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STATE REGISTER

STATE OF MINNESOTA

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April 6, 1981

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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 5		
41	Monday Mar 30	Monday Apr 6	Monday Apr 13
42	Monday Apr 6	Monday Apr 13	Monday Apr 20
43	Monday Apr 13	Monday Apr 20	Monday Apr 27
44	Monday Apr 20	Monday Apr 27	Monday May 4

*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 and notices of intent to adopt rules without a public hearing 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, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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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*.

Cover graphic: *Minnesota State Capitol*, ink drawing by Ric James.

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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:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A 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 lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

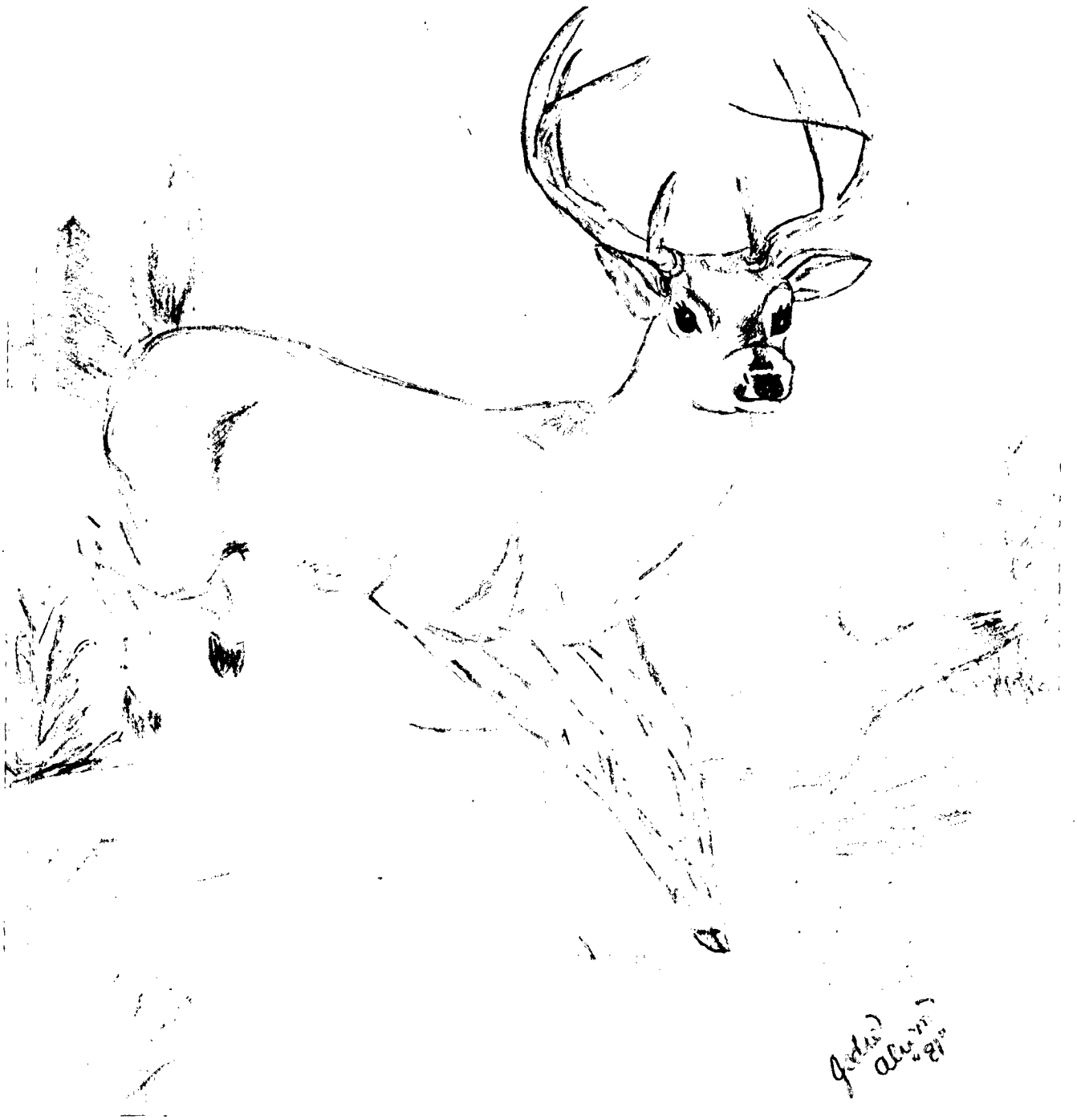
Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

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

MCAR AMENDMENTS AND ADDITIONS

Public Hearings on Agency Rules
April 13-18, 1981

Date	Agency & Rule Matter	Time & Place
Apr 13	Energy Agency Administration & Distribution of Community Energy Planning Grants Hearing Examiner: Kent Roberts	9:30 a.m., 5th Floor Conference Room; Veterans Services Bldg., 20 W. 12th Street, St. Paul, MN 55155



***WHITE TAIL DEER*, pencil drawing by Jodie Alwin, 9th grade, New Ulm Junior High School, New Ulm, MN.**

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Revenue
Property Equalization Division

Amendment to Proposed Rules Governing the Apportionment of Railroad Operating Property to Counties and Taxing Districts

Due to an oversight, the following numerical example was omitted from the above captioned rules as they appeared in the March 23, 1981 edition of the *State Register* (5 S.R. 1482-1487). The example is now being published to correct this omission. It should be used in conjunction with the narrative which appeared in 5 S.R. 1482-1487. The example is not intended to be a rule in and of itself, but is used to illustrate the proposed rules. [See next page.]

Department of Revenue
Property Equalization Division

Proposed Amendments to Rules Governing the Valuation and Assessment of Electric, Gas Distribution and Pipeline Companies (Utility Company)

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the State of Minnesota Department of Revenue proposes to adopt the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Gerald D. Garski
Manager of the State Assessed Property
Property Equalization Division
Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
(612) 296-5131

[Continued on S.R. 1574.]

	LAND COMPONENT				TRACK COMPONENT					STRUCTURES			
Taxing District	Ave. E.M.V. Per Acre	# of R.R. Oper. Acres	Gross R.R. Land Component	Adj. R.R. Land Component @ 60%	Miles of Main Line	Value of Main Line @ $30,000 Mile	Miles of all other Track	Value of All Other Track @ $20,000	Total Track Component	Structures At original cost	Total of 3 Components	% of 3 Components to Unit Value*	Taxing Dist. Portion of Unit Value
St. Paul, S.D. # 625	$19,000	50	$ 950,000	570,000	8	$ 240,000			$ 240,000	$400,000	$1,210,000	37.87%	$ 458,285
Minneapolis, S.D. #1	20,000	80	1,600,000	960,000	12	360,000			360,000	20,000	1,340,000	37.87%	507,522
Fridley, S.D. #16	15,000	95	1,425,000	855,000	6	180,000	20	$ 400,000	580,000	200,000	1,635,000	37.87%	619,253
Coon Rapids, S.D. #11	13,000	70	910,000	546,000	9	270,000			270,000	-----	816,000	37.87%	309,059
Anoka, S.D. #11	12,000	20	240,000	144,000	4	120,000			120,000	250,000	514,000	37.87%	194,677
Ramsey, S.D. #11	10,000	60	600,000	360,000	11	330,000			330,000	-----	690,000	37.87%	261,336
Elk River, S.D. #728	6,000	5	30,000	18,000	2	60,000			60,000	-----	78,000	37.87%	29,542
Elk River Twsp., S.D. #728	2,000	20	40,000	24,000			8	160,000	160,000	-----	184,000	37.87%	69,690
Big Lake, S.D. #727	3,000	4	12,000	7,200			4	80,000	80,000	-----	87,200	37.87%	33,027
Big Lake Twsp., S.D. #727	1,000	100	100,000	60,000			20	400,000	400,000	-----	460,000	37.87%	174,224
			$5,907,000	$3,544,200		$1,560,000		$1,040,000	$2,600,000	$870,000	$7,014,200		$2,656,615

*Taxable Minn. Portion of Unit Value $2,656,615 = 37.87%

Total of 3 Components for All Taxing Districts $7,014,200

Authority for the adoption of these rules is contained in Minnesota Statutes, §§ 270.06 (14); 270.11, subd. 1 and 6; 273.33, subd. 2; 273.37, subd. 2; and 273.38. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the date and information relied upon to support the proposed rules has been prepared and is available from G. D. Garski, at the above mentioned address, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to G. D. Garski, at the above mentioned address.

The proposed rules if adopted will effectively amend the current rules of the Department of Revenue relating to ad valorem (property) taxes imposed on utilities. The present rules deal generally with the valuation, allocation and apportionment of property of electric, gas distribution, pipelines and cooperative electric companies. The proposed rules if adopted would: define certain terms; require utilities to report the cost of leased property; modify the cost approach to value by allowing electric companies an additional 1% depreciation, and gas distribution and pipeline companies an additional 2½% depreciation on the original cost of the companies' assets; increase the study period to be used when computing the "average cost per kilowatt of installed capacity" for steam and gas turbine generating plants; modify the income approach to value by increasing the capitalization rate by .5%; specify the types of utilities that are to be valued on a "cost only" method; provide for the utilization of "obsolescence allowances" if a utility meets certain standards and details the methods to be used to calculate these allowances; require a utility to report certain information on property costs whenever a new taxing district is established; and eliminate the example section of the rules while incorporating the examples into the body of the rules.

Copies of the Notice and the proposed rules are available and may be obtained by contacting G. D. Garski at the above-mentioned address.

Clyde E. Allen, Jr.
Commissioner of Revenue

Amendments as Proposed

Chapter One: Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

13 MCAR § 1.0001 Introduction. On October 19, 1973, the Minnesota Supreme Court in Independent School District No. 99, *et al.* v. Commissioner of Taxation, 297 Minn. 378, ruled that in estimating the market value of utility properties for ad valorem tax purposes, the assessing authorities must consider every element and factor affecting market value. The assessment formula used to value operating utility property since 1962, based solely on the original cost less limited depreciation and commonly known as the "Hatfield Formula," was thus invalidated as a rule of general application.

These regulations are promulgated to fill that void and reflect the manner in which the value of utility property will be estimated by utilizing data relating to the cost of the property and the earnings of the company owning or utilizing the property.

Since the Commissioner of Revenue is by statute the assessor of some of the utility property in the State of Minnesota and has supervisory powers ~~of~~ over all assessments of property, and may raise or lower values pursuant to Minn. Stat. § 270.11, he will estimate the valuation of the entire system of a utility company operating within the state. The entire system will be valued as a unit instead of valuing the component parts and the resulting valuation will be "allocated" or assigned to each state in which the utility company operates. Finally, by the process of apportionment, the portion allocated to Minnesota will be distributed to the various taxing districts within the state. All data used in the valuation, allocation, and apportionment process will be drawn from reports submitted to the Department of Revenue by the utility companies. These reports will include Minnesota Department of Revenue Annual Utility Reports (UTL Forms), Annual Reports to the Federal Energy Regulatory Commission and Annual Reports to the Interstate Commerce Commission. Periodic examinations of the supporting data for these reports will be made by the Department of Revenue.

The methods, procedures, indicators of value, capitalization rates, weighting percents, and allocation factors will be used as described in 13 MCAR §§ 1.0003-1.0007 for ~~1979~~ 1981 and subsequent years, or until, in the opinion of the Commissioner of Revenue, different conditions justify a change.

As in all property valuations the Commissioner of Revenue reserves the right to exercise his judgment whenever the circumstances of a valuation estimate dictate the need for it.

13 MCAR § 1.0002 Definitions. As used in this chapter, the following words, terms and phrases shall have the meanings given to them by this regulation, except where the context clearly indicates a different meaning.

A. "Allocation" means the process of dividing the unit value of a utility company among the states in which the utility operates.

B. "Apportionment" means the process of distributing that portion of the utility company's unit value which has been allocated to Minnesota to the various taxing districts in which the utility company operates.

C. "Book depreciation" means the depreciation shown by a utility company on its corporate books, and allowed the company by various regulatory agencies.

D. "Capitalization rate" means the relationship of income to capital investment or value, expressed as a percentage.

E. "Electric company" means any company engaged in the generation, transmission or distribution of electric power, excluding cooperatives and municipal corporations.

F. "Gas distribution company" means any company engaged in the distribution of natural or synthetic gas excluding cooperatives and municipal corporations.

G. "Installed capacity" means the number of kilowatts a power plant is capable of producing as shown by the nameplates affixed to the generators by the manufacturer.

H. "Integrated company" means any company engaged in two or more utility operations within Minnesota, such as electric distribution and gas distribution, within the framework of one corporate structure.

I. "Major generating plant" means any steam electric power plant capable of generating 25,000 KW (kilowatts) or more; or any hydroelectric, internal combustion, or gas turbine power plan capable of generating 10,000 KW or more.

J. "Net operating earnings" means earnings from system plant of the utility, after the deduction of operating expenses, depreciation, and taxes but before any deduction for interest.

K. "Non-formula assessed property" means property of a utility which is valued by the local or county assessor rather than by the Commissioner of Revenue.

L. "Operating property" means any property, owned or leased, except land that is directly associated with the generation, transmission, or distribution of electricity, natural gas, gasoline, petroleum products, or crude oil. Examples of operating property include, but are not limited to substations, transmission and distribution lines, generating plants, and pipelines. Land, garages, warehouses, office buildings, pole yards, radio communication towers, and parking lots are examples of non-operating property.

M. "Pipeline company" means any company engaged in the transmission of natural gas, gasoline, petroleum products or crude oil via a fixed line of pipes.

N. "System plant" means the total tangible property, real and personal, of a company which is used in its utility operations in all states in which it operates.

O. "Throughput" means the amount of product measured in barrels, gallons or cubic feet which passes through a pipeline.

P.~~O.~~ "Unit value" means the value of the system plant of a utility company taken as a whole without any regard to the value of its component parts.

Q.~~P.~~ "Weighted pipe line miles" means the product obtained by multiplying the number of miles of each size of a pipeline by the diameter in inches of each size. Example: a 6 mile pipeline having 3 miles with a 10 inch diameter and 3 miles with a 30 inch diameter would have a weighted miles product of 120.

13 MCAR § 1.0003 Valuation.

A. General. Public utilities are subject to stringent government regulations over operations and earnings. Because of this unique characteristic of public utility companies, the traditional approaches to valuation estimates of property (cost, capitalized income and market) must be modified when utility property is valued. Consequently, for the ~~1979~~ 1981 and subsequent assessment years, until economic and technological factors dictate a change, the value of utility company property will be estimated in the manner provided in this chapter.

B. Market approach. Market value implies a price for which an entire public utility enterprise might reasonably change hands between willing and informed buyers and sellers. The term presupposes a market of normal activity, no urgency to buy or sell on the part of either buyer or seller, and continued operation of the utility as a single entity. Public utility property is seldom transferred as a whole unit under these circumstances. Consequently, after consideration of this approach, it has been decided

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that valuation of utility properties by this approach is speculative and unreliable and will not be employed as a method of valuation for utility property at this time.

C. Cost approach. The cost factor that will be considered in the utility valuation formula is the original cost less depreciation of the system plant, and improvements, plus the original cost of construction work in progress on the assessment date. The original cost of any leased property used by the utility must be reported to the commissioner in conjunction with the annual utility report. If the original cost of the leased property is not available, the commissioner shall make an estimate of the cost by capitalizing the lease payments. Depreciation will not be allowed on construction work in progress. Depreciation will be allowed as a deduction from cost in the amount allowed on the accounting records of the utility company, as such records are required to be maintained by the appropriate regulatory agency.

Depreciation, however, shall not exceed the prescribed percentage of cost: for electric companies, ~~18~~ 19 percent; for gas distribution companies, ~~45~~ 47.5 percent; pipeline companies, ~~45~~ 47.5 percent.

When valuing electric company property the "average cost per kilowatt of installed capacity" will also be considered. Any excess of average cost per kilowatt of installed capacity over the actual cost of production plant (except land) multiplied by the kilowatts of installed capacity will be added to the original cost of the plant, and reduced by the same rate of depreciation applicable to the original cost. The average cost per kilowatt of installed capacity is computed by averaging the construction costs of production plant (except land) for major generating plants in the Continental U.S. by type of plant, as shown in the latest issues of the United States Department of Energy publications, Hydro-Electric Plant Construction Cost and Annual Production Expenses and Steam-Electric Plant Construction Cost and Annual Production Expenses and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses. Average cost per kilowatt of installed capacity will be determined after excluding, federally constructed, multi-purpose projects, and nuclear electric generating plants. The periods to be used for computing the average will be as follows: hydroelectric plants, 15 years; steam electric plants, ~~10~~ 15 years; gas turbine plants, ~~10~~ 15 years.

The following examples illustrate this procedure. In both examples assume that the study of the most recent construction data available from Federal Power Commission publications indicates that the average cost per kilowatt of installed capacity in a fossil fuel steam plant is $150 per kilowatt. Each of the two plants is of this type.

1. Plant	#1	#2
2. Installed capacity	100,000 KW	50,000 KW
3. Year in Service	1960	1940
4. Cost of Plant	$15,200,000	$5,000,000
5. Cost per KW	$152	$100
6. Average cost per KW per Study	$150	$150
7. Excess (line 6 − 5)	—	$50
8. Additional value (line 7 × 2)	—	$2,500,000

The cost indicator of value computed in accordance with this regulation will be weighted for each class of utility company as follows: electric companies, 85 percent; gas distribution companies, 75 percent; pipeline companies, 75 percent.

The following example illustrates how the cost indicator of value would be computed for an electric company:

1. Utility Plant (Cost)		$200,000,000
2. Construction in Progress		5,000,000
3. Additional Value From Average Cost per K. W. Computation		2,500,000
4. Total Plant		207,500,000
5. Non-Depreciable Plant (Land, Intangibles, C.W.I.P.)	17,500,000	
6. Depreciable Plant	190,000,000	
7. Depreciation (Maximum 19%)		36,100,000
8. Total Cost Indicator of Value		172,900,000

D. Income approach to valuation. The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40 percent; previous year, 35 percent; final year, 25 percent. After considering, as far as possible, all conditions that may exist in the future that may affect the present annual return, including risk, life expectancy of the property, and cost of money, the capitalization rates used to compute value

for the assessment will be: electric companies, ~~8.00~~ 8.50 percent; gas distribution companies, ~~8.25~~ 8.75 percent; pipeline companies ~~8.50~~ 9.00 percent. The income indicator of value computed in accordance with this regulation will be weighted for each class of utility company as follows: electric companies, 15 percent; gas distribution companies, 25 percent; pipeline companies, 25 percent.

The following example illustrates how the income indicator of value would be computed for a pipeline company:

	1978	1979	1980
1. Net Operating Income	468,000	385,700	450,000
2. Capitalized Income ¶ 9%	5,200,000	4,285,600	5,000,000
3. Weighting Factor	25%	35%	40%
4. Weighted Capitalized Income	1,300,000	1,500,000	2,000,000
5. Total Income Indicator of Value			4,800,000

E. Unit value computation. The unit value of the utility company will be the total of the weighted indicator of value.

The following is an example of the computation of the unit value for a pipeline company:

Cost indicator of value .....$5,000,000 × 75% = $3,750,000
Income indicator of value.....$4,800,000 × 25% = $1,200,000
Unit Value of Pipeline Company 100% $4,950,000

~~F. Valuation of utility property of cooperatives. Cooperative associations shall have their utility property valued on the basis of historical cost only since they do not operate on the traditional profit making basis. Depreciation will be allowed as a deduction from cost at increments of 2.5 percent per year but the maximum shall not exceed 25 percent of property used in the generation, transmission or distribution of electric power.~~

F. Valuation of utility property of cooperatives and other non-common carrier or non-regulated utilities. Cooperative associations and other types of utilities which do not operate in the traditional profit making mode, or are not common carriers, or are non-regulated, will have their utility property valued on the basis of historical cost only. Depreciation will be allowed as a deduction from the historical cost in increments of 2.5 percent per year, but the maximum depreciation allowed shall not exceed 25 percent of the cost of the utility operating property. Additions to existing utility property will be depreciated 2.5 percent per year until they reach the 25% maximum. Retirements of utility property will be deducted from the cost basis at the appropriate depreciation level of the retired property.

The following example illustrates this process for an electric cooperative association.

1. Cost of substation	$1,000,000
2. Value 1st year ¶ 97.5%	975,000
3. Value 2nd year ¶ 95%	950,000
4. Value 3rd year ¶ 92.5%	925,000
5. Value 4th year ¶ 90%	900,000
6. Value 5th year ¶ 87.5%	875,000
7. Value 6th year ¶ 85%	850,000
8. Value 7th year ¶ 82.5%	825,000
9. Value 8th year ¶ 80%	800,000
10. Value 9th year ¶ 77.5%	775,000

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11. Value 10th year ¶ 75%	750,000
12. Value 11th and succeeding years at 75%	750,000

(Cite 1 S.R. 718)
November 8, 1976

G. Obsolescence allowances. The commissioner may adjust the value calculated pursuant to 13 MCAR § 1.0003 through the use of an obsolescence allowance. This allowance is intended to be used in order to recognize the effect the curtailment or termination of a pipeline's source of supply may have on its value. In order for a pipeline or a gas distribution company to be eligible for such an allowance they must meet certain criteria or standards. These standards are listed below. It is mandatory that standards 1, 2 and 3 be met by the utility. It is highly desirable that standards 4 and 5 also be met.

1. The utility must adequately demonstrate, to the satisfaction of the commissioner, that its source of supply for gas or oil will be terminated within the next 10 years.

2. The utility must be at, or above, the maximum depreciation allowance as specified by 13 MCAR § 1.0003 C.

3. The utility must have made application to the appropriate regulatory agency for increased depreciation allowances, and the application must not have been denied or rejected.

4. The utility must not have made any major capital expenditures within the last 3 years.

5. The utility must not have sold any long term bonds or signed any long term notes within the last 3 years.

If the utility has made major capital expenditures, or entered into long term debt obligations within the last three years, a satisfactory explanation of the rationale for these actions must be made to the commissioner before an allowance for obsolescence will be granted.

The obsolescence allowances which may be applied to the utility's value will be calculated in the following manner:

Method 1. A 5 year average of the utility's annual throughput will be calculated. The throughput for the assessment year will be compared to this average and a percentage calculated. This percentage will be applied to the cost indicator of value calculated pursuant to the 13 MCAR § 1.0003 C. in order to adjust the indicator for obsolescence. The adjusted cost indicator of value will be used in the calculation of the unit value pursuant to 13 MCAR § 1.0003 E. The following is an example of this procedure.

Year	Throughput in Barrels	
1975	1,200,000	
1976	1,300,000	
1977	1,150,000	
1978	1,100,000	
1979	1,050,000	
	5,800,000	Total
	1,160,000	Average Throughput

1980 Throughput	1,000,000 Barrels
Percent of 1980 Throughput to 5 year Average Throughput	86%
Cost Indicator of Value	$6,300,000
Costs Indicator Adjusted for Obsolescence	$5,418,000

Method 2: The book depreciation shown on the books and accounts of the utility will be compared to the depreciation allowed by 13 MCAR § 1.0003 C. If the book depreciation exceeds the maximum depreciation allowance, 50% of the excess depreciation will be used in the calculation of the cost indicator of value. An example of this calculation is as follows:

Book Depreciation	$6,000,000	
Maximum Allowable Depre.	4,750,000	
Excess Depreciation	$1,250,000	
50% of Excess Depreciation	625,000	
Utility Plant		$11,000,000
Construction Work in Progress		50,000
Total Plant		$11,050,000

Non-Depreciable Plant (Land, CWIP)	1,050,000	
Depreciable Plant	10,000,000	
Depreciation (Maximum 47.5%)		4,750,000
Obsolescence Allowance		625,000
Cost Indicator of Value		$ 5,675,000

Method 3. The income indicator of value computed in accordance with 13 MCAR § 1.0003 D. will be calculated by capitalizing the utility's 3 year weighted net operating earnings for a specific term of years rather than into perpetuity. The term of years to be used will be the number of years remaining until the expected expiration of the utility's source of supply for product (oil, gas), or the number of years remaining until the utility's major assets (pipeline, pump stations, storage tanks, etc.) are fully depreciated, whichever is greater. An example of this capitalization process is as follows:

	1978	1979	1980
Net Operating Earnings	1,320,000	1,000,000	800,000
Weighting	25%	35%	40%
Weighted Net Operating Earnings	330,000	350,000	320,000

Total Weighted Net Operating Earnings $1,000,000

Term of years until major assets are fully depreciated 8
Capitalization rate pursuant to 13 MCAR § 1.0003 D. 9.00%
Capitalization rate converted to term of 8 years 18.0674%

Capitalized Income/Income Indicator of Value $5,534,831

The commissioner shall apply to the valuation process whichever of the 3 obsolescence methods is most appropriate in order to equitably recognize the effect of obsolescence on the utility's value.

13 MCAR § 1.0004 Allocation.

A. General. After the unit value of the utility property has been estimated, the portion of value which is attributable to Minnesota must be determined. This process of dividing the unit value of a utility company among the states in which the utility operates is called allocation. Each of the factors in the allocation formula is assigned a weighted percentage to denote the relative importance assigned to that factor. The resulting sum of the weighted factors multiplied by the unit value yields the valuation of the utility property which will, after the adjustments described in 13 MCAR § 1.0005, be subject to ad valorem tax in the State of Minnesota.

The factors to be considered in making allocations of unit value to Minnesota for the utility companies, and the weight assigned to each factor for each class are specified in this regulation.

B. Electric companies. The original cost of the utility property located in Minnesota divided by the total original cost of the property in all states of operation is weighted at 90 percent. Gross revenue derived from operations in Minnesota divided by gross operations revenue from all states is weighted at ten percent.

The following example illustrates this formula, assuming a unit value of $20,000,000.

Minnesota plant cost	$115,000,000	× .90 = 50.49%
System plant cost	$205,000,000	
Minnesota gross revenue	$ 40,000,000	× .10 = 3.80%
System gross revenue	$105,000,000	
Total percentage allocable to Minnesota		54.29%
Unit value of system plant		$20,000,000
Minnesota Portion of Unit Value		$10,858,000

C. Gas distribution companies. The allocation of value of gas distribution companies shall be made utilizing the same factors

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used to determine the allocation of value of electric companies. The weight given to the original cost factor will be 75 percent, and gross revenue shall be weighted 25 percent.

D. Pipeline companies. In addition to the cost factor and the gross revenue factor, a weighted pipeline miles factor shall be considered in allocating the value of pipeline companies. Weighted pipeline miles means the number of miles of pipeline multiplied by the diameter of the pipe, measured in inches. To illustrate, weighted pipeline miles for a pipeline 6 miles long which has 3 miles of pipe with a diameter of 10 inches and 3 miles of pipe with a diameter of 30 inches would be calculated as follows:

3 miles × 10″ diameter = 30
3 miles × 30″ diameter = 90
Weighted pipeline miles = 120

The following example illustrates the allocation of value of property of a pipeline company and the weights given to each factor.

Minnesota plant cost	$13,500,000	× .75 =	25.76%
System plant cost	$39,300,000		
Minnesota gross revenue	$ 2,980,000	× .05 =	1.60%
System gross revenue	$ 9,300,000		
Minnesota weighted pipeline miles	9,500		
System weighted pipeline miles	27,100	× .20 =	7.01%
Total percentage allocable to Minnesota			34.37%

13 MCAR § 1.0005 Adjustments for non-formula assessed or exempt property.

A. After the Minnesota portion of the unit value of the utility company is determined, any property which is non-formula assessed or which is exempt from ad valorem tax, will be deducted from the Minnesota portion of the unit value. Only that qualifying property located within the State of Minnesota may be excluded.

B. The following properties will be valued by the local or county assessor and, therefore, the formula provided herein for the valuation of utility property will not be applicable for such property.

1. Land
2. Non-operating property
3. Rights of way

C. The Minnesota portion of the unit value will be reduced by the original cost of ~~these items except that~~ land and rights of way. In the case of non-operating property, the deduction shall be original cost, less the rate of depreciation applicable in the valuation process pursuant to 13 MCAR § 1.0003.

D. A deduction from the Minnesota portion of the unit value shall also be made for property, real or personal, which is exempt from ad valorem tax. For instance, pollution control equipment for which an exemption has been granted is exempt. A deduction from the Minnesota portion of the unit value shall be made at original cost, less the applicable rate of depreciation used in the valuation process pursuant to 13 MCAR § 1.0003. The value of personal property, such as office machinery and vehicles, which is not taxed, shall also be excluded from the Minnesota portion of the unit value. The deduction shall be at original cost less the applicable rate of depreciation utilized in the valuation process.

The following example illustrates how these items are deducted from the Minnesota portion of the unit value.

1. Minnesota Portion of Unit Value		$5,000,000
2. Excludable Items—Non Depreciable		
a. Land Assessed Locally		3,000
b. Land Rights		2,000
3. Excludable Items—Depreciable		
a. General Plant Items	$10,000	
b. Pollution Control Equipment	10,000	
c. Gross Depreciable Items	20,000	
d. Depreciated at 25%	5,000	
e. Net Depreciable Excludable Items		15,000
4. Total Excludable Items		20,000
5. Minnesota Apportionable Value		4,980,000

E. The utility company shall have the burden of proof to establish that the value of any property should be excluded from the Minnesota portion of the unit value. Accordingly, the utility company shall have the responsibility to submit in the form required by the Commissioner of Revenue, such schedules of exempt or non-formula assessed property as he may require.

13 MCAR § 1.0006 Apportionment.

A. After the unit valuation of the utility company has been allocated to the State of Minnesota and has been adjusted pursuant to 13 MCAR § 1.0005, the determined amount shall be apportioned or distributed to the taxing districts in Minnesota in which the company operates. This apportionment will be made by the Commissioner of Revenue on the basis of information submitted by the utility companies in annual reports filed with the commissioner.

B. The following information must be submitted for each taxing district:

1. The market value of the company's operating property by classification, as reflected in the last assessment, including the cost of leased taxable property.

2. The original cost of the company's operating property by classification, including the cost of leased taxable property.

3. The original cost of any new additions since the last assessment, including work in progress on the assessment date.

4. The market value of any retirements made after the last assessment, as reflected in that assessment.

5. The original cost of any retirements made after the last assessment.

6. Whenever a new taxing district is established, the information submitted by the utility companies for the taxing district must be submitted in the same form as enumerated in 1 through 5 above. If the utility, because of administrative difficulty, is forced to make estimates of values and costs for property within new taxing districts, these estimates must be approved by the commissioner.

C. The total market value of each company's operating utility property in Minnesota shall be divided by the larger of:

1. The last market value of each company's operating utility property in each taxing district, plus original cost of new construction, reduced by the last market value of property retired since the last assessment.

2. The original cost × 75 percent of each company's operating utility property in each taxing district plus original cost of new construction reduced by the original cost of property retired since the last assessment.

D. For this purpose, the last market value and the last assessment shall mean the latest assessment immediately prior to the current assessment. The portion of unit value to be assigned to each taxing district will be the resulting percentage multiplied by the Minnesota portion of the unit value, as adjusted pursuant to 13 MCAR § 1.0006.

~~E. If the market value of any parcel of property assessed pursuant to this chapter is increased, the increase entered on the assessment books shall be subject to the limitation provided in Minn. Stat. § 273.11, subd. 2. The amount of decrease in market value of such property, exclusive of property retired or destroyed since the last assessment, shall not exceed ten percent of the value in the preceding assessment.~~

~~13 MCAR § 1.0007 Comprehensive example. An illustration of the methods and procedures described in 13 MCAR §§ 1.0003-1.0006 is as follows:~~

CAPITALIZATION OF AVERAGE UTILITY WORKSHEET

ALL INFORMATION FROM
1980 MOODY'S PUBLIC UTILITY MANUAL: SPECIAL FEATURES SECTION

10 YEAR STUDY—HOW THE AVERAGE UTILITY IS CAPITALIZED

	YEAR	% OF DEBT	% OF PREFERRED	% OF COMMON
ELECTRIC COMPANIES	1970	55.8%	10.9%	33.3%
	1971	54.8	11.7	33.5

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	1972	53.8	12.4	33.8
	1973	53.8	12.4	33.8
	1974	55.0	12.7	32.3
	1975	53.5	12.8	33.7
	1976	52.5	12.9	34.6
	1977	50.9	13.1	36.1
	1978	50.5	12.9	36.6
	1979	51.4	12.7	35.8
AVERAGE		53.2%	12.5%	34.4%
TRANSMISSION COMPANIES	1970	63.2%	7.4%	29.4%
	1971	62.1	6.5	31.4
	1972	60.4	6.5	33.0
	1973	60.2	6.3	33.4
	1974	59.6	5.8	34.6
	1975	58.3	5.3	36.4
	1976	55.5	5.5	39.1
	1977	51.9	4.9	43.2
	1978	52.4	5.5	42.1
	1979	52.4	5.3	42.3
AVERAGE		57.6%	5.9%	36.5%
DISTRIBUTION COMPANIES	1970	55.9%	9.4%	34.7%
	1971	53.6	9.9	36.6
	1972	54.0	9.1	36.9
	1973	53.8	8.5	37.6
	1974	56.0	8.3	35.8
	1975	54.9	8.8	36.4
	1976	53.0	9.4	37.6
	1977	51.0	9.9	39.1
	1978	48.3	10.3	41.3
	1979	47.1	9.8	43.1
AVERAGE		52.8%	9.3%	37.9%
ROUNDED AVERAGE OF THREE INDUSTRY AVERAGES		55 %	9 %	36 %

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.

Pollution Control Agency
Solid Waste Division

Adopted Rule for the Administration of the Minnesota Solid Waste Management Demonstration Program for Waste Reduction and Source Separation

The rule proposed and published at *State Register*, Volume 5, Number 27, pp. 1069-1079, January 5, 1980, (5 S.R. 1069) is now adopted as proposed, with the following amendments:

Rule as Adopted

6 MCAR § 4.6086 Rule for the administration of the Minnesota solid waste management demonstration program.

C. Definitions.

1. "Acceptable project" means

a. for pre-implementation projects, a project which results in an acceptable written report on the conceptual and technical feasibility of implementing a particular source separation or waste reduction program, as defined in C.16 and C.18, respectively. To be considered an acceptable written report under this rule, the report shall:

(1) describe a particular waste reduction or source separation program proposed to be implemented in a specified area;

(2) establish the solid waste management objectives to be accomplished through the implementation of the proposed program;

(3) evaluate the feasibility and anticipated success of accomplishing those objectives through the implementation of the proposed program,

(4) estimate the operating revenues, if any, to be obtained from the proposed program, considering the availability and security of sources of solid waste and of markets for recovered resources, together with any proposed federal, state or local financial assistance, and,

(5) describe the potential statewide significance or the transferability of knowledge or experience gained from the project to other communities in the state.

b. for implementation projects, a project which:

(1) is undertaken to demonstrate the conceptual and technical feasibility of implementing a particular source separation or waste reduction program as defined in C.16 and C.18, respectively, and

(2) results in a report which includes an analysis of:

(a) the conceptual and technical feasibility of implementing the project and

(b) ~~an analysis of~~ the potential statewide significance of the project or the transferability of the knowledge or experience gained from the project to other communities in the state.

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The agency shall determine that a project is reasonably designed to demonstrate the conceptual and technical feasibility of implementing a particular waste reduction or source separation program if the grant application required to be submitted under Part E. is complete.

E.2.e.(3) If the ~~Director~~ director determines that any of the costs described in the application are not grant eligible or that the application is otherwise incomplete.

E.3. If, while working to complete a project which has been funded under this rule, a grantee finds that more funds are needed to complete the project and that the amount of additional funding needed is more than 20% of the original grant, the grantee shall submit a new grant application which shall be treated in accordance with the procedures set out in ~~G.(1)~~ G.1. through ~~G.(4).~~ G.4. The total amount awarded for any one project (including all additional funding) shall in no event exceed the maximums established in D.2.(a)(3) and D.2.(b)(3).

F.1.a. The name(s) of ~~the~~ each applicant making the grant application;

F.1.j.(5) A breakdown of the staff, consultants, and units of government associated with completing each of the tasks specified in ~~(j)(3)~~ j.(2);

I.1. The agency shall apportion funds allocated to it by the legislature for the grant programs set out in Articles V and VI of the Waste Management Act, Minn. Stat. §§ 115A.42 through 115A.54 (1980) as follows:

I.2. For pre-implementation and implementation grants, the agency shall apportion funds allocated to it by the legislature as follows.

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

Ramsey County

Tax Court

Regular Division

Hauenstein and Burmeister, Inc. and Independent School District No. 726,

Appellants,

v.

The Commissioner of Revenue,

Appellee.

In the Matter of the Appeal from the Commissioner's Order dated February 1, 1980, Relating to the sales tax liability of $4,793.04 for the taxable period ending March 31, 1978 and June 30, 1978.

Docket No. 3080

Order Dated March 18, 1981.

The above matter was submitted for decision on a Stipulation of Facts, written briefs and oral argument heard by Judge Earl B. Gustafson on January 7, 1981.

Mr. William J. Wernz, Attorney at Law of Broeker, Hartfeldt, Hedges & Grant, appeared on behalf of Appellant.

Mr. Paul R. Kempainen, Special Assistant Attorney General, appeared on behalf of Appellee.

Issue

Appellants acted as both a flooring sub-contractor and a prime contractor for equipment installation in a school building project. The issue is whether flooring materials, wall lockers, and gym bleachers purchased by Appellant and installed in the school building are taxable under Minn. Stat. § 297A.01, subd. 4 as sales to a contractor or exempt as sales to a tax exempt political subdivision.

Decision

The sale of flooring materials to Appellant is taxable under Minn. Stat. § 297A.01, subd. 4 as the sale of building materials to a sub-contractor for incorporation into the school building. The sale of wall lockers and gym bleachers is not taxable under Minn. Stat. § 297A.01, subd. 4 because they are not building materials or equipment that became part of the realty.

Findings of Fact

With only minor modifications in form we adopt the Stipulation of Facts submitted by the parties as follows:

1. The Appellant, Hauenstein and Burmeister, Inc. (hereinafter, "H & B, Inc.") is a Minnesota corporation engaged in the businesses of manufacturing, and of construction and furnishing of buildings, and of sales of building materials and other products, with its main offices located in Minneapolis, Minnesota.

2. During the years 1977 and 1978, H & B, Inc. was involved in three aspects (to wit: the wood flooring, the gym bleachers, and the wall lockers) of the construction of a new high school at Becker, Minnesota for Independent School District No. 726 (hereinafter, "School District"). In building its new high school the School District did not invite bids from a single general contractor, but instead hired an architect (Birkeland Architects, Inc., of Buffalo, Minnesota) to separate the specifications for the overall contract into the following divisions, each of which was separately bid upon:

General Construction (which included the wood flooring)
Electrical Construction
Mechanical—Plumbing and Heating Construction
Mechanical—Ventilating and Air Conditioning and Temperature Control Construction

Equipment
- Lockers
- Basketball Backstops
- Bleachers
- Scoreboards
- Swimming Pool
- Stage Curtains
- Compactor
- Conveyor
- Kitchen
- Science Casework
- Classroom Casework
- Seating Auditorium

Divisional Curtains	Seating—Fixed Classroom
Carpet	

3. As the above list indicates, the wood flooring portion of the work was included in the "General Construction" specifications. A copy of that portion of the General Construction Specifications dealing with the wood flooring is marked Exhibit A and incorporated by reference herein.

4. The overall "General Construction" contract (including wood flooring) was awarded to Witcher Construction of Minneapolis, Minnesota (hereinafter, "Witcher"), as indicated by the Contract Agreement between Witcher and the School District dated January 17, 1977, a copy of which is marked Exhibit B and incorporated by reference herein. However, on February 16, 1977, Witcher entered into a separate subcontract with H & B, Inc. for the labor portion of the wood flooring job. A copy of that subcontract is marked Exhibit C and incorporated by reference herein. Pursuant to this subcontract, H & B, Inc. performed the actual installation of the wood flooring into the high school as real property.

5. The materials used in the wood flooring job were obtained in the following manner: On February 15, 1977, the School District issued a purchase order directly to H & B, Inc. for the necessary wood flooring materials. H & B, Inc. then purchased the materials itself at a cost of $38,188.40, and had delivered to the high school construction site where they were installed into the real property. The School District directly paid H & B, Inc. a total of $46,876.00 for the wood flooring materials. The School District then deducted the amount of $46,876.00 from the contract amount which it owed to Witcher for general construction.

6. The gym bleachers portion of the work was separately bid upon, and the separate contract therefor was awarded by the School District to H & B, Inc. In fulfilling its contract H & B, Inc. purchased the bleachers from Hussey Manufacturing Co., Inc., (hereinafter "Hussey") at a cost of $25,413.00. The bleachers were then delivered to the high school construction site where they were put in place in the gymnasium by H & B, Inc. At the direction of the School District, as a safety precaution, H & B, Inc. bolted the top row of the bleachers through wooden blocks to the wall of the gym.

7. The parties to this case are not in agreement regarding the character of the bleachers as real property or tangible personal property after installation by H & B, Inc. A copy of the contract specifications for installation of the bleachers is marked Exhibit H, and incorporated by reference herein. The parties agree that the bolts or screws which attach the bleachers to the school building can be removed without substantial damage either to the bleachers or to the school building, although the bleachers cannot be removed from the building through existing doors without substantial dismantlement.

8. On May 19, 1978, H & B, Inc. invoiced the School District for the bleachers. This invoice amount was paid by the School District to H & B, Inc. on June 8, 1978. The balance of the original bleacher contract price of $50,523.00 (as reduced by change orders not herein relevant) was paid by the School District to H & B, Inc. on August 10, 1978.

9. The wall lockers portion of the work was also separately bid upon, and the separate contract therefor was awarded by the School District to H & B, Inc., a copy of which is marked Exhibit M, and incorporated by reference herein. The lockers themselves were supplied by Republic Steel, who on November 23, 1977, sent a price quotation to the School District c/o H & B, Inc., a copy of which is marked Exhibit N, and incorporated by reference herein. This quotation was accepted and the lockers were thereafter delivered to the high school construction site where they were installed by H & B, Inc.

10. The parties in this case are not in agreement regarding the character of the lockers as real property or tangible personal property after installation by H & B, Inc. A copy of the contract specifications for installation of the lockers is marked Exhibit O, and incorporated by reference herein. The parties agree that the bolts or screws which attach the lockers to the school building can be removed without substantial damage either to the lockers or to the school building.

11. On April 30, 1978, Republic Steel invoiced the School District for the cost of the lockers and the freight in a total amount of $41,969.50. This invoice amount was paid by the School District on June 8, 1978. The School District then deducted the amount of $41,969.50 from the original contract amount which it owed to H & B, Inc. for the locker portion of the job. The balance of $23,902.50 owed to H & B, Inc. on the original contract was paid on August 10, 1978 and September 4, 1978.

12. Upon audit by the Commissioner of Revenue H & B, Inc. was determined to be liable for contractor's use tax with respect to each of the above described transactions. The Commissioner issued his Order herein dated February 1, 1980, assessing additional use tax against H & B, Inc. in the amount of $4,130.33, plus interest.

13. The parties in this case do not agree whether a sale of building materials by the School District in connection with the construction of a new school took place nor, if so, whether such a sale would constitute an integral part of its business. However, the parties do agree that, aside from its school construction activities, the School District does not sell building materials as a recurring or frequent part of its activities.

14. While the School District herein is itself exempt pursuant to Minn. Stat. § 297A.24, subd. 1(j), the School District has by contract with H & B, Inc. agreed to pay in full on behalf of H & B, Inc. any sales or use tax liability ultimately found to exist.

15. Marked Exhibit W, and incorporated by reference herein, is a copy of The American Institute of Architects General

Conditions of The Contract for Construction, AIA Document A201, which was a part of the School District's contracts with H & B, Inc., and Witcher. Marked Exhibit X, and incorporated by reference herein, is a copy of part of the insurance policy purchased by the School District with respect to the construction of its new high school.

Conclusions of Law

1. The sale of wood flooring materials to Appellant, Hauenstein and Burmeister, Inc. is taxable under Minn. Stat. § 297A.01, subd. 4 as a "retail sale" to a sub-contractor.

2. The sale of wall lockers and gym bleachers to Appellant, Hauenstein and Burmeister, Inc. is not taxable under Minn. Stat. § 297A.01, subd. 4 and constitutes a "sale for resale."

3. The sale of wall lockers and gym bleachers to Appellant, Independent School District No. 726, is exempt under Minn. Stat. § 297A.25, subd. 1(j) as a sale to a political subdivision.

4. The Commissioner's Order dated October 1, 1979 should be amended to require Appellant to pay a sales tax on its purchase of wood flooring materials only and not on the purchase or use of the wall lockers and gym bleachers.

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

MINNESOTA TAX COURT
Earl B. Gustafson

Memorandum

This is a sales and use tax case which requires the Court to again draw the line between purchases of tangible personal property by political subdivisions (which are exempt from the sales tax under Minn. Stat. § 297A.25, subd. 1(j)) and purchases of building materials supplies and equipment by contractors who are erecting buildings or improving real estate. These later transactions—sales to building contractors and sub-contractors—are considered "retail sales" and taxable under Minn. Stat. § 297A.01, subd. 4 even though the building materials or equipment are eventually incorporated into the realty of a tax exempt entity. See *County of Hennepin v. State of Minnesota*, 263 N.W. 2d 639 (Minn. 1978); *Christensen Corporation v. Commissioner*, Minn. Tax Ct. Dkt. No. 2536 (March 18, 1980); Tax S&U 112.

Independent School District No. 726, herein after referred to as Becker School District, built a new high school building in 1977 and 1978. Witcher Construction Company was the general contractor obligated to furnish all material and work in erecting the school building. There were separate contracts for electrical construction, mechanical construction and equipment installation. The taxpayer, was involved as a flooring sub-contractor under the construction contract and had two equipment contracts, one for wall lockers and another for gym bleachers.

The first transaction we will discuss is the purchase of wood flooring. This involves Witcher Construction Company as the general contractor and Hauenstein and Burmeister, Inc., the taxpayer, as sub-contractor. Witcher Construction, as general contractor, was obligated to install the floors throughout the building. Witcher sub-contracted the labor and material for this wood flooring installation to the taxpayer, Hauenstein and Burmeister, Inc. The taxpayer purchased the wooden flooring from a supplier and, in turn, "sold" it to Becker School District. Becker turned around and gave the flooring back to taxpayer who proceeded to complete this part of the construction sub-contract. The Commissioner contends that the original sale of wood flooring to taxpayer is taxable as a "retail sale" to a building contractor or sub-contractor under Minn. Stat. § 297A.01, subd. 4.

We agree.

Minn. Stat. § 297A.01, subd. 4 reads in relevant part as follows:

A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business . . . *Sales of building materials, supplies and equipment to owners, contractors, sub-contractors or builders for the erection of buildings or the alteration, repair or improvement of real property are "retail sales" or "sales at retail"* in whatever quantity sold and whether or not for purpose of resale in the form of real property or otherwise. (Emphasis added).

The Minnesota Supreme Court has said that this statute reflects a legislative policy that construction contractors, sub-contractors and builders who purchase or use materials for the improvement of realty are liable for either the sales tax or the complementary use tax (Minn. Stat. § 297A.14) as the ultimate users and consumers of such materials while they remain personal property and before they become part of the realty. *County of Hennepin v. State of Minnesota*, 263 N.W. 2d 639, 640, (Minn. 1978). The imposition of the sales and use tax upon construction contractors in this manner remains the same whether they are building for non-exempt or exempt entities.

The taxpayer would have us focus on the sale from itself to Becker School District, a tax exempt school district, and ignore the fact that the materials end up back in the hands of the taxpayer, the sub-contractor, for incorporation into the building. If we isolate the sale to the Becker School District, this could be considered exempt as a sale to a tax exempt organization. We cannot, however, accept this restricted view of the entire transaction. There is no difference, in substance, between a sale of

materials to a sub-contractor who proceeds to use it in the construction of a building and a sale to a sub-contractor who "sells" the materials to the owner who immediately returns it for use in constructing the building. Either way it is a sale to a building sub-contractor of building materials "for the erection of buildings" and taxable as a "retail sale" under Minn. Stat. § 297A.01, subd. 4.

If the Becker School District were determined to avoid the sales tax—because under the contract it must indemnify the contractor for any tax paid—this could have been accomplished by following the procedures set out in Tax S&U 112(c)(3). This would require the appointment of the contractor or (presumably) a third party as a purchasing agent under a written agreement that would relieve the contractor of the usual obligations regarding payment to suppliers, risk of loss, and liability for any defects in the materials. See *Christensen Corporation v. Commissioner*, Minn. Tax Ct. Dkt. No. 2536 (March 18, 1980).

The taxpayer, Hauenstein & Burmeister, had two additional contracts with the Becker School District, one for furnishing and installing bleachers in the gymnasium and another for furnishing and installing wall lockers. Both were lump sum contracts and both contained identical language obligating Hauenstein & Burmeister to "cause the delivery of and manage all of the material and perform all of the work shown on the plans and drawings and described in the specifications." Under the bleacher equipment contract the taxpayer provided both the bleachers and the labor for installation and was paid the contract amount by Becker School District. Under the locker equipment contract, the taxpayer obtained the bid for the lockers from its supplier, Republic Steel, but Becker School District paid Republic directly and deducted this from the contract amount. Again, we find no difference, in substance, between the two contracts and consider the original sales of this equipment in both instances sales from a supplier to a contractor who, in turn, sold this equipment "installed" to the Becker School District. If this equipment becomes incorporated as part of the realty it is taxed as a "retail sale" under Minn. Stat. § 297A.01, subd. 4. If it is not integrated with the building and remains personal property there is no "retail sale" until there is a transfer of title or possession to Becker School District. The original sale from the supplier to Hauenstein & Burmeister would be a sale for resale and not taxable.

The pivotal question then becomes: are these lockers and bleachers, after installation, personal property or real property?

"Building materials, supplies and equipment" are defined in S&U 112(a) as "property intended to become part of a new building . . . [and] [o]ther property usually incorporated into a building . . ." Section 297A.01, subd. 4 itself applies only to "building materials, supplies and equipment" sold for "improvement of real property".

The Sales and Use Tax law, Chapt. 297A. contains no special definition of the terms "real property" and "building" but they are statutorily defined "for the purposes of taxation" generally in Minn. Stat. § 272.03, subd. 1(a) and (b). This defines "real property" to include "buildings" and, in turn, defines "building" to include the

. . . building or structure itself, together with all improvements or fixtures annexed to the building or structure, which are integrated with and of permanent benefit to the building or structure, . . . and which cannot be removed without substantial damage to itself or to the building or structure.

Section 272.03, subd. 1 was amended in 1971 so that instead of including "fixtures" generally within the concepts of "real property" and "building", the present statute provides that only fixtures "which are *integrated with* and of *permanent benefit* and "*cannot be removed without substantial damage*" are to be considered realty. (Emphasis added)

This is not inconsistent with Tax S&U 112(a) which reads in its entirety as follows:

(a) In general. Under Section 297A.01, subd. 4 sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders constitute retail sales and are thus taxable.

The term "building materials, supplies and equipment", as used in these regulations, refers to property intended to become part of a new building, structure, road or an addition, repair, improvement or alteration to roads or real estate. A partial list of such materials includes gravel, blacktop, bricks, cement, steel beams and rods, electrical supplies, glass, woodwork, paint and paint supplies, pipes and valves, aluminum sheathing, wood and composition sheathing, lumber, plastics, roofing and wallboards. Other property usually incorporated into a building or other types of real property includes lighting fixtures, plumbing and bathroom fixtures, furnaces, boilers and heating units for space heating, pre-fabricated cabinets and central air conditioning units (for space cooling).

Other types of equipment may be incorporated into a new structure or added to an existing structure undergoing repairs, alterations or improvements in order to enhance the attractiveness of the structure or to increase its rental or sales value. Examples of such equipment are built-in dishwashers, stoves and ranges, garbage disposal units and air-conditioners installed in openings in outer walls.

If property is removable without substantial damage to itself or to the building, that property is not part of the building nor of the realty for tax purposes, according to § 272.03. This removability standard is an appropriate one to apply. Admittedly, as the commissioner points out, § 272.03 applies generally to ad valorem taxation and not specifically to sales and use taxes. This is the

most recent legislative expression on the subject, however, and is not inconsistent with any language in Chapt. 297A, the Sales and Use Tax Act. The adoption of this standard in sales and use tax cases will presumably follow legislative intent and have the added benefit of greater uniformity and certainty.

The parties have stipulated that removal of the bolts and screws which attach the bleachers and the lockers to the school building would not cause substantial damage to the building nor to the bleachers and lockers themselves. (Stip. Para. 7, 10). Under the cited statute, this stipulation disposes of the question whether the bleachers or lockers became part of the Becker school building. They did not. Since the bleachers and lockers did not become part of the building or realty, they do not constitute "building materials or equipment" under Minn. Stat. 297A.01, subd. 4 and S&U 112(a). This means they are never taxed because they were purchased by a retail consumer which is an exempt entity, Becker School District.

E.B.G.

SUPREME COURT

Decisions Filed Friday, March 27, 1981

Compiled by John McCarthy, Clerk

51437/Sp. State of Minnesota v. Walter Lloyd Harding, Appellant. Ramsey County.

Evidence of defendant's guilt was sufficient.

Trial court did not prejudicially err in admitting evidence of prior sexual misconduct involving the same victim.

The less serious of the two convictions is vacated pursuant to Minn. Stat. § 609.04 (1980).

Conviction of criminal sexual conduct in the first degree affirmed, but conviction of criminal sexual conduct in the second degree vacated. Otis, J.

50945/Sp. Frank Mee, Relator, v. Metropolitan Transit Commission, self-insured. Workers' Compensation Court of Appeals.

The finding that employee is not in need of retraining lacks sufficient evidentiary support when it is apparently based on a medical opinion rejected in a prior proceeding and on the testimony of a vocational counselor who did not state what he thought employee could earn without retraining.

Reversed and remanded. Peterson, J. Dissenting, Otis, J.

51023/Sp. In re the Marriage of Claudia R. Hummel, petitioner, Appellant, v. Conrad W. Hummel. Hennepin County.

The trial court erred by reversing the first custody order on the basis of affidavits and oral argument by counsel, since the trial court did not conduct a full hearing with an opportunity for cross-examination of the witnesses.

Reversed and remanded. Todd, J.

51446/10 Catherine Kordosky, *et al.*, v. Conway Fire and Safety, Inc., defendant and third party plaintiff, v. Red Owl Stores, Inc., third party defendant, Appellant. Dakota County.

The evidence justifies the jury's conclusion that appellant was negligent.

Minn. Stat. § 176.061, subd. 6(c) (1980), requires that the reimbursement paid to an employer by an employee in a third-party action be reduced by a proportionate attorney's fee. This reduction results in the employer receiving less in reimbursement than it paid out in contribution to the third party. Although this reduction is theoretically inconsistent with *Lambertson v. Cincinnati Corp.*, it is mandated by statute and will be enforced.

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

50751/Sp. C. G. Rein Company, etc., v. Arthur C. Roemer, Commissioner of Revenue, Department of Revenue, State of Minnesota, Appellant. Ramsey County.

Fees charged to members of tennis and racquetball clubs for "court time" are not within the definition of sales contained in Minn. Stat. § 297A.01, subd. 3(d) (1980) and there is no resultant sales tax liability.

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

51241/Sp. State of Minnesota v. Edward S. Jones, Appellant. Hennepin County.

Held, evidence of defendant's guilt of assault in the second degree (assault with a dangerous weapon) was sufficient.

Affirmed. Todd, J.

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.

Pollution Control Agency
Water Quality Division

Behind-Schedule and Substandard Project List

Minn. Stat. § 115.83 (1978) requires the Minnesota Pollution Control Agency ("agency") to issue an order incorporating lists of principal consulting engineers, contracting engineers, and principal contractors who are responsible for behind-schedule or substandard municipal wastewater treatment projects. The statute also requires the lists to be published in the *State Register*. A behind-schedule project is one which, due to failures of design or workmanship or other factors within the reasonable control of the contractor or engineer, the agency determines is more than 90 days behind schedule. A substandard project is one which, due to failures of design or workmanship, or other factors within the reasonable control of the contractor or engineer, the agency determines does not accomplish the purpose for which it was designed or constructed.

In accordance with the statute, the agency has issued an order incorporating the following lists.

Louis J. Breimhurst
Executive Director

[See p. 1591 of this issue.]

Ethical Practices Board

Advisory Opinion #77 Re: Campaign Finance Disclosure

Approved by the Ethical Practices Board on March 27, 1981

Issued to:

Commissioner Randy Johnson
Board of Hennepin County Commissioners
2400 Government Center
Minneapolis, MN 55487

Summary

#77. Under Minn. Laws of 1980, Chapter 362, applicable to certain elected officials in Hennepin County, the costs of publishing and distributing an office-holder's newsletter shall be reported as campaign expenditures commencing after the office-holder files for re-election.

The full text of the opinion is available upon request from the office of the State Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, (612) 296-5148.

BEHIND SCHEDULE AND SUBSTANDARD PROJECTS LISTS
1980 FINAL LISTS

BEHIND SCHEDULE PROJECTS

Firm	Municipality or Sanitary District	Nature of Deficiency (Number of Days Behind Schedule)	Project Description
Robert R. Wallace & Associates	1. Buhl-Kinney, Minnesota 55713	287 days	Facility Plan
	2. Marble-Calumet, Minnesota 55764	241 days (as of December 31, 1980)	Facility Plan
	3. Nashwauk, Minnesota 55769	103 days	Facility Plan
	4. Tower-Breitung, Minnesota 55790	439 days	Facility Plan
Wallace, Holland, Kastler, Schmitz & Co.	1. Dodge Center, Minnesota 55927	519 days (as of December 31, 1980)	Plans and Specifications

Another entry withheld pending outcome of hearings

SUBSTANDARD PROJECTS

Firm	Municipality or Sanitary District	Nature of Deficiency	Project Description	Nature of Correction
	Entries withheld pending outcome of hearings			

Metropolitan Council and Metropolitan Health Board

Public Hearing for the Joint Consideration of Revising the 1980-81 Health Systems Plan

The Metropolitan Council and Metropolitan Health Board will hold a public hearing on Wednesday, April 15, 1981, at 7:00 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, 55101 for the purpose of receiving oral and written comments on ten service plan components for inclusion in the 1980-81 Health Systems Plan for the Twin Cities Metropolitan Area. These service components include stratified coronary care, trauma care, burn care, regional poison information and treatment, spinal injury care, medical control, computed tomography scanning, home health care, developmental disabilities services and emergency medical services overview. Copies of these plan components are available for public inspection beginning March 17, 1981 at the following locations:

Metropolitan Council Library
300 Metro Square Building
St. Paul, MN 55101

Minneapolis Public Library
Government Documents Room
300 Nicollet Mall
Minneapolis, MN 55401

St. Paul Public Library
Science and Industry Room
90 West Fourth Street
St. Paul, MN 55102

Anoka County Library—Blaine Branch
707 Highway 10
Blaine, MN 55434

Carver County Library—Chaska Branch
314 Walnut Street
Chaska, MN 55318

Dakota County Library—Burnsville Branch
1101 W. County Rd. 42
Burnsville, MN 55337

Hennepin County Library—Southdale Brach
7001 York Avenue
Edina, MN 55435

Ramsey County Library—Roseville Branch
2180 N. Hamline Avenue
Roseville, MN 55113

Scott County Library—Shakopee Branch
235 S. Lewis Street
Shakopee, MN 55379

Washington County Library—Park Grove Branch
7520-80th Street S.
Cottage Grove, MN 55106

Copies of the ten service components are available free of charge from the Metropolitan Health Board, 300 Metro Square Building, St. Paul, Minnesota 55101, telephone 291-6352.

People who wish to speak at this public hearing may register in advance by contacting Eleanor Suneson at 291-6352. Those who register first will be scheduled to speak first. If you cannot attend you are encouraged to send written comments to the Metropolitan Health Board, up to seven days following this hearing. For further information contact the Metropolitan Health Board at 291-6352.

Barbara O'Grady, Chairperson
Metropolitan Health Board

Charles Weaver, Chairman
Metropolitan Council

Minnesota Teachers Retirement Association

Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Friday, April 24, 1981, at 9 a.m. in the office of the association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the board.

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.

Office of the State Auditor

Notice of Request for Proposals for Auditing Services

The Office of the State Auditor requires the services of private accounting firms to audit eight Regional Development Commissions for the year ended June 30, 1981.

Firms will be selected through a competitive proposal procedure. Firms will be retained for three year cycles with audit contracts contingently renewable on a negotiated price basis annually.

The basic characteristics of the audit work include the following:

Firms will enter into a contract for services with the State Auditor. Contracts will be awarded for each Commission.

The entire cost of audit services will be charged to the Commissions.

The audit work must be performed in accordance with generally accepted auditing standards.

It is expected that financial statements will be prepared using the National Council on Governmental Accounting Statement 1 Guidelines.

Previous audit engagements required estimated hours of 100 to 150 hours.

For more information concerning audit guidelines contact Sue Schwab at (612) 297-3677. Firms desiring consideration should submit their proposals by April 17, 1981. These proposals should include resumes indicating similar experience, and an engagement budget by man hours. Send response to :

The Honorable Arne H. Carlson
State Auditor
State of Minnesota
555 Park Street, Suite 400
St. Paul, Minnesota 55103

Department of Health Environmental Health Division

Notice of Request for Proposals for Inventory of Underground Injection Wells

The Section of Water Supply and General Engineering, Division of Environmental Health, is seeking individuals or organizations with hydrological and engineering field survey expertise to locate all U.S. E.P.A. Class 4 and 5 injection wells and determine their potential for contaminating ground water, and to evaluate heat pump systems and state policies governing their

use. These tasks which are to be carried out under one or more contracts, are outlined in detail in the Request for Proposals (RFP) Statement of Work. The formal RFP may be requested from and inquiries should be directed to:

Michael Convery
Ground Water Quality Unit
Minnesota Department of Health
717 Delaware St. S.E.
Minneapolis, Minnesota 55440

It is anticipated that the activities to accomplish these tasks will not exceed a total cost to the State of $47,000. The deadline for submission of completed proposals will be 4:30 p.m., May 1, 1981.

Department of Health
Health Systems Division
Emergency Medical Services Section

Notice of Request for Proposal for Minnesota Poison Information Center

The Minnesota Department of Health is requesting proposals from non-profit corporations and units of government to provide 24-hour poison information and referral services to the general public and to health professionals. Funding for this project is dependent on Legislative appropriations. Maximum state funding for this grant will not exceed $125,000 for the year July 1, 1981, to June 30, 1982. Criteria for selection include five factors listed in the enabling statute (Minn. Stat. § 145.93) plus such general considerations as the availability of matching funds or support. All selection criteria are described in a request for proposal available from the Minnesota Department of Health. Selection will follow the review of all proposals received before the deadline and a recommendation by a statutory Advisory Council. Responders will be expected to demonstrate ability to initiate service as soon as possible following selection and awarding of funds. The deadline for applications is 4:00 p.m. May 6, 1981. This deadline is essential if the grant is to be awarded prior to July 1, 1981.

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

Jim Parker, Assistant Chief
Emergency Medical Services
Minnesota Department of Health
717 Delaware St. S.E.
Minneapolis, Minnesota 55440
(612) 296-5284

Iron Range Resources and Rehabilitation Board, Eveleth, MN

Solicitation of Request for Proposal, for Engineering Services

The Commissioner of IRRRB is seeking proposals from Minnesota engineering firms to provide assistance in the evaluation and review of public works grant applications and assist IRRRB staff in design, planning and reviewing of physical mineland reclamation projects. (Contract will include option to renew for 1 additional year.)

The purpose of this project shall be to provide technical data for effective administration of grant funding processes and of a comprehensive mineland reclamation program involving tourism, control of environmental hazards, and promotion of natural resources (timber and wildlife).

Eligibility for this Request for Proposals is limited to firms which have not in the past, nor shall be during the term of the service, contracted for work with any governmental subdivision within the confines of the taconite tax relief area.

For formal REQUEST FOR PROPOSAL documents, interested parties should contact:

Mike Gentile, Grants Analyst
Iron Range Resources and Rehabilitation Board
P.O. Box 678
Eveleth, MN 55734

Proposals must be submitted no later than April 20, 1981.

Office of the State Public Defender

Notice of Availability of Contract for Legal Services

The Office of the State Public Defender may require the services of experienced attorneys to perform legal services to indigents beginning July 1, 1981.

The legal services will include the following:

1. Prepare post-conviction proceedings
2. Prepare and attend parole revocation hearings
3. Prepare appellant briefs and do legal research
4. Prepare and lecture at training schools

The estimated range for these services is $8.62 to $29.68 per hour for 380 hours to 1,044 hours. Attorneys in the State of Minnesota are to be given first consideration. Extensive experience in these specialized areas required.

Attorneys desiring consideration should submit a resume immediately. The decision will be made in the month of April, 1981. Send your response to:

C. Paul Jones
State Public Defender
95 Law Building, University of Minnesota
Minneapolis, Minnesota 55455
(612) 373-5725

STATE OF MINNESOTA

OFFICE OF THE STATE REGISTER

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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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.

This Week—weekly interim bulletin of the House. Contact House Information Office.