered by OLUA in determining the preliminary funding allocations shall include, ~~but need not be limited to such matters as:~~

4. Submission of a final work program.

b. The final work program shall contain the following:

(3) Inclusion of the following attachments:

(a) A statement that no person will be discriminated against on the grounds of race, color, religion, disability, or national origin;

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."

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

**State of Minnesota
County of Hennepin**

**Basic Bible Church of
America, Chapter 8035, Petitioner,**

v.

County of Hennepin, Respondent.

**Tax Court
Regular Division**

District Court File No. 0649

**Findings of Fact,
Conclusions of Law and
Order for Judgment**

The above matter, having been duly filed with the Minnesota Tax Court, came on for hearing on the 28th day of January, 1980 at Hennepin County Government Center before Judge Earl B. Gustafson and submitted on post-trial briefs on March 13, 1980.

Joseph L. Mannikko of Oberg & Mannikko appeared for petitioner and Donald J. Lalor, Assistant Hennepin County Attorney, appeared for respondent.

The Court, having heard and considered the evidence adduced, having viewed the subject property and being fully advised now makes the following:

Findings of Fact

1. Petitioner is Basic Bible Church of America, Chapter 8035.
2. Petitioner is not organized as either a religious association or as a non-profit corporation under the laws of the State of Minnesota.
3. Petitioner claims to be the owner of a residence at 15817 Valley View Road in the City of Eden Prairie, County of Hennepin with a legal description as follows:

The East 312 feet of the West 520.5 feet of the North 416 feet of the NW¼ of the NW¼ of the SE¼ of Section 9, Township 116, Range 22.

4. Petitioner claims the subject property is exempt from real estate taxes under Minn. Stat. § 272.02, subd. 1(5) and Article X, Section 1 of the Minnesota Constitution as a church and/or a house of worship, parsonage and church office.
5. The subject property is not owned by petitioner.
6. The subject property is not used primarily for religious or church purposes.
7. The petitioner does not come within the meaning of the word "church" in Minn. Stat. § 272.02, subd. 1(5) or Article X, Section 1, Minnesota Constitution.

Conclusions of Law

1. The subject property is not owned by a church.
2. The subject property is not being used primarily for religious or church purposes.
3. The subject property is not entitled to exemption from real estate taxes under Minn. Stat. § 272.02, subd. 1(5) or under the Minnesota Constitution.
4. The action of respondent, Hennepin County, in denying petitioner's application for tax exempt classification is affirmed and the petition herein is dismissed.
5. The attached Memorandum is made a part of these Findings of Fact and Conclusions of Law.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Dated: April 21, 1980

Earl B. Gustafson,
Judge of Tax Court

Memorandum

The petitioner, Basic Bible Church of America, Chapter 8035, claims to be owner of a residence at 15817 Valley View Road in the City of Eden Prairie, County of Hennepin and further claims this property is exempt from real estate taxes because it qualifies as a house of worship, parsonage and church office. Its application for tax exemption was denied by Hennepin County and this appeal resulted.

The property has the outward appearance of a two-level suburban home and at all times has been occupied by Mr. and Mrs. Douglas A. Page and their children. The Page's are purchasing the property under a contract for deed. Mr. Page is a mechanical engineer. On May 5, 1978 he was issued an Ordination Certificate and a Doctor of Divinity degree by the Basic Bible Church of America. Four months later he was elevated to the office of Bishop. These and other copyrighted documents were signed by Jerome Daly, D.D., Archbishop, President of the Basic Bible Church of America and Chief of the Order of Almighty God. Jerome Daly is designated in other documents as "Pope" and is the undisputed founder and leader of the parent church, Basic Bible Church of America, sometimes known as the church of Jerome Daly, with offices in Bloomington, Minnesota. Daly is a lawyer no longer permitted to practice in Minnesota.

Bishop Page has done more than merely receive certificates and documents from Archbishop Daly. He has attached a 12" x 18" bronze plaque to the outside basement wall of his home which has raised letters reading, "Basic Bible Church of America, Chapter 8035." He regularly advertises in the church directory section of the local newspaper and has converted his basement recreation room into a church meeting room by bringing in two church pews and covering the pool table with a floor length blue cloth. There are religious pictures on the wall. Four of his printed sermons were offered and received in evidence along with a sample of the church's printed letterhead. Marriage certificates, baptismal certificates and various pamphlets and tracts have been purchased with church funds.

We need not concern ourselves with the tax status of the parent church because no claim can be sustained that Chapter 8035 derives any direct tax exemption through its parent organization. In this case the Charter is specific that, "No property (of Chapter 8035) will become the property of the parent church," and that, "this Auxiliary Chartered Church is not under the management, direction or control of the parent church." The Basic Bible Church of America, Chapter 8035 therefore stands alone in its claim for exemption.

All property in Minnesota is presumed taxable unless specifically exempt by law, Minn. Stat. § 272.01, subd. 1; *Christian Business Men's Committee of Minneapolis, Inc., v. State*, 228 Minn. 549, 554, 38 N.W. 2d 803, 808 (1949); *Camping and Education Foundation v. State*, 282 Minn. 245, 164 N.W. 2d 369 (1969). Exemptions from taxation are strictly construed and to be granted only when some public purpose is being served and not merely for the benefit of any particular persons or organization at the expense of taxpayers generally. *Christian Business Men's Committee of Minneapolis, Inc., supra*; *Camping and Education Foundation, supra*; *State v. Board of Foreign Missions of Augustana Synod*, 221 Minn. 536, 22 N.W. 2d 642 (1946).

The language granting a tax exemption to church property is found in both the Minnesota Constitution and Minnesota Statutes.

Article X, Section 1, of the revised Minnesota Constitution reads in relevant part as follows:

All churches, church property, houses of worship, . . . shall be exempt from taxation except as provided in this section.

While the Minnesota Supreme Court has held that this constitutional provision is self-executory, *State v. Board of Foreign Missions of Augustana Synod, supra*, the exemption is also expressed in Minn. Stat. § 272.02, subd. 1(5); which reads as follows:

Except as provided in other subdivisions of this section or in section 272.025, all property described in this section to the extent herein limited shall be exempt from taxation.

* * *

(5) All churches, church property, and houses of worship;

Neither the legislature nor the courts of this state have attempted to further define the word church. Because this is a case of property tax exemption, there must be a concurrence of ownership of the property by a "church" as that term is used in the exemption language, and a use of the property for the purpose for which the tax exemption was created. *Christian Business Men's Committee of Minneapolis, Inc. v. State*, 228 Minn. 549, 38 N.W. 2d 803 (1949).

Church property, to be exempt, must be used for the furtherance of religious worship and instruction. *State v. United Homes, Inc.*, 292 Minn. 302, 195 N.W. 2d 411 (1972). Both church buildings and church parsonages have been held exempt by the Minnesota Supreme Court. *State v. Church of Incarnation*, 158 Minn. 48, 196 N.W. 802 (1924); *State v. Second Church of Christ Scientist*, 185 Minn. 242, 240 N.W. 532 (1932).

Property owned by a church but not used for church purposes would not be exempt. *State v. Union Congregational Church*, 173 Minn. 40, 216 N.W. 326 (1927).

In *State v. Union Congregational Church*, 173 Minn. 40, 216 N.W. 326 (1927) the Minnesota Supreme Court more or less equated the exemption granted to "church property" to the exemption allowed educational institutions in *State v. Carleton College*, 154 Minn. 280, 191 N.W. 400 (1923). In *State v. Union Congregational Church, supra*, the Court said:

No hard and fast rule can properly be laid down to govern all cases. Generally speaking, it may be said that the rule governing exemption

TAX COURT

from taxation as to the real property of educational institutions is that all property reasonably necessary for *and primarily used and devoted to the proper purposes of the institution*. . . is exempt from taxation. 173 Minn. 44, 216 N.W. 328. (Emphasis Added)

In the case of *Christian Business Men's Committee of Minneapolis, Inc. v. State*, 228 Minn. 549, 554, 38 N.W. 2d 803, 808 (1949), the Minnesota Supreme Court said:

In order for any institution to qualify for tax exemption under Minn. Const. Art. 9, Sec. 1—and M.S.A. 272.02 enacted pursuant thereto—there must be a concurrence of *ownership* of the property by an institution of the type prescribed by the constitution and a *use* of the property for the purpose for which such institution was organized.

The burden of proof is on the petitioner and in this case we find the petitioner has failed to prove three essential elements. First, there is insufficient proof that the property is owned by petitioner. Second, there is insufficient proof that the property is being used primarily for the furtherance of religious worship and instruction. Third, there is insufficient proof that the petitioner has any regular members or congregation other than Bishop Page and his wife.

Let us examine in greater detail the ownership and use of the property at 15817 Valley View Road remembering the familiar maxim in tax law that substance controls over form. *Midwest Federal Savings and Loan Ass'n v. Commissioner of Revenue*, 259 N.W. 2d 596, 599 (Minn. 1977). *Transport Leasing Corp. v. State*, 294 Minn. 134, 199 N.W. 2d 817 (1972).

First, is this property owned by a religious association or church? The present record owners of the property are Douglas A. Page and Caroline Page as joint trustees for the Basic Bible Church of America, Chapter 8035. Prior to May 1978 when Bishop Page received his "Ordination Certificate" and a "Charter" was issued to Chapter 8035, Basic Bible Church of America, the property was being purchased under a contract for deed by Douglas A. Page and Caroline Page as joint tenants. On July 21, 1978 the vendees' interest was transferred by quit claim deed from Douglas A. Page and his wife to Douglas A. Page and Caroline Page as joint trustees for Basic Bible Church of America, Chapter 8035. There is no evidence that this conveyance put ownership of the property beyond the personal control of Douglas A. Page. On the contrary, under the By-Laws of Chapter 8035 he remains in sole control. Article III of the By-Laws designate him as "Head of this Order" and goes on to say, "The Head of this Chapter shall be for life unless otherwise agreed to." Article IV of the By-Laws flatly states:

Article IV *Members*. The sole authority of this Chapter of this Order shall be vested in the Head of this Chapter. All other members of this Chapter shall be advisory trustees or nominee Heads of the Order, whom the Head of the Order shall listen to for advice, but they shall have no right to vote unless so designated otherwise by the Head of this Order. (Emphasis Added)

A trustee acts in a fiduciary capacity—not for his personal benefit. In this case the quit claim deed indicates the beneficiary of the trust is Basic Bible Church of America, Chapter 8035. What is this? Is it a non-profit corporation? A religious association? A church congregation?

It appears to be none of these. No attempt has been made to qualify this church under Minnesota law as any type of religious association under either Chapter 315, Minnesota Statutes, the usual statute used for organizing a new church or under Chapter 317, the Non-Profit Corporations Act.

The ownership of the property, therefore is in the name of two people, as trustees, under a non-existent trust agreement for the benefit of a "church" that has no legal status. All Douglas and Caroline Page would have to do to put the property back in their individual names would be to execute another quit claim deed. There is no independent third party who would or could complain.

The very first and fundamental requirement that the property be owned by the party seeking the exemption is not met in this case. *State v. United Church Homes, Inc.*, 292 Minn. 323, 195 N.W. 2d 411 (1972).

Even if the property were actually owned by the petitioner, Basic Bible Church of America, Chapter 8035, and it were properly incorporated, there is insufficient proof that Chapter 8035 is any kind of a religious association or church congregation within the normal definitions and understanding of those words. As the trier of fact this Court finds that no congregation actually exists and uses the subject property on any regular basis as its meeting place or house of worship. It continues to be used primarily, if not exclusively, as the residence and business office of Bishop Page and his family.

Although Bishop Page testified at one point that his congregation might have as many as 50 members he said that membership depended upon what a person's intentions and motivations are in expressing an interest in his church. No membership records exist, and he declined to give the names of any members or names of anyone who attends his Friday evening services. Church attendance, outside his wife and children, he testified, varies from no one in the winter to one or more in the summer. (He testified that no one attended the two weekly services held immediately prior to the trial.) No member of his "congregation" was called as a corroborating witness.

Bishop Page acknowledged that he had never officiated at a baptism or a marriage. His church apparently has no religious education or youth programs, and apparently undertakes no charitable or service efforts. No attempt has been made to comply with the City of Eden Prairie's zoning ordinance regarding churches which has special requirements for off-street parking and city approval of plans and specifications for church buildings.

The religious beliefs advanced by the Basic Bible Church, Chapter 8035 will not be discussed here because petitioner has failed to meet its burden of proof on the threshold issues of ownership and use of the subject property and its existence either as a legally organized religious

association or as a de facto religious or church congregation. Some discussion of what constitutes "religion" is found in *Missouri Church of Scientology v. State Tax Commission*, 560 S.W. 2d 837 (Mo) (1977) and *Ideal Life Church of Lake Elmo v. County of Washington*, Minn. Tax Court decision December 6, 1979.

There is a final constitutional issue raised by petitioner that deserves comment. Bishop Page mistakenly equates his First Amendment rights of freedom of religion under the U.S. Constitution with the right to a tax exemption on his homestead. The freedoms guaranteed by the First Amendment are extended to him as an individual and prevent the government from unjustifiably interfering with his religious beliefs and practices. The First Amendment does not guarantee him any tax benefits. The property tax exemption under consideration is not extended to individuals but to churches. The petitioner must prove the existence of a group of people associated together for common religious purposes. Here is where the confusion apparently arises. Under the theories advanced by Bishop Page, he and the church are one.

In the post-trial memorandum submitted to the Court petitioner argues as follows:

In addition to the substantial compliance with the statute, (Chapt. 315) so far as permitted by the doctrine of the church, *the property is owned by the church to the extent that it is owned by the ministers*. The Articles of Incorporation, Article XII (amended), Section 1, so states. The Apostle's Decree likewise states that *Douglas A. Page is ordained and established personally*, in body and mind, and has been, commencing at the time he was called into the ministry, *an auxiliary church in his whole person* and spirit together with the members of his flock.

This is consistent with the scripture and contemporary theology. Jesus was an entity unto himself who had no church building nor, initially, a congregation, and who established his church in a man ". . . thou art Peter and upon this rock I will build my church . . ." Matthew 16:13.

* * *

The Catholic encyclopedia defines "rock" as "a symbol of impregnable safety and protection," and defines "church" as, inter alia, both a place of Christian worship and those who are of the clerical state and whose lives are devoted to the service of the church. *Thus, the "rock", Peter, was Christ's Church: likewise, the owners of this property are a Church.* (Emphasis added)

We do not pretend to decide whether Bishop and Mrs. Page come within any theological definition of a church. We reject, however, their contention that they, as individuals, come within the meaning of the word "church" as found in Minn. Stat. §272.02, Subd. 1(5) or Minnesota Constitution, Article X, Section 1.

To hold otherwise would allow any person to declare himself to be a "church" and thereupon become a tax exempt institution. All property owned and used by him would instantaneously become exempt from property taxes and shift the cost of local government and public schools onto persons less ingenious than Archbishop Daly and his disciples and also onto those who continue their membership in more traditional churches.

For the reasons stated the applicant's claim for property tax exemption is denied.

Earl B. Gustafson, Judge

SUPREME COURT

Opinions Filed Friday, April 25, 1980

50350/180 State of Minnesota vs. William E. White, petitioner, Appellant. Lake County.

Evidence of defendant's guilt of reckless driving and disorderly conduct was not, as defendant contends, legally insufficient.

Trial court did not err in denying motion to sever nontraffic offenses from traffic offenses for trial where offenses were all part of single behavioral incident and severance was not needed to promote a fair determination of defendant's guilt or innocence of each offense.

Affirmed. Sheran, C. J.

49716/436 John Pfeffer vs. State Automobile and Casualty Underwriters Insurance Company, Renville County.

A no-fault insurer, which has paid out benefits to its insured, is not entitled to subrogation under Minn. Stat. § 65B.53, subd. 2 (1974) (amended 1976) to the proceeds in a settlement made by its insured with a third party tortfeasor, where the insured has not been fully compensated for his injury.

Affirmed. Kelly, J.

SUPREME COURT

50441/Sp. Arlyn (Leisinger) Shantz, as trustee for the heirs of Albert T. Nelson, Decedent, Appellant, vs. Richview Inc., etc., defendant and third-party plaintiff, vs. Richard D. Vickerman, as Executor of the Estate of Delbert Vickerman, Third-party Defendant. Hennepin County.

When a plaintiff in a wrongful death action uses a Pierringer release to settle with one of two alleged tortfeasors and the jury, after being properly instructed, later determines that the settling party was not negligent, the nonsettling party is not entitled to have the amount paid by the other party subtracted from the damages he is required to pay the plaintiff.

Reversed in part with causation issue reserved. Yetka, J.

STATE CONTRACTS

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 Corrections Health Care Unit

Notice of Request for Proposals for Professional/Technical Services Contracts

Notice is hereby given that the Minnesota Department of Corrections is seeking the following services for the period July 1, 1980 through June 30, 1981. These services are to be performed at the indicated state correctional institutions.

1. Services of a pharmacist for the Minnesota Correctional Facility-Stillwater on a full time basis and the Minnesota Correctional Facility-Shakopee approximately 14 hours/day to supervise the total pharmacy program. The estimated amount of the contract will not exceed \$35,355.

2. Services of a radiologist approximately 24 hours per month to provide full radiological services to the State Prison. The estimated amount of the contract will not exceed \$22,400.

3. Services of a registered dietitian approximately 88 hours per month to provide the total consultant dietitian services at the Minnesota Correctional Facility-Stillwater and Lino Lakes. The estimated amount of the contract will not exceed \$14,080.

4. Services of a psychiatrist approximately 64 hours per month to provide psychiatric consultations at the Minnesota State Prison and the in-patient Mental Health Unit. The estimated amount of the contract will not exceed \$38,745.

Direct inquiries for the above listed contracts to Clyde

Eells, Health Services, Minnesota Correctional Facility-Stillwater, Stillwater, MN 55082.

5. Services of a psychiatrist approximately 20 hours per month to provide psychiatric consultation services to the Minnesota Department of Corrections' Mental Health Unit located at the Minnesota State Prison. The estimated amount of the contract will not exceed \$11,340. Direct inquiries to Dr. Lowell Parsons, Ph.D., Mental Health Unit, Minnesota State Prison, Box 55, Stillwater, Minnesota 55082.

6. Services of a behavior therapist to provide: psychological evaluations including a performance evaluation prediction on sex offenders for the Minnesota Corrections Board; general consultation services to the Minnesota Corrections Board; and therapy services to inmate sex offenders. Estimated amount of the contract will not exceed \$13,300.

Direct inquiries to Mrs. Dorothy Skiwiera, Minnesota Corrections Board, Suite 238, Metro Square Building, St. Paul, Minnesota 55101.

Proposals for the above listed contracts must be submitted no later than May 23, 1980.

Energy Agency Conservation Division

Notice of Request for Proposals for Development of An Energy Accounting Procedures Manual and Training Plan for Local Units of Government and School Districts

The Conservation Division of the Minnesota Energy Agency is requesting proposals from groups or individuals having experience in energy cost and consumption record keeping or related experience to develop an energy accounting procedures manual and training plan on use of the procedures for local government and school administrative personnel. These consulting services, which will be provided under contract, are outlined in detail in the Request for Proposals (RFP) Statement of Project Tasks. The formal RFP may be requested and inquiries should be directed to:

Marsha Battles (612) 296-8382
Conservation Division
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

It is anticipated that the activities to develop an energy accounting procedures manual and training plan will not exceed \$25,000. The deadline for the submission of the complete proposals will be 4:30 p.m., June 19, 1980.

Department of Health Health Systems Division Emergency Medical Services Section

Notice of Request for Proposals for Minnesota Poison Information Center

The Minnesota Department of Health (MDH) is requesting proposals from non-profit corporations and units of government for a grant to provide 24-hour poison information and referral services to the general public and to health professionals. Maximum state funding for this grant will not exceed \$125,000 for the year July 1, 1980 to June 30, 1981. Additional funding may be possible from federal funds. Because the enabling statute prescribes that the grant is to be effective July 1, 1980, responders will be expected to demonstrate ability to initiate service as soon as possible following selection. The deadline for applications is 4:00 p.m. May 23, 1980.

This deadline is essential if the grant is to be awarded prior to July 1, 1980.

Copies of the request for proposal and other information about this grant are available from:

Jim Parker, Assistant Chief
Emergency Medical Services
Minnesota Department of Health
717 Delaware Street S.E.
Minneapolis, MN 55440
(612) 296-5281

Department of Natural Resources Minerals Division

Notice of Sale of State Horticultural Peat Lease

Notice is hereby given that a lease sale to remove horticultural peat in swamp fund lands located in 670 acres of the West Central Lakes Bog, St. Louis County, Minnesota will be held in Room 130 of the State Capitol Building, St. Paul, Minnesota, at 8:30 o'clock a.m. CDT on June 10, 1980.

The Commissioner of Natural Resources, Box 45, Centennial Office Building, St. Paul, MN 55155, will receive sealed bids and applications for a lease to remove peat under the authority of Minn. Stat. § 92.50 (1978), up to the time specified below.

Each application and bid must be submitted in a bid envelope obtained from the Division of Minerals and each sealed bid envelope must be enclosed in another envelope and delivered to the Commissioner of Natural Resources, Attn: Division of Minerals, Box 45, Centennial Office Building, St. Paul, MN 55155. Bids must be received by 4:30 o'clock p.m. CDT on June 9, 1980 and no bids received after that time will be considered.

At the time specified for the lease sale, the commissioner, together with the State Executive Council, will publicly open the bids and announce the amount of each bid separately. A lease will be awarded by the commissioner, with approval of the State Executive Council, to the highest responsible bidder; but no bids will be accepted that do not equal or exceed the base royalty rates set forth in the prospectus. The right is reserved to the state, through the Executive Council, to reject any or all bids. All bids not accepted will become void.

In the absence of satisfactorily demonstrated past technical and financial competence to perform under similar circumstances, the commissioner may require bidders to submit information relating to their technical and financial competence to perform under the state's lease to remove horticultural peat. If the commissioner makes such a request of a bidder, the information shall be submitted by the bidder within 30 days after the date of the commissioner's request.

STATE CONTRACTS

Application and bid forms, bid envelopes, instructions on how bids are to be submitted, and copies of the prospectus may be obtained from the Department of Natural Resources, Division of Minerals Offices at Box 45, Centennial Office Building, St. Paul, Minnesota 55155, or Box 567, Hibbing, Minnesota, 55746.

April 18, 1980

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Public Welfare Personnel Division Executive Office

Notice of Request for Proposals for Classification Study

Notice is hereby given that the Personnel Division of Department of Public Welfare is seeking organizations with public sector job evaluation and classification experience to provide a classification study of approximately 230 positions. Additional responsibilities will be to modify the existing position evaluation system, rate and classify the positions studied and where necessary, create new class series and classify positions accordingly.

The formal RFP may be requested and inquiries should be directed to:

Eleanor Hoover
Personnel Director
Department of Public Welfare
4th Floor, Centennial Office Building
St. Paul, Minnesota 55155

It is anticipated that the activities to accomplish this will not exceed a total cost to the state of \$18,700 and will be completed within six months of initiation. The deadline for submission of completed proposals will be May 26, 1980.

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, Bureau of Mental Health, Department of Public Welfare, is seeking the following services for the period July 1, 1980, through June 30, 1981. 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 \$26,000.

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 \$26,470.

3) Services of a radiologist to interpret x-rays taken at Brainerd State Hospital or special x-rays done under his/her direction at St. Joseph's Hospital, Brainerd, MN. The estimated amount of the contract will not exceed \$17,000. Responses for the above services must be received by May 26, 1980. Direct inquiries to:

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

Department of Public Welfare St. Peter State Hospital Complex

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

Notice is hereby given that the St. Peter State Hospital Complex, Mental Health Division, Department of Public Welfare, is seeking the following services for the period July 1, 1980 through June 30, 1981. These services are to be performed as requested by the administration of the St. Peter State Hospital Complex.

1) Services of a psychologist to provide psychological evaluations and examinations of chemically dependent patients. Preparation and presentation of lectures. The estimated amount of the contract will not exceed \$15,000.

2) Services of a psychologist to provide psychodiagnostic evaluations, psychological assessments and some group psychotherapy with the geriatric population. The estimated amount of the contract will not exceed \$14,000.

3) Services of an individual who specializes in internal medicine, to provide medical evaluations of mentally ill and chemically dependent patients at St. Peter State Hospital as well as medical examinations and care of the population at Minnesota Security Hospital. This individual will provide primary care and act as a consultant to staff physicians. The estimated amount of the contract will not exceed \$33,000.

4) Services of a psychiatrist to provide psychiatric evaluations and make recommendations with regard to psychotropic medications. Individual will aid staff in the special area of geriatric psychopharmacology and geriatric psychiatry. The estimated amount of the contract will not exceed \$17,000.

5) Services of a psychiatrist to provide psychiatric services to Minnesota Security Hospital. This individual will perform such duties as examinations and evaluations of residents, prescribe and regulate medications, provide individual and/or group psychotherapy, attend team meetings, assist with quarterly reviews, discharge summaries, etc. The estimated amount of the contract will not exceed \$42,000.

6) Services of a psychiatrist to specialize in working with the Intensive Treatment Program for Sexual Aggressives (ITPSA); assist with admissions, diagnosis and treatment of these men. The estimated amount of the contract will not exceed \$32,000.

7) Services of a psychiatrist to be responsible for court evaluations and manage the drug regimes on the admissions unit at Minnesota Security Hospital. The estimated amount of the contract will not exceed \$29,000.

8) Services of a psychiatrist to provide psychiatric assessment,

with emphasis on use of psychotropic medications in controlling behavior, follow up reviews and feedback reviews for our residents at the Minnesota Valley Social Adaptation Center (MVSAC). Also, to be responsible for medication for residents on specific units at Minnesota Security Hospital. The estimated amount of the contract will not exceed \$35,000.

Responses for the above services must be received by May 26, 1980.

Direct inquiries to:

Thomas R. Bolstad
Sr. Accounting Officer
St. Peter State Hospital Complex
100 Freeman Drive
St. Peter, Mn. 56082
Phone: (507) 931-3000, Ext 116

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 Commerce Insurance Division

Meeting Notices

Minnesota Comprehensive Health Association
Annual Meeting
Wednesday, June 18, 1980
10:00 a.m.

Board of Directors Meeting
Immediately following Annual Meeting
Room 83 State Office Building
St. Paul, Minnesota

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the offices of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone 296-2202.

Department of Economic Security Employment and Training Division

Meeting Notice

The Balance of State Advisory Council (BOSAC) is scheduled to meet on:

Tuesday, 7/8/80, at 10:00 a.m.-1:00 p.m.
Tuesday, 9/9/80, at 10:00 a.m.-1:00 p.m.
Tuesday, 12/9/80, at 10:00 a.m.-1:00 p.m.

at

The Department of Economic Security
690 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Department of Education Special Services Division

Notice of Intent to Solicit Outside Opinion Regarding Rules for Providing Equal Opportunity in Athletics

The Department of Education is drafting rules to implement Minn. Stat. § 126.21 as amended, which permits the State Board of Education to promulgate rules regarding the provision of equal opportunity for members of both sexes to participate in certain athletics. The rules shall provide procedures to prevent discrimination in elementary and secondary school athletic programs operated by educational institutions.

The department invites interested persons or groups to provide information, comment and advice on the subject in writing to:

Gregory Waddick, Assistant Commissioner
Minnesota State Department of Education
726 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

All information must be submitted prior to June 1, 1980.

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

April 25, 1980

Gregory J. Waddick
Assistant Commissioner

Ethical Practices Board Request for Advisory Opinion Regarding Office Equipment Purchased in Election Year

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its Board meeting on May 30, 1980. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to May 23, 1980.

April 18, 1980

B. Allen Clutter, III
Executive Director
Ethical Practices Board
Rm. 41, State Office Bldg.
St. Paul, MN 55155

Dear Mr. Clutter:

Would you please request the Ethical Practices Board to clarify how a volunteer committee is to allocate costs for capital purchases?

If a volunteer committee purchases a \$1,000 typewriter during a campaign year, is the entire cost charged against that specific year's spending limits? Would it make a difference if that machine was purchased in a non-campaign year? Is it allowable to assign a reasonable amount of depreciation against the current year's use?

If a volunteer committee were to purchase the same typewriter and sell it later in the year, would it be proper to submit only the difference between the purchase and the sale price as the campaign expenditure?

Can you identify any exceptions to the answers you provide to the above situations that might apply if the item happened to be a different type of capital expenditure?

Thank you for considering these issues.

Sincerely yours,
Wayne Olhoft

Governor's Council on Employment and Training

Notice of Meeting

Notice is hereby given that the Governor's Council on Employment and Training will hold a regular meeting on Friday, May 23, 1980 in Room 118, State Capitol, St. Paul, MN.

Department of Health Health Systems Division Emergency Medical Services Section

Notice of Openings on Minnesota Poison Information Service Advisory Council

The Commissioner of Health is directed in Laws of 1980, ch. 577, to appoint an advisory council to serve on a voluntary basis consisting of, but not limited to, the following: one nurse; one pharmacist; one physician each from the fields of toxicology, pediatric medicine, emergency medicine, and internal medicine; and one person who has no past or present material financial interest or professional involvement in the provision of poison information or treatment services. No more than three members may be residents of the metropolitan area, as defined in Minn. Stat. § 473.02, subd. 5; no more than one may be a resident of any single county; and none may be affiliated in any way with the currently designated poison information center.

The purpose of this council is to advise the commissioner on the selection of a grantee for state funding to serve as the Minnesota

Poison Information Center. The commissioner is requesting interested persons to submit nominations for themselves or persons they consider qualified and willing to serve in this capacity. The Minnesota Poison Information Service advisory council will conduct its business primarily by mail and will serve without reimbursement, on a voluntary basis. Terms for members will range from one to four years, as prescribed in law. Continuation of the advisory council will be dependent on the continued funding of the Minnesota Poison Information Service.

Persons interested in serving on or nominating members to this advisory council should request applications from:

Open Appointments Section
Elections Division
Office of the Secretary of State
Room 180, State Office Building
Wabasha Street
St. Paul, MN 55155
(612) 296-9218

Application forms and information about this council are also available from:

Jim Parker, Assistant Chief
Emergency Medical Services
Minnesota Department of Health
717 Delaware Street S.E.
Minneapolis, MN 55440
(612) 296-5281

All applications must be submitted to the Office of the Secretary of State no later than the close of business, May 21, 1980.

Metropolitan Transit Commission

Notice of Request for Proposals for Consultant Services for Subregional Transit Planning Project

The Metropolitan Transit Commission is inviting proposals for consultant services to undertake a study to test the subregional transit concept through development of a transit service plan for one subregion in the Minneapolis-St. Paul area. The required tasks to be undertaken by the consultant are identified in the Study Design and attachments contained in the Request for Proposal (RFP).

A request for the RFP and inquiries should be directed to:

Hugh Faville
Metropolitan Transit Commission
801 American Center Building
150 E. Kellogg Blvd.
St. Paul, MN 55101
Telephone (612) 221-0939, Ext. 152

It is anticipated that the total consultant cost for this project will not exceed \$30,000. Completed proposals should be submitted by or on May 27, 1980.

Department of Natural Resources

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Relating to Reclamation of Mineral Exploration Sites

Notice is hereby given that the Minnesota Department of Natural Resources, pursuant to Minn. Stat. §§ 93.44 to 93.51 (1978), has begun consideration of proposed rules governing Reclamation of Mineral Exploration Sites.

In order to adequately determine the nature and utility of such rules, the Department of Natural Resources hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules. The purpose of these rules is to provide for the reclamation of lands hereafter subjected to excavation and waste disposal, excluding exploration borings, during the exploration for metallic minerals.

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

Department of Natural Resources
Division of Minerals
Box 45, Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-4807, and in person at the above address.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Pollution Control Agency

Application by the University of Minnesota for A Variance from WPC 22 (6 MCAR § 4.8022), and for A State Disposal System Permit, to Conduct A Research and Demonstration Project for Aquifer Thermal Energy Storage

Order and Notice of Hearing

It is hereby ordered and notice is hereby given that a hearing concerning the above-captioned matter will be held on Tuesday, June 10, 1980, at Minnesota Pollution Control Agency Board Room, 1935 W. County Road B2, Roseville, Minnesota 55113, beginning at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

OFFICIAL NOTICES

The purpose of this hearing will be to consider testimony and evidence bearing upon the application by the University of Minnesota, Physical Plant Operations, 319 15th Ave. S.E., Minneapolis, MN 55455, for a temporary variance from WPC 22 (6 MCAR § 4.8022), which prohibits a direct discharge into a zone of saturation. The purpose of the hearing is also to receive and review testimony, evidence, and argument regarding the terms and conditions and proposed issuance of a temporary State Disposal System Permit.

The University of Minnesota has requested the variance and permit to conduct a research and demonstration project for aquifer thermal energy storage involving reinjection of ground water. The St. Paul Campus is the proposed site for the demonstration project. The University has received a grant award of 1.9 million dollars from the Federal Department of Energy for this project. Assistance to the University in this project would be supplied by the Minnesota Geological Survey, Minnesota Energy Agency, U.S. Geological Survey, Honeywell Technology Strategy Center, and General Electric Center for Advanced Studies.

The University of Minnesota seeks temporary variance from WPC 22 (6 MCAR § 4.8022) until the conclusion of the demonstration project, now expected to conclude in June of 1981. The State Disposal System Permit would also expire at the conclusion of the demonstration project.

The draft permit is available for public inspection at the MPCA offices in Roseville. A copy of the draft permit will be mailed to any interested person upon request. Persons wishing a copy of the draft permit should contact Gordon W. Meyer at:

Minnesota Pollution Control Agency
1935 W. County Road B2
Roseville, Minnesota 55113
Telephone: (612) 296-7218

Interested persons are invited to submit written comments to the MPCA in regard to the issuance of a permit. Comments should be submitted in person or by mail, and received by the MPCA by no later than June 5, 1980. Comments should be directed to the attention of Mr. Meyer. Any written comments received will be offered to the Hearing Examiner as part of the hearing record.

The Minnesota Pollution Control Agency is authorized to hold the hearing, grant the requested variance and issue the permit pursuant to Minn. Stat. § 115.03, subs. 1(e) and (h), § 116.07, subd. 5, § 116.075 (1978) and WPC 36K (6 MCAR § 4.8036 (K), MPCA 6 (6 MCAR § 4.3006) and MPCA 9 (6 MCAR § 4.3009).

The hearing will be held before Howard L. Kaibel, Jr., 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8107, a hearing examiner appointed by the Chief Hearing Examiner of the State of Minnesota. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411-15.052 (1978), and 6 MCAR §§ 2.201-2.299 (the Rules of the Office of Hearing Examiners)

and to the extent they do not conflict, MPCA 1-13 (6 MCAR §§ 4.3001-4.3013) (the Minnesota Pollution Control Agency's Rules of Procedure).

The above-cited procedural rules are available for inspection at the Office of Hearing Examiners and the Minnesota Pollution Control Agency or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, St. Paul, Minnesota, 55155, (612) 296-2874. The rules provide generally for the procedural rights of the parties.

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).

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 May 30, 1980. 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:

Dennis M. Coyne
Special Assistant Attorney General
Minnesota Pollution Control Agency
1935 W. County Road B2
Roseville, Minnesota 55113
Attorney for Minnesota
Pollution Control Agency Staff

Jeffrey G. Lalla
Associate University of
Minnesota Attorney
Room 332 Morrill Hall
100 Churchill St. S.E.
Minneapolis, MN 55455

A Notice of Appearance form, enclosed with this order, must be completed and returned to the hearing examiner by May 30, 1980, by each person admitted as a *party* to the hearing. A Notice of Appearance need not be filed by persons who wish to present oral or written statement without becoming parties. Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

Please be advised that the issues to be considered at the hearing may, without further notice, be modified 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 University's application for a variance and a State Disposal System Permit.

If no person intervenes as a party and no person appears at the hearing at 9:00 a.m. on June 10, 1980, the variance may be approved and the State Disposal System Permit, as drafted, may be issued by the MPCA. In any event, some time after the close of the hearing, the hearing examiner will submit a report to the MPCA and make a recommendation on the variance and the permit. The MPCA Board will then make the final decision.

Questions concerning the issues raised in the Order or concerning informal disposition or access to information may be directed to Special Assistant Attorney General Dennis M. Coyne, Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota, 55113, (612) 296-7702.

If any person has a good reason for requesting a delay of the hearing, a 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 all parties.

April 28, 1980

Terry Hoffman
Executive Director

STATE OF MINNESOTA MINNESOTA POLLUTION
COUNTY OF RAMSEY CONTROL AGENCY

In the Matter of the Application by the City of Winsted for a
Variance from WPC 14 (c) (6) for its Existing and Proposed Municipal
Wastewater Treatment Facility

NOTICE OF APPEARANCE

Date of Hearing:

Name and Telephone Number of Hearing Examiner:

TO THE HEARING EXAMINER:

You are advised that the party named below will appear at the
above-entitled hearing.

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

Office Address: _____

Telephone Number: _____

Signature of Party or Attorney: _____

Date: _____

NOTE: This Notice of Appearance should only be submitted by
persons who have been admitted as parties after filing a Petition to
Intervene. Interested persons who wish to make statements without
becoming parties need not submit this Notice.

**Department of Public
Safety**

Fire Marshal Division

**Notice of Intent to Solicit Outside
Opinion Regarding Proposed
Revision of the Minnesota
Uniform Fire Code (11 MCAR
§§ 1.5030-1.5051)**

Notice is hereby given that the Department of Public Safety is seeking information, comments, and opinions from sources outside of the department in preparing to draft revisions to the uniform fire code rules. Such rules are authorized by Minn. Stat. § 299F.011.

All interested or affected persons or groups are invited to provide information on this subject until October 1, 1980 by contacting:

Wes Werner
State Fire Marshal
1246 University Avenue
St. Paul, MN 55104

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

**Department of Public
Service**

Public Service Commission

**Notice of Intent to Solicit Outside
Opinion Concerning
Implementation of FERC
Cogeneration and Small Power
Production Rules**

Notice is hereby given that the Minnesota Public Service Commission is seeking information or opinions from outside the commission on appropriate methods for implementation of Federal Energy Regulatory Commission (FERC) rules concerning arrangements between electric utilities and qualifying cogeneration and small power production facilities. The Public Utility Regulatory Policies Act of 1979 (PURPA) required the FERC to establish such rules. PURPA also requires state regulatory authorities, such as the Minnesota Public Service Commission, to implement the rules within one year of their adoption by the FERC.

Background

The intent of PURPA and the FERC rules is to encourage electric power generation by smaller units in order to realize significant resource savings. Cogeneration facilities are capable of producing electricity and other forms of energy with significantly less fuel than

would be needed to produce the two separately. Small power production facilities use biomass, waste, or renewable resources to produce electric power. Reliance on these sources of energy can reduce the need to consume traditional fossil fuels to generate electric power.

The FERC rules provide that electric utilities must purchase electric energy and capacity made available by qualifying cogenerators and small power producers at a rate reflecting the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing energy or capacity from other suppliers. To enable potential cogenerators and small power producers to estimate these avoided costs, the rules require electric utilities to furnish data concerning present and future costs of energy and capacity on their systems.

These rules also provide that electric utilities must furnish electric energy to qualifying facilities on a nondiscriminatory basis, and at a rate which is just and reasonable and in the public interest; and that they must provide certain types of service which may be requested by qualifying facilities to supplement or back up these facilities' own generation.

The Minnesota Public Service Commission will host a FERC public informational meeting on the rules for cogeneration and small power production on June 2, 1980, at 1:30 p.m. The meeting will be held in the commission's Large Hearing Room, 7th Floor, American Center Building, Kellogg and Robert, St. Paul. It is anticipated that the meeting will allow for both explanation of the rules by members of the FERC staff, and exploration of methods and problems of implementation by this commission. The deadline for comments—June 9, 1980—has been chosen to encourage commenters to incorporate information from the meeting.

Information Requested

The commission believes outside comment on the procedure for implementation may be as important as comment on the content of rules, tariffs, or other means of implementing the FERC rules. Accordingly, parties are invited specifically to address alternatives (rulemaking, contested case, etc.) which may be available for implementation. In addition, parties are invited to provide comment and opinion on the technical details the commission must address. These details include the appropriate techniques for calculation of avoided costs and interconnection costs, necessary conditions for standard rates, the issues of standard rates for large blocks of sales and for different generation technologies, and appropriate operating reliability standards.

All interested or affected parties or groups are invited to submit written statements or comments by June 9, 1980, addressed to:

Mary L. Harty, Secretary
Minnesota Public Service Commission
7th Floor, American Center Building
Kellogg and Robert Streets
St. Paul, Minnesota 55101

Written material received by June 9, 1980 will become part of the record of any rules hearing held on this subject.

April 28, 1980

Mary L. Harty
Commission Executive Secretary

Department of Public Welfare Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Concerning Approval of Mental Health Centers and Clinics for Insurance Reimbursement

Notice is hereby given that the Minnesota Department of Public Welfare is drafting a temporary rule, 12 MCAR § 2.029 and, subsequently, a permanent rule, 12 MCAR § 2.029, governing conditions or approval of mental health centers and clinics insurance reimbursement. This notice is to request comments and opinions for the permanent rule. A separate notice will be published in the *State Register* soliciting comments when the proposed temporary rule is published.

These rules, authorized by Minn. Stat. § 245.69 (amended, 1980), govern the conditions under which the commissioner will approve mental health centers and clinics for insurance reimbursement.

The proposed rules will set forth the minimum requirements to qualify for approval such as staffing, peer review of clinical work, and continuing education standards.

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

Terry Sarazin, Director
Mental Illness Program Division
Fourth Floor, Centennial Building
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-2710. The cutoff date for input concerning the permanent rule, 12 MCAR § 2.029, is June 15, 1980.

Department of Transportation

Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove Tracks Numbered 90, 95, 100, 102, 105, 107 and An Unnumbered Track All with One Turnout, Also Known as "Levee Line," at St. Paul, MN

Order for Hearing and Notice Thereof

It is hereby ordered, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on June 9, 1980 at 9:00 a.m., at the Offices of the Chief Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota.

The hearing will be held before Mr. Richard DeLong, 1745 University Avenue, Saint Paul, Minnesota 55104 (Telephone: 612-296-8117) a hearing examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. § 15.0411 through Minn. Stat. § 15.052 and 9 MCAR § 2.201 through § 2.222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Mr. Gordon W. Boldt, Chief, Railroad Operations Section, 419 Transportation Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-2452).

The purpose of the hearing is to ensure that under the provisions of Minn. Stat. §§ 219.631, 219.741 and 218.041, subd. 3 (10), all parties and potential parties of interest are given an opportunity to be heard on the petition by the Chicago and North Western Transportation Company to retire and remove Tracks Numbered 90, 95, 100, 102, 105, 107 and an Unnumbered Track all with one Turnout, also known as "Levee Line" located in St. Paul, Minnesota.

The petition recites among other matters that:

"The subject track is no longer needed for rail transportation service, constitutes a continuing and burdensome maintenance expense, and is an unnecessary safety hazard. Further, Bridge No. 16-G was not designed for present day railroad cars and engines nor present day vehicular traffic. The only shippers, patrons or members of the public who might have an interest in the retention of the tracks or facilities, or who have used the same to any substantial degree within the past several years are Lan-O-Sheen, Inc., Metal Reduction Company, American Crane Service, Henly Furniture and The St. Paul Port Authority."

Any person who desires to become a party to this matter must

submit a timely Petition to Intervene to the hearing examiner pursuant to 9 MCAR § 2.210, 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 are advised that if a party intends to appear at the hearing scheduled for June 9, 1980, the Notice of Appearance form enclosed with this order must be completed and returned to the hearing examiner at least 10 days before the hearing date. Should a party fail to appear at the hearing the allegations made in the petition may be taken as true.

The above cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155 (Telephone: 612-296-2874). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

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 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

April 28, 1980

Richard P. Braun
Commissioner

Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove Tracks Numbered 90, 95, 100, 102, 105, 107 and an Unnumbered Track All with One Turnout, Also Known as "Levee Line," at St. Paul, MN

Notice of Appearance

Date of Hearing: June 9, 1980

Name and Telephone Number of Hearing Examiner:

Richard DeLong
1745 University Avenue
Saint Paul, Minnesota 55104
296-8117

OFFICIAL NOTICES

To the Hearing Examiner:

You are advised that the party named below will appear at the above hearing.

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

Signature of Party or Attorney: _____

Date: _____

Department of Transportation

Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove ICC Track No. 21 Located at Duluth, Minnesota.

Notice of Application and of Opportunity for Hearing

Notice is hereby given that the 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 I.C.C. Track No. 21, located in Duluth, Minnesota.

Any person may file a written objection to the action proposed by the petitioner by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before May 26, 1980. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

The petition recites among other matters that:

"The subject track is no longer needed for rail transportation service, constitutes a continuing and burdensome maintenance expense, and is an unnecessary safety hazard. The track is not used at the present time, and there is no present prospect that the 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 the City of Duluth."

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 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

April 28, 1980

Richard P. Braun
Commissioner

Errata

At 4 S.R. 1690, April 21, 1980, rules of the Health Department, Manpower Division, relating to examination and licensing of morticians, there is an error in the requirements for persons wishing to qualify as competent to engage in the practice of mortuary science. In 7 MCAR § 1.022 A.3., the word "written" should be struck from the first sentence, as shown below:

A. Every person who wishes to qualify as competent to engage in the practice of mortuary science, shall comply with the following requirements:

3. After these education qualifications, in the order specified, have been acquired, the applicant shall attain a satisfactory level of achievement in a comprehensive written examination, approved by the Commissioner of Health in such subjects related to the practice of mortuary science as the commissioner may prescribe.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

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Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

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