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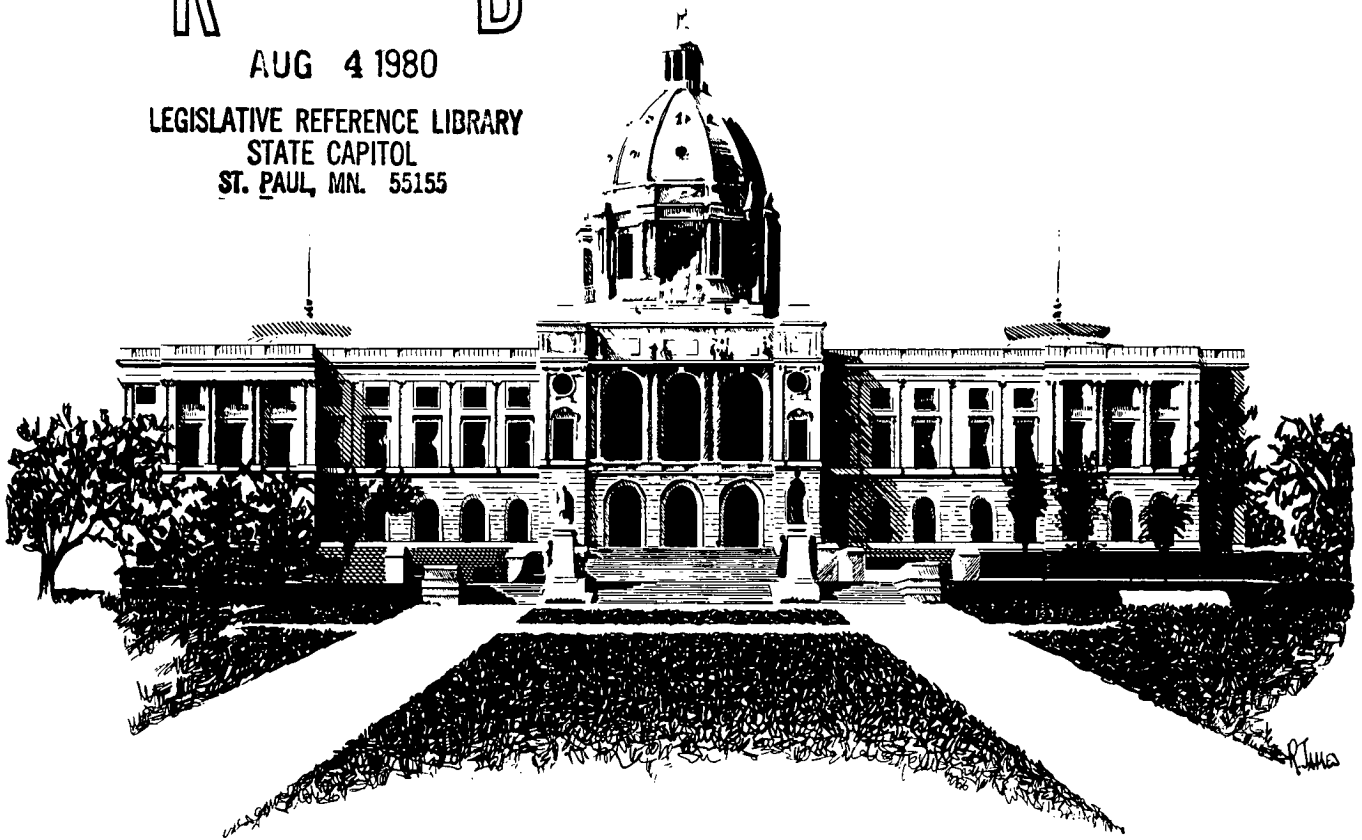
# STATE REGISTER

STATE OF MINNESOTA

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### 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			
6	Monday July 28	Monday Aug 4	Monday Aug 11
7	Monday Aug 4	Monday Aug 11	Monday Aug 18
8	Monday Aug 11	Monday Aug 18	Monday Aug 25
9	Monday Aug 18	Monday Aug 25	Monday Sept 1

\*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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**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

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# PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new 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.

## Department of Education School Management Services Division

### Proposed Temporary Rules Governing Educational Aids to Nonpublic Schools

#### Request For Public Comment

Notice is hereby given that the State Board of Education proposes the following temporary rules for the purpose of implementing provisions of Laws of 1980, ch. 609, Art. IV, §§ 2-6, amending Minn. Stat. §§ 123.931-123.947, governing educational aid to nonpublic school children.

All interested persons are hereby awarded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the *State Register* by writing to:

Phillip Miller  
State Aids Section  
Minnesota Department of Education  
915 Capitol Square  
St. Paul, MN 55101

The temporary rules may be revised on the basis of comments received. Any written material shall become part of the record and the final adoption of the temporary rule.

July 14, 1980

Howard B. Casmev  
Commissioner of Education

#### Temporary Rules as Proposed

##### Chapter Forty-One: Textbooks, Individualized Instructional Materials, and Standardized Tests for Pupils Attending Nonpublic Schools

**5 MCAR § 1.0820 Policy.** In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, textbooks, individualized instructional materials, and standardized tests as provided by Minn. Stat. §§ 123.931-~~123.937~~ 123.947 shall be made available to pupils in nonpublic schools.

##### **5 MCAR § 1.0821 Definitions.**

A. ~~“Textbook” means any book or book substitute which a pupil uses as a text or text substitute in a particular class or program in the school he regularly attends and a copy of which is expected to be available for the individual use of each pupil in this class or program; which book or book substitute shall be limited to books, workbooks, or manuals, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students. The term includes only such textbooks as are available and of benefit to Minnesota public school pupils and which are secular, neutral and nonideological such that the material contained therein is not regarded as religious, spiritual, or sacred, and presents events, facts and theories that pertain to religion or religious doctrine in an impartial manner.~~

A. “Eligible materials” means textbooks, individualized instructional materials, and standardized tests. All textbooks and individualized instructional materials must be:

**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

1. designed primarily for use by individual students at their desks or in small groups, in a particular class or program in the school the pupil regularly attends,

2. used by the student to reach certain educational objectives within a particular subject or course of study,

3. secular, neutral, non-ideological and not capable of diversion for religious use,

4. available and of benefit to public school pupils, and

5. not specifically excluded from eligibility by 5 MCAR § 1.0821 B.

B. "Ineligible materials" means, in addition to educational materials excluded from eligibility by 5 MCAR § 1.0821 A., the following materials: chemicals, wall maps, wall charts, pencils, pens or crayons, notebooks, blackboards, chalk and erasers, duplicating fluids, paper, 16mm films, unexposed films, blank tapes, cassettes or videotape, instructional equipment, reference materials, and teachers' aids.

C. "Textbook" means any book or book substitute which a pupil uses as a text or text substitute, copies of which are:

1. used as a principal source of study materials for a given class or group of students, and

2. available for individual use of each pupil in the class or program.

D. "Individualized instructional materials" means educational materials in addition to textbooks which fall into any of the following areas: published materials, periodicals, documents, pamphlets, photographs, reproductions, pictorial or graphic works, filmstrips, prepared slides, pre-recorded video programs, pre-recorded tapes, cassettes and sound recordings, manipulative materials, desk charts, games, study prints and pictures, desk maps, models, learning kits, blocks or cubes, flashcards, individualized multi-media systems, prepared instructional computer software programs, and pre-recorded film cartridges.

E. ~~B.~~ "Standardized tests" means tests and scoring services available from commercial publishing organizations and which are in use in the public schools of Minnesota to measure the progress of pupils in secular subjects.

F. "Secular, neutral, and non-ideological" materials are materials which are not regarded as religious, spiritual, or sacred, and present events, facts, and theories that pertain to religion or religious doctrine in an impartial manner.

### **5 MCAR § 1.0822 State administration.**

A. The Department of Education shall administer funds allocated for the purchase of textbooks and standardized tests eligible materials to be loaned or provided to nonpublic school pupils.

B. The Department of Education, in cooperation with the State Auditor's Office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records for the acquisition of textbooks and standardized tests eligible materials to be loaned or provided to nonpublic school pupils.

C. Computation of pupil allocation available. On or before March 1 the Department of Education shall determine, from the most recent data available, the allocation available per pupil for textbooks and standardized tests eligible materials to be used for the following school year. The allocation per pupil shall be determined by dividing the total expenditure for textbooks and standardized tests eligible materials by all public school districts in the state for pupils enrolled in public schools by the average daily membership of pupils enrolled in the districts during the same fiscal year. This amount shall then be increased by a percentage equal to the percentage increase in foundation aid, between the prior school year and the coming year. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

D. Termination of eligibility. Whenever the public school district or intermediary service area receives information indicating that eligible materials loaned under the program have been used contrary to law, the servicing school district or intermediary service area shall report that information to the department. Whenever the department receives information regarding improper use of these materials, it shall:

1. Provide written notification to the pupil, the pupil's parents, or the nonpublic school administrator of the alleged program abuse, and

2. Allow 30 calendar days from the date of mailing for written or oral response.

Following receipt of responses during the 30 day period, if it appears that materials may have been used contrary to law, the department shall institute Chapter 15 contested case procedures. After due consideration of all evidence presented pursuant to those procedures, if the department determines that the materials have been used contrary to law, the department shall notify the pupil, the pupil's parents, or nonpublic school administrator, and the public school district or intermediary service area that:

a. The eligibility of the pupil for materials during the current school year is terminated, and

b. The allocation for the current year for the nonpublic school must be reduced accordingly.

**5 MCAR § 1.0823 Local administration.**

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the public school district or intermediary service area a preliminary application for participation in the textbooks, individualized instructional materials, and standardized tests aid program, for ~~textbooks and tests~~ eligible materials to be used the following school year. The preliminary application shall be on forms provided by the Department of Education and shall include:

1. An estimate of the nonpublic school pupils, kindergarten through grade twelve, who may be enrolled as of September 15 of the following school year and who may be signing pupil request forms for ~~textbooks and standardized tests~~ eligible materials.

2. An estimate of the total allocation available to the nonpublic pupils attending the nonpublic school for ~~textbooks and standardized tests~~ eligible materials. The estimated allocation is determined by multiplying the estimated count of participating pupils by the allocation available per pupil for ~~textbooks and standardized tests~~ eligible materials. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

B. Purchase of materials. On or before May 1, the public school district or intermediary service area shall have completed its review of the preliminary application and shall notify the nonpublic school that it may begin submitting requests for ~~textbooks and standardized tests~~ eligible materials for the following school year based on the estimated allocation. The materials requested by the nonpublic school shall be purchased by the public school district or intermediary service area within a reasonable time of the receipt of the requests. After the materials have arrived, they shall be promptly transmitted to each nonpublic school in the public school district or intermediary service area for distribution to the pupil applicants.

C. Pupil request forms. Each year the Department of Education shall prepare a Pupil Request Form for Textbooks, Individualized Instructional Materials, and Standardized Tests. This form shall be separate from the Health Services Pupil Request Form and the Guidance and Counseling Services Pupil Request Form. The form shall be processed as follows:

1. The nonpublic school administrator shall distribute a copy of the Pupil Request Form to each pupil or parent or guardian and shall collect and maintain on file forms properly completed.

2. A signed Pupil Request Form must be properly completed, signed, and on file with the nonpublic school by September 25 in order for that pupil to be counted on the final application form for aid.

3. The nonpublic school shall maintain on file the Pupil Request Forms for three years. The forms shall be available for inspection by the Department of Education, the public school district, or the intermediary service area.

~~D. Final application.~~ Final application. On or before September 25 the nonpublic school shall make final application for participation in the ~~textbooks and standardized tests aid~~ textbooks, individualized instructional materials, and standardized tests aid program to the district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall be on forms provided by the Department of Education and shall include:

1. A count of the nonpublic school pupils, kindergarten through grade twelve, who are enrolled as of September 15 of the current school year and ~~who have signed a separate pupil request form for textbooks and standardized tests only~~ for whom Pupil Request Forms have been properly completed.

2. The allocation for ~~textbooks and standardized tests~~ eligible materials to the nonpublic pupils attending the nonpublic school. The actual allocation shall be determined by ~~multiplying the allocation available per pupil for textbooks and standardized tests by the total number of participating pupils. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each~~ according to 5 MCAR § 1.0822 C. above.

~~D- Nonpublic school files. The nonpublic school shall maintain on file for three years all pupil request forms for textbooks and standardized tests loaned or provided to nonpublic school pupils. The forms shall be available for inspection by the Department of Education, the public school district, or the intermediary service area.~~

E. Inventory. ~~Textbooks and standardized tests loaned to pupils in nonpublic schools shall be maintained on inventory by the public school district or intermediary service area except in cases of consumable or nonreusable materials. The public school district or intermediary service area may declare loaned school books unusable after five years, remove them from the inventory, and divest of them in any manner. The public school district or intermediary service area shall maintain an inventory of each of the eligible materials loaned under the program for the material's useful life. The useful life of eligible materials is as follows: (1) for workbooks and manuals in which the students write—1 year, (b) paperbacks, computer programs, and audio-visual materials—3 years, (c) hard-~~

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## PROPOSED RULES

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bound materials and textbooks—5 years. Thereafter the public school district or intermediary service area may divest itself of the materials in any manner it deems appropriate. A compilation of invoices, showing descriptions and destinations of eligible materials purchased under the program, satisfies the inventory requirement.

F. Reimbursement. Upon completion of the distribution of the textbooks and standardized tests, eligible materials each public school district or intermediary service area may claim from the Department of Education (1) the cost of materials, not to exceed the allocation available, and (2) a sum for the actual cost of administration which shall not exceed five percent of the cost of the materials distributed. The administrative costs shall be in addition to the allocation available for textbooks and standardized tests eligible materials. Handling and shipping charges by the vendor shall be included in the allocation for textbooks and standardized tests eligible materials for each nonpublic school. A public school district shall not be considered a vendor.

G. Certificate of compliance. Each claim for reimbursement shall include a certificate of compliance from the public school district or intermediary service area indicating that all materials have been reviewed prior to the expenditure of public funds and are in accordance with the limitations set forth in 5 MCAR § 1.0821. The public school district shall also include a list of the textbooks eligible materials actually purchased, which list shall include the publisher of those textbooks and the names of the publishers of those materials.

### **Chapter Forty-One B: Health Services for Pupils Attending Nonpublic Schools**

**5 MCAR § 1.0860 Policy.** In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, health services as provided by Minn. Stat. §§ 123.931-~~123.937~~ 123.947 shall be made available to pupils in nonpublic schools.

#### **5 MCAR § 1.0861 Definitions and general requirements.**

A. "Health services" means physical and mental health services provided by licensed health services personnel or their assistants. Licensed health services personnel includes physicians, dentists, professional nurses or optometrists.

B. Health services shall not include the direct educational instruction of nonpublic pupils by health services personnel.

C. Health services shall not include those services which are required under the Special Education Law, Minn. Stat. § 120.17 (1976, as amended), or which are eligible to receive reimbursement under the Special Education Aid Law, Minn. Stat. § 124.32 (1976, as amended).

D. The public school district or intermediary service areas shall provide those specific health services which it offers to its public school pupils, provided the costs for such services do not exceed the amount allocated for health services by the Department of Education.

E. Costs relating to the provision of health services shall include (1) the salaries of licensed health services personnel and their assistants and (2) expenses for supplies, equipment, travel, and necessary in-service training and other eligible expenses that are associated with the provision of health services by the licensed health services personnel or their assistants.

F. Health services may be provided at the nonpublic school, a neutral site, or at the public school.

#### **5 MCAR § 1.0862 State administration.**

A. The Department of Education shall administer funds for the provision of health services to nonpublic school pupils.

B. The Department of Education, in cooperation with the State Auditor's Office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records associated with the provision of health services to nonpublic school pupils.

C. Computation of pupil allocation available. On or before March 1 the Department of Education shall determine from the most recent data available the allocation available per pupil for health services to be used for the following school year. The allocation per pupil for health services shall be the average expenditure per public school pupil in average daily membership for these services by those Minnesota public elementary and secondary schools which provide health services to public school pupils. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

D. Computation of actual allocation. Based on the year-end report filed by each district, the department shall allot to each district or intermediary service area for the provision of health services the actual cost of the services provided during the school year. The actual allotment shall not exceed the pupil allocation available.

E. December 1 payment. On or before December 1, the department shall distribute to the public school district or intermediary service area an amount equal to 90 percent of the approved budget.

F. Final payment. On or before September 1 following the school year, the department shall make the final adjustment payment to the district or intermediary service area based on the year-end report.



**5 MCAR § 1.0863 Local administration.**

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the district or intermediary service area a preliminary application for health services beginning with the following school year. The preliminary application shall be on forms provided by the Department of Education and shall include an estimate of the nonpublic school pupils, kindergarten through grade twelve, who may be enrolled as of September 15 of the following school year and who may be signing pupil request forms for health services. The preliminary application shall also include an assessment of the type and level of health services desired for the following school year.

B. Annual consultation. The district or intermediary service area shall hold an annual consultation with the nonpublic school regarding the location at which health services for nonpublic school pupils are to be offered. Final decision as to location shall be made by the public school district or intermediary service area.

C. Notification of services. On or before September 1 the public school district or intermediary service area shall inform the nonpublic school of the type, level, and location of health services that are to be made available to the nonpublic school students during the following school year.

D. Pupil request forms. Each year the Department of Education shall prepare a Pupil Request Form for Health Services. This form shall be separate from the Guidance and Counseling Services Pupil Request Form and the Pupil Request Form for Textbooks, Individualized Instructional Materials and standardized tests. The form shall be processed as follows:

1. The nonpublic school administrator shall distribute a copy of the Pupil Request Form to each pupil or parent or guardian and shall collect and maintain on file forms properly completed.

2. A signed Pupil Request Form must be properly completed, signed, and on file with the nonpublic school by September 25 in order for that pupil to be counted on the final application form for aid.

3. The nonpublic school shall maintain on file the Pupil Request Forms for three years. The forms shall be available for inspection by the Department of Education, the public school district, or the intermediary service area.

E. ~~D.~~ Final application. On or before September 25 the nonpublic school shall make final application for health services to the public school district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall indicate the number of nonpublic school pupils who are enrolled as of September 15 and have signed a separate pupil request form for health services only for whom Pupil Request Forms have been properly completed.

F. ~~E.~~ Submission of program and budget. On or before October 15 the public school district or intermediary service area shall submit to the Department of Education a program and budget of the health services that are being offered to the nonpublic school pupils for the current school year. The program and budget shall be on forms made available by the Department of Education and shall include:

1. Projected health services expenditures for salaries, supplies, equipment and other expenses, which expenditures shall not exceed the amount allocated for health services to the public school district or intermediary service area by the Department of Education. The allocation for health services is determined by multiplying the total number of participating pupils by the allocation available per pupil for health services as set forth in 5 MCAR § 1.0862 C. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

2. Projected expenditures for health services administration, which expenditures shall not exceed an amount equal to five percent of the public school district's or intermediary service area's expenditures for health services for nonpublic school pupils and which shall be in addition to the health services allocation.

G. ~~F.~~ Year-end report. On or before July 15, following each school year, the public school district or intermediary service area shall submit to the Department of Education a year-end report of health services provided to nonpublic school pupils. The report shall be on forms made available by the Department of Education.

~~G. Nonpublic school files. The nonpublic school shall maintain on file for three years all pupil request forms for health services. The forms shall be available for inspection by the Department of Education, the public school district or the intermediary service area.~~

**Chapter Forty-one C: Guidance and Counseling Services for Pupils Attending Nonpublic Schools**

**5 MCAR § 1.0880 Policy.** In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, guidance and counseling services as provided by Minn. Stat. §§ 123.931-~~123.937~~ 123.947 shall be made available to secondary pupils in nonpublic schools.

**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**

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### **5 MCAR § 1.0881 Definitions and general requirements.**

A. "Guidance and counseling services" means all activities of a licensed counselor in counseling pupils and parents, providing counseling on learning problems, evaluating the abilities of pupils, assisting pupils in personal and social development and providing referral assistance.

B. Guidance and counseling services provided to nonpublic school pupils shall not include the planning or selection of particular courses or classroom activities of the nonpublic school.

C. The district where the nonpublic school is located shall provide the necessary transportation within the district boundaries between the nonpublic school and a public school or neutral site for nonpublic school pupils who are provided guidance and counseling services.

D. The public school district or intermediary service areas shall provide those specific guidance and counseling services which it offers to its public school secondary pupils, provided the costs for such services do not exceed the amount allocated for guidance and counseling services by the Department of Education.

E. Costs relating to the provision of guidance and counseling services shall include (1) the salaries of licensed guidance and counseling services personnel and their assistants and (2) expenses for supplies, equipment, travel, and other eligible expenses that are directly attributable to the provision of guidance and counseling services by the licensed guidance and counseling services personnel or their assistants.

F. Guidance and counseling services may be provided to nonpublic school pupils only at a neutral site or at the public school.

### **5 MCAR § 1.0882 State administration.**

A. The Department of Education shall administer funds for the provision of guidance and counseling services to nonpublic school pupils.

B. The Department of Education, in cooperation with the State Auditor's Office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records associated with the provision of guidance and counseling services to nonpublic school pupils.

C. Computation of pupil allocation available. On or before March 1 the Department of Education shall determine from the most recent data available the allocation available per secondary pupil in average daily membership for guidance and counseling services to be used for the following school year. The allocation available per secondary pupil for guidance and counseling services shall be the average expenditure per public secondary school pupil for these services by those Minnesota public school districts which provide guidance and counseling services to public secondary school pupils. Pupils shall be counted as one pupil each.

D. Computation of actual allocation. Based on the year-end report filed by each district, the department shall allot to each district or intermediary service area for the provision of guidance and counseling services the actual cost of the services provided in that school year. The actual allotment for guidance and counseling services for the nonpublic secondary pupils shall not exceed the total pupil allocation available.

E. December 1 payment. On or before December 1, the department shall distribute to the public school district or intermediary service area an amount equal to 90 percent of the approved allocation.

F. Final payment. On or before September 1, the Department of Education shall make the final adjustment payment to the district or intermediary service area based on the year-end report.

### **5 MCAR § 1.0883 Local administration.**

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the district or intermediary service area a preliminary application for guidance and counseling services beginning with the following school year. The preliminary application shall be on forms provided by the Department of Education and shall include an estimate of the nonpublic secondary school pupils who may be enrolled as of September 15 of the following school year and who may be signing pupil request forms for guidance and counseling services. The preliminary application shall also include an assessment of the type and level of guidance and counseling services desired for the following school year.

B. Annual consultation. The district or intermediary service area shall hold an annual consultation with the nonpublic school regarding the location at which guidance and counseling services for nonpublic school pupils are to be offered. Final decision as to location shall be made by the public school district or intermediary service area.

C. Notification of services. On or before September 1 the public school district or intermediary service area shall inform the nonpublic school of the type, level, and location of guidance and counseling services that are to be made available during the following school year.

D. Pupil request forms. Each year the Department of Education shall prepare a Pupil Request Form for Guidance and Counseling Services. The form shall be separate from the Health Services Pupil Request Form and the Pupil Request Form for Textbooks, Individualized Instructional Materials and Standardized Tests. The form shall be processed as follows:

1. The nonpublic school administrator shall distribute a copy of the Pupil Request Form to each pupil or parent or guardian and shall collect and maintain on file forms properly completed.

2. A signed Pupil Request Form must be properly completed, signed, and on file with the nonpublic school by September 25 in order for that pupil to be counted on the final application form for aid.

3. The nonpublic school shall maintain on file the Pupil Request Forms for three years. The forms shall be available for inspection by the Department of Education, the public school district, or the intermediary service area.

E. ~~D.~~ Final application. On or before September 25 the nonpublic school shall make final application for guidance and counseling services to the public school district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall indicate the number of nonpublic school pupils who are enrolled as of September 15 and have signed a separate pupil request form for guidance and counseling services only for whom Pupil Request Forms have been properly completed.

F. ~~E.~~ Submission of program and budget. On or before October 15 the public school district or intermediary service area shall submit to the Department of Education a program and budget of the guidance and counseling services that are being offered to the nonpublic school pupils for the current school year. The program and budget shall be on forms made available by the Department of Education and shall include:

1. Projected guidance and counseling services expenditures for salaries, supplies, equipment and other eligible expenses, which expenditures shall not exceed the amount allocated for guidance and counseling services to the public school district or intermediary service area by the Department of Education. The allocation for guidance and counseling services is determined by multiplying the total number of participating secondary pupils by the allocation available per pupil for guidance and counseling services as set forth in 5 MCAR § 1.0882 C. Pupils shall be counted as one pupil each.

2. Projected expenditures for guidance and counseling services administration, which expenditures shall not exceed an amount equal to five percent of the public school district's or intermediary service area's expenditures for guidance and counseling services for nonpublic school pupils and which shall be in addition to the guidance and counseling services allocation.

G. ~~F.~~ Year-end report. On or before July 15, following each school year, the public school district or intermediary service area shall submit to the Department of Education a year-end report of guidance and counseling services provided to nonpublic school pupils. The report shall be on forms made available by the Department of Education.

G. ~~F.~~ Nonpublic school files. The nonpublic school shall maintain on file for a period of 3 years all pupil request forms for guidance and counseling services. The forms shall be available for inspection by the Department of Education, the public school district or the intermediary service area.

## **Housing Finance Agency**

### **Proposed Rules Relating to Income Limits for the Home Improvement Loan Program**

#### **Notice of Hearing**

Notice is hereby given that a public hearing will be held in the above entitled matter in the Capitol Square Building, Conference Room A, 550 Cedar Street, St. Paul, Minnesota, 55101, on Thursday, September 4, 1980, commencing at 9:00 a.m. and continuing until all interested or affected persons have had an opportunity to participate.

All representatives of associations or other interested groups and all interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted by mail without personally appearing at the hearing to Richard Luis, Hearing Examiner, at Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8114. For those wishing to submit written statements or exhibits, it is suggested to save time and avoid duplication, that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement on behalf of such interests. All

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## PROPOSED RULES

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such statements will be entered into and become a part of the record. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). Questions about procedure may be directed to the hearing examiner.

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 Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all of the evidence and argument which is anticipated to be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

After the public hearing, written material may be submitted to the Hearing Examiner and recorded in the hearing record for five working days, or the comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner at the hearing.

Notice: Any person may request notification of the date on which the Hearing Examiner's report will be available, after which date the Agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the hearing examiner's report) or to the Agency (in the case of the agency's submission or resubmission to the Attorney General).

The agency proposes to adopt rules of the Minnesota Housing Finance Agency Relating to the Income Limits for the Home Improvement Loan Program. Notice: The proposed rules are subject to change as a result of the rule hearing process. The agency, therefore, strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to the Executive Director, Minnesota Housing Finance Agency, 333 Sibley Street, St. Paul, Minnesota, 55101. Additional copies will be available at the door on the date of the hearing.

The agency's statutory authority to promulgate the proposed rules is contained in Minn. Stat. §§ 462A.03, subd. 10, and 462A.06, subs. 4 and 11 (1978).

Under Minn. Stat. § 10A.01, subd. 11 (1979 Supp.), a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute:

"Lobbyist" means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

"Lobbyist" does not include any:

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

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

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

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

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

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

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

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Questions regarding only lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota, 55155; telephone (612) 296-5615.

July 21, 1980

James J. Solem, Executive Director  
Housing Finance Agency

### Rule as Proposed

**12 MCAR § 3.002 O.** "Persons and Families of Low and Moderate Income" means:

4. with respect to Home Improvement Loans pursuant to Chapter Six of these rules, those persons and families whose Adjusted Income does not exceed ~~\$16,000~~ \$18,000.

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## 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.

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## Board of Cosmetology

### Adopted Rules Relating to Continuing Education for Licensed Instructors

The rules proposed and published at *State Register*, Volume 4, Number 26, pp. 1066-1069, December 31, 1979 (4 S.R. 1066) are adopted with the following amendments:

#### Rules as Adopted

**Chapter Five:** 4 ~~5~~ MCAR §§ 10.081-10.090 Continuing Education

4 ~~5~~ MCAR § 10.081 Definitions. For the purpose of Chapter Five, the following definitions shall apply:

- A. "Board" means the Minnesota State Board of Cosmetology.
- B. "Licensee" means any person licensed as a senior instructor in the State of Minnesota.
- C. "Continuing education hour" means a clock-hour spent by a licensee in actual attendance at an approved program or activity.
- D. "Approved program or activity" means a continuing education program which meets the standards set forth in these rules, which has received approval by the board pursuant to these rules and which is offered by an accredited sponsor.
- E. "Accredited sponsor" means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules.

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F. "Compliance period" means that period of time extending from April 1, to the following March 31.

### **4-5 MCAR § 10.082 Continuing education requirements.**

A. Beginning April 1, 1980, each licensee shall complete during each compliance period a minimum of 15 continuing education hours approved by the board. Compliance with the requirements of continuing education is a prerequisite for license renewal for the license year beginning July 1 following the end of each compliance period.

B. Continuing education hours may be obtained by attending or participating in an approved program or activity offered by an accredited sponsor.

C. Such attendance must be reported to the board by the licensee on such forms as may be approved by the board no later than April 15 following the close of the compliance period for which attendance is to be reported.

~~D. A licensee who completes more than 15 hours of approved programs or activities during a single compliance period may apply excess credits, up to a maximum of 30 additional hours, to the succeeding one or two compliance periods, by reporting the carryover credits at the time of filing the annual report to the board for the period during which the credits were earned.~~

~~D.~~ E. Persons who first become licensed as senior instructors between September 30 and the following April 1 need not obtain as a prerequisite for license renewal 15 hours of continuing education until the end of the compliance period following that during which they were first licensed. ~~Such persons must, however, file an attendance report form after the end of the compliance period during which they were first licensed if they attended any approved programs or activities during such period.~~

**4-5 MCAR § 10.083 Standards for approval.** A continuing education activity shall be qualified for approval if the board determines that:

A. It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

B. It consists of at least one clock hour of learning activity; and

C. It deals with subject matters which integrally relate to the practice of a senior instructor; and

D. It is conducted by individuals who have special education, training or experience concerning the subject matter of the program, and is accompanied by a paper, a manual or a written outline which relates to the subject matter of the program.

E. It is offered by an accredited sponsor.

### **4-5 MCAR § 10.084 Approval of sponsors, programs, and activities.**

A. Accreditation of sponsors. An organization or person which desires accreditation as a sponsor of courses, programs, or other continuing education activities, shall apply for accreditation to the board.

The application shall state the applicant's teaching history, if any, for the preceding two years, including dates of programs, subjects offered, total hours of instruction presented, and the names and qualifications of each instructor. The application for accreditation shall also state the full name of the person or organization desiring accreditation, including the names of the owners, partners and/or directors of the organization; the past and current occupations and training of such persons making application, ~~and~~ the purposes and activities of applying organizations; and a complete financial statement prepared by an independent accountant or C.P.A., showing all the assets and liabilities of the applicant, or other satisfactory evidence of its financial ability to sponsor continuing education programs. If the applicant is unable to demonstrate by its financial statement or other satisfactory evidence that it is financially able to sponsor continuing education programs, the board shall permit the applicant to sponsor such programs upon agreement by the applicant to escrow all tuition funds, or such portion thereof as may be agreeable to the board, received by the applicant until five days after the program for which the tuition has been received is conducted or until release of the funds by the board or its representative, whichever is earlier.

By January 31 of each year, commencing January 31, 1981 all accredited sponsors shall provide a written report to the board stating the education programs conducted during the preceding calendar year on a form approved by the board.

The board may at any time reevaluate an accredited sponsor. ~~If after such reevaluation, the board finds there is a basis for consideration of revocation of the accreditation of an accredited sponsor, indicates that there is a substantial difference between the sponsor's programs as approved by the board and as actually conducted, such that the board would not have approved the programs as conducted, or would have approved them for fewer continuing education hours; or that the sponsor is no longer financially able to sponsor continuing education programs, the board may suspend or revoke the accreditation of the sponsor.~~

B. Prior approval of activities. An organization or person which has not been accredited and which desires approval of a course, program or other educational activity, shall apply to the board for accreditation as a sponsor at least ninety days in advance of the commencement of the activity on a form provided by the board. A previously accredited sponsor shall submit specific courses,

programs or other educational activities to the board for approval at least sixty days in advance of the proposed commencement of the activity. The application for program approval shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers, fees to be charged, location, facilities and equipment available, and other pertinent information requested on the application form or by the board. Such application must be accompanied by the paper, manual or written outline required under § 10.083 D. of the rules, a detailed course description or outline, and a notation whether the proposed course has been approved for credit by any other official body. Application for accreditation of sponsorship and approval of programs may be submitted simultaneously; however, the board will not approve programs prior to accreditation of the program sponsor.

The board shall approve or deny applications for accreditation of sponsors or approval of programs ~~complete~~ in writing within sixty days of receipt of complete applications and all other requested information.

C. Post approval of activities. The board will not recognize continuing education hours for attendance and participation in an educational activity in the state of Minnesota which was not conducted by an accredited sponsor or which was not approved by the board prior to its offering. Licensees seeking continuing education hours for participation in programs outside Minnesota and not approved and conducted by an accredited sponsor shall submit to the board a request for credit, including a brief resume of the activity, its dates, subjects, instructors and their qualifications and the number of credit hours requested. Within ninety days after receipt of such application the board shall advise the licensee in writing by mail whether the activity is approved and the number of hours allowed. A licensee not complying with the requirements of this paragraph shall be denied credit for such activity.

~~D. Review of programs. The board may monitor or review any continuing education program already approved by the board, and upon evidence of significant variation in the program presented from the program approved may disapprove all or any part of the approved hours granted the program.~~

4-5 MCAR § 10.085 Hearings. In the event of denial, in whole or in part, of any application for accreditation of a sponsor or for approval of a continuing education program, or in the event of suspension or revocation of the accreditation of a sponsor, the applicant or sponsor shall have the right, within twenty days after the sending of the notification of the denial, suspension or revocation by mail, to request a hearing which shall be held within sixty days after receipt by the board of the request for hearing. The hearing shall be conducted by a hearing officer from the Minnesota Office of Hearing Examiners pursuant to Minn. Stat. ch. 15. Post approval of activities shall be entirely within the discretion of the board.

4-5 MCAR § 10.086 Attendance record report. The person or organization sponsoring approved programs or activities shall make a written record of the Minnesota licensees in attendance at such activities during each compliance period and shall send a signed copy of the attendance record to the executive secretary of the board upon completion of the education activity, but in no case later than April 15 following the close of the compliance period for which such attendance is being reported. The report shall be sent to the Minnesota State Board of Cosmetology, 500 Metro Square Building, St. Paul, Minnesota 55101.

4-5 MCAR § 10.087 Physical disability or illness. The board ~~may~~ shall in individual cases involving physical disability or illness, grant waivers of the education requirements or extensions of time within which to fulfill the education requirements or make the required reports. No waiver or extension of time shall be granted unless written application is made on forms provided by the board and signed by the licensee and a licensed physician. Waivers of the educational requirements may be granted by the board for any period of time not to exceed one compliance period. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by methods as may be prescribed by the board.

4-5 MCAR § 10.088 Exemptions for inactive practitioners. A licensee who is not engaged in practice in the state of Minnesota who resides within or without the state of Minnesota ~~may~~ shall be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not practice as a senior instructor in Minnesota without first complying with all ~~regulations~~ rules governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

4-5 MCAR § 10.089 Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these ~~regulations~~ rules and obtained a certificate of exemption shall, prior to practicing as a senior instructor in the state of Minnesota satisfy the following requirements for reinstatement:

A. Submit written application for reinstatement to the board upon forms provided by the board; and

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B. Furnish in the application evidence of one of the following:

1. The full-time practice of beauty culture in another of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

2. Completion of a total number of hours of accredited continuing education computed by multiplying 15 by the number of years a certificate of exemption shall have been in effect for such applicant; or

3. Successful completion of the Minnesota state license examination conducted within one year immediately prior to the submission of the application for reinstatement.

**4-5 MCAR § 10.090 Penalties.** The board may refuse to renew the license of any licensee who has failed to complete or timely report the continuing education hours required by this chapter. In the event of such refusal to renew a license, the licensee shall have the right within 20 days, after the mailing of a notification of the refusal to renew to his last known address, to request a hearing, which shall be held within 45 days after receipt by the board of the request for hearing. The hearing shall be conducted according to the procedures set forth in Minn. Stat. ch. 15 by a hearing examiner from the Minnesota Office of Hearing Examiners.

## Department of Transportation

### Adopted Rules Pertaining to Implementation of the Rail User Loan Guarantee Program

The proposed rules published at *State Register*, Vol. 4, Number 30, pp. 1200 through 1203 on January 28, 1980 (4 S.R. 1200) were adopted on June 12, 1980, with the following amendments:

#### Rules as Adopted

##### 14 MCAR § 1.4006 Authority and definitions.

A. Authority. These rules are adopted pursuant to the provisions of Minn. Stat. §§ 222.55 to 222.62 (1978 & 1979 Supp.).

B. Definitions. The following terms as they appear in these rules shall have these meanings:

1. "Account" means the Rail User Loan Guarantee Account established by Minn. Stat. § 222.57 as amended by Laws of 1979, Ex. Sess., ch. 1 § 40.

2. "Act" means the Rail User Loan Guarantee Act, Minn. Stat. §§ 222.55 to 222.62 (1978 & 1979 Supp.).

3. "Borrower" means any "rail user" as that term is defined in Minn. Stat. § 222.56, subd. 7 (1978).

4. "Capital improvements" means the purchase, rehabilitation or construction of physical facilities or equipment to improve rail service. Operating expenses are not considered capital improvements.

5. "Capital investment" means the cost of labor, materials and other incidental costs of rehabilitation of a rail line, including acquisition of right of way and structures.

6. "Collateral" means the security pledged for the loan which ~~may include but is not limited to~~ includes land, buildings, machinery, equipment, furniture, fixtures, accounts receivable, marketable securities, cash surrender value of life insurance and assignment of leases or leasehold interests and other similar types property interests.

7. "Commissioner" means the Commissioner of the Department of Transportation, State of Minnesota.

8. "Department" means the Minnesota Department of Transportation.

9. "Interest adjustment" means that portion of the interest on a guaranteed loan ~~that may be paid by the commissioner pursuant to Minn. Stat. § 222.58, subd. 5a, (1978)~~ 1979 Supp.

10. "Lender" shall have the meaning given it in Minn. Stat. § 222.56, subd. 4.

11. "Loan" means a loan or advance or credit to a rail user for the purpose of making a capital investment in rail line rehabilitation.

12. "Personal guarantee" means an individual or corporate obligation to repay the loan.

13. "Railroad" means a common carrier by rail as defined by 49 U.S.C. § 1(3), (1970).

14. "Rail line" means a railroad roadbed, right-of-way, track structure and other appurtenances of railroad right-of-way, including, ~~but not limited to,~~ public-use sidings.

15. "Rail user" means any person or entity described by Minn. Stat. § 222.48, subd. 6.



16. "Rehabilitation" means the rebuilding of a rail line or portions thereof and the implementation of other projects that will improve rail service.

**14 MCAR § 1.4007 Application procedure.**

A. Loans by state or federally chartered banks.

1. All information required to be submitted to the commissioner to support consideration for acceptance as an insured eligible loan shall be submitted in duplicate, and include:

a. A written statement under oath executed by the borrower that the proceeds of the loan will be used solely for participation in contracts for rail line rehabilitation or other capital improvements.

b. A copy of the contract for rail line rehabilitation which must contain:

(1) The identification of the participating parties.

(2) The total amount of the contract for rehabilitation.

(3) The respective share of the amount of the contract for rehabilitation to be provided by each participating party.

(4) The conditions for repayment of the total amount of the contract to the participating parties.

(5) The nature of the capital improvements to be made.

(6) Identity of the escrow agent, if any.

c. The loan application taken by the lender, together with all supporting documents and data, pertinent to the lender's credit consideration, including the following:

(1) Principal amount of the loan and repayment terms.

(2) The collateral offered.

(3) Investigative credit data developed.

(4) Borrower's statement of present financial condition, including schedule of assets, liabilities, capital or net worth and income and expenses and statements for the immediately preceding three fiscal years.

(5) Application of person or persons, if any, making personal guarantee of such a loan together with their statement of financial condition as required in (4) above.

d. The form of the promissory note to be executed, complete except for signatures, and any personal guarantee forms to be executed by a person or persons providing guarantee of repayment of the loan.

e. The form of the security agreements or mortgages to be executed in connection with the loan, complete except for signatures; including the complete legal description of the property, personal or real, to be pledged, supplemented in addition by:

(1) A statement of the collateral's condition, marketability and appraised value, including the source of the appraisal.

(2) A statement of priority of such lien or security interest position based on official records search.

(3) Evidence of insurance coverage against customary perils and the availability of suitable loss payable assignments.

f. A lender's sworn statement to the commissioner which includes:

(1) The citation of Minnesota Statutes under which the interest rate and other expenses in connection with the loan are deemed lawful.

(2) Certification Documentation of lender's appraisal and consent to make the loan in the amount applied for which may be conditioned upon the granting of the commitment for insurance by the commissioner.

g. An executed agreement between the lender and borrower that upon granting of the commitment for insurance by the commissioner that:

(1) Funds will be disbursed only under the terms and for the purposes set forth in the application for insurance.

(2) Liens and security interests provided for in the application and documents offered in the application for insurance will be filed, recorded or otherwise perfected by the lender.

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(3) Reasonable care shall be exercised by the lender or its agents to protect the interest of the state.

(4) A copy of the Notice of Default required by the Act to be sent to the borrower within 90 days of default of the loan shall also be sent to any person or persons guaranteeing the loan.

(5) If default is continued for 180 days and borrower has not made arrangements to meet his obligation, the lender shall promptly notify the commissioner of the circumstances of default and file a claim for benefits under the Act.

B. Loans by municipalities, county or rural development financing authorities.

1. All information required to be submitted to the commissioner for consideration for commitment to insure any eligible loan shall be submitted in duplicate and include:

a. The information required by Part A, paragraphs 1.a. through g.(3) of this rule.

b. A copy of the application for the revenue bond project together with any attachments required to be submitted to the Minnesota Department of Commerce, Securities Division.

c. Evidence of the approval of the application for the revenue bond project by the Commissioner of Securities.

d. A statement that upon granting of the commitment for insurance by the commissioner that a copy of the Notice of Default required by the Act to be sent to the borrower by the trustee within 15 days of the default of the terms of the revenue agreement will also be sent to any person or persons guaranteeing the agreement.

e. A statement that after 90 days, if default continues, the trustee shall file a claim with the commissioner stating the nature of the default.

### **14 MCAR § 1.4008 Requirements for obtaining approval of commitments for insuring loans prior to their execution or disbursement.**

A. Eligibility requirements for loans by state or federally chartered banks; Terms.

1. Principal amount. The original bona fide principal amount of any loan shall not exceed:

a. An amount which can be shown to be fully secured by the ~~unencumbered~~ equity determined by the current appraised value of the collateral to be pledged by or on behalf of the borrower; or

b. An amount which can be reasonably documented and shown to be secured by the value found in the personal guarantee up to a maximum proportion of 40 percent of the original bona fide principal with the remaining proportion to be fully secured in the manner prescribed in a. above.

2. Interest rate. The interest rate agreed upon between the borrower and the lender shall be expressed clearly in the loan agreement in annual percentage rate terms and include the manner in which lapsed periods of time are to be calculated for purposes of application of that rate, if interest is to be calculated or collected in intervals of less than one calendar year.

3. Repayment terms. The loan agreement shall provide for repayment terms which

a. Include a schedule of installment payments of principal and interest which will extinguish the original bona fide principal of the loan over a term not exceeding ~~15~~ 10 years from the date of execution of the loan.

b. Include a schedule of periodic installment payments of principal and interest coming due at least each 3 months or such lesser intervals as are reasonably consistent with the revenue income flow determined to support the ability on the part of the borrower to repay the obligation.

c. Provide that the first such installment of principal and interest may be scheduled so as to coincide with the first anticipated revenue.

d. Include language which provides that no refinancing, extension or deferment of the originally contracted obligation as approved for insurance or its security, or otherwise as would operate to modify the original contract terms may be made between the borrower and the lender unless such considerations are in writing and expressly approved by the commissioner.

e. Include language which effectively renders the obligation as documented to be nontransferable as to all or any part of its interests without prior written approval of the commissioner.

f. The commissioner shall grant the approvals called for by this section if the loan agreement remains substantially the same, the loan agreement is in accordance with these rules, and the risks to the state by the change in the agreement are not increased and the interests of the state are fully protected.

4. No loan agreement may be the subject of any extension of time or deferment of originally scheduled installment payments which would result in the final contracted payment of principal or interest or combination thereof to fall due at a date more than ~~15~~ 10 years from the date of origin without prior written approval of the commissioner.

B. Eligibility requirements for loans by municipalities, county or rural development financing authorities; terms.

1. Principal amount. The original bona fide principal amount as to the amount insured of any revenue agreement, exclusive of interest and expense shall not exceed:

a. An amount which can be shown to be fully secured by the ~~unencumbered~~ equity determined by the current appraised value of the collateral to be pledged by or on behalf of the borrower, or

b. An amount which can be reasonably documented and shown to be secured by the value found in the personal guarantee up to a maximum proportion of 40 percent of the original bona fide principal with the remaining proportion to be fully secured in the manner prescribed in a. above.

2. Repayment of revenue agreement. The repayment of the revenue agreement shall be such that it will produce income and revenue sufficient to provide for the repayment of principal and interest on all bonds issued thereunder when due.

3. Repayment of revenue agreement: terms. The revenue agreement shall provide for:

a. Repayment terms, including a schedule of installment payments of principal and interest, which will extinguish the original bona fide principal of the bonds over a period not to exceed ~~45~~ 10 years from the date of origin.

b. Language which provides that no revision of the revenue agreement may be made between the borrower and the lender unless such revisions are approved by the commissioner.

c. Language which would effectively render the revenue agreement nontransferable as to all or any part of its interest without the expressed approval of the commissioner.

d. The commissioner shall grant the approvals called for by this section if the loan agreement remains substantially the same, the loan agreement is in accordance with these rules, and the risks to the state by the change in the agreement are not increased and the interests of the state are fully protected.

**14 MCAR § 1.4009. Interest adjustment.**

A. Eligibility requirements.

1. In order to be eligible for an interest adjustment an applicant must demonstrate inability to obtain a loan at an interest rate of 7% or less from other sources.

2. Only guaranteed loans that comply with 14 MCAR §§ 1.4007 and 1.4008 shall be eligible for interest adjustment.

B. Repayment procedures.

1. The borrower shall reimburse the commissioner for any amounts paid as an interest adjustment within one year after the final payment to a lending institution is due on the loan. The reimbursement to the commissioner may be made in equal installments over the period of one year or in a single payment at the close of that year.

2. If the borrower has no proprietary right in the property to be rehabilitated, then a promissory note shall be negotiated between the borrower and the commissioner prior to the granting of a loan guarantee to insure repayment of the interest adjustment.

## Department of Transportation

### Adopted Amended Rules for State-Aid Operations under Minnesota Statutes 1978, Chapters 161 and 162, as amended

The proposed amended rules published at *State Register*, Vol. 4, Number 37, pp. 1496 through 1511 on March 17, 1980 (4 S.R. 1496) were adopted on June 10, 1980, with the following amendments:

#### Amendments as Adopted

**14 MCAR § 1.5032 Rules for State-Aid Operations under Minn. Stat. chs. 161 and 162 (1978), as amended.**

A. Purpose. The purpose of 14 MCAR § 1.5032 is to carry out the mandate of the legislature and to effectuate that mandate as set forth in Minn. Stat. ch. 162 (1978), as amended.

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B. Scope. The scope of 14 MCAR § 1.5032 is confined within the framework of and consistent with Minn. Stat. chs. 161 and 162 (1978), as amended.

C. Definitions. For purposes of 14 MCAR § 1.5032 the following terms shall mean:

1. Commissioner. The Commissioner of Transportation.
2. State-Aid engineer. A registered engineer employed as the State-Aid engineer of the Minnesota Department of Transportation.
3. District engineer. A district engineer of the Minnesota Department of Transportation or a registered engineer employed as his State-Aid assistant.
4. County engineer. A registered engineer employed as the county engineer or the director of public works-county engineer of each county.
5. City engineer. A registered engineer employed as the city engineer or the director of public works-city engineer of each urban municipality.
6. Needs report. A report of the estimated construction cost required to improve a State-Aid system to standards adequate for future traffic on a uniform basis.
7. County-municipal account. A separate record of that portion of the County State-Aid highway funds allocated for expenditure solely within cities, having less than 5,000 population.
8. Urban municipality. Any city, having 5,000 or more population, determined in accordance with the provisions of law.
9. Local highway or street departments. The highway or appropriate department of each county and each urban municipality.
10. Township allotment. The county apportionment of County State-Aid highway funds for use in the construction of township roads.
11. Advance encumbrance. The authorized expenditure of local funds, in lieu of State-Aid funds, by a county or municipality for use on an approved State-Aid project. By agreement with the commissioner, the local funds will be repaid to the county or urban municipality from future county or municipal State-Aid allotments or from future county or municipal turnback funds.
12. Screening committee. The county or municipal committee, appointed in accordance with law, and authorized to recommend to the commissioner the mileage and money needs for each of their State-Aid systems.
13. Disaster account. The accounts provided by law for use in aiding a county or urban municipality that has suffered a serious damage to its County State-Aid highway system or Municipal State-Aid street system from fire, flood, tornado or other uncontrollable forces of such proportion that the cost of repairs to such County State-Aid highway system or Municipal State-Aid street system is beyond the normal resources of the county or urban municipality.
14. Trunk highway turnback. A former trunk highway or portion thereof that has reverted to a county or municipality in accordance with law.
15. Turnback accounts. The respective accounts provided by law for payment to the county for the restoration of or to the urban municipality for the reconstruction and improvement of former trunk highways that have reverted to the county or municipality and have become part of the State-Aid system.
16. Disaster committee. A committee, appointed in accordance with the law, to investigate and report its findings and recommendations to the commissioner as to a county's or urban municipality's claim of a disaster or unforeseen event affecting its County State-Aid highway or Municipal State-Aid street system and resulting in a financial hardship.

17. Local road research board. A board appointed in accordance with these rules to recommend specific research projects to the commissioner.

18. Town bridge needs. The estimated construction costs required to improve or replace town bridges to standards adequate for future traffic on a uniform basis.

19. Town bridge account. The apportionment of County State-Aid turnback funds for use in the construction or reconstruction of bridges on township roads.

20. Functional classification plan. A plan by which highways and streets are grouped into classes according to the character of service they are intended to provide.

21. Variance committee. A committee appointed in accordance with these rules to investigate and make recommendations to the commissioner on requests for variances from these rules.

D. Organization and powers of local highway departments. Each county and each urban municipality shall establish and maintain a highway or street department. Such departments shall be adequately organized, staffed, and equipped to administer for the county or urban municipality all matters relating to the operations of the State-Aid program and to exercise all functions, incidental thereto, in accordance with law. All preparation of plans and specifications, and the supervision of construction and maintenance shall be under the control and direction of a professional engineer, registered in the State of Minnesota and employed or retained for that purpose.

E. Selection and designation of State-Aid systems. The State-Aid highways and streets designated to form the basis for a long range improvement program shall, in general, be so selected as to form an integrated network of highways and streets in accordance with the following provisions:

1. Systems.

a. Final selection of routes to be included in the respective County State-Aid and Municipal State-Aid systems shall be subject to the approval of the commissioner.

b. The highway and street systems to be selected and designated in accordance with law are:

(1) County State-Aid highway system not exceeding 30,000 miles in extent, excluding trunk highway turnback mileage.

(2) Municipal State-Aid street system not exceeding 2500 miles in extent within urban municipalities, excluding trunk highway turnback mileage.

(a) On 28' undivided one-way streets with no parking lanes, the chargeable mileage allowed for municipal state aid street mileage purposes shall be one-half of the length of the one-way street.

2. Criteria. State-Aid routes shall be selected on the basis of the following criteria:

a. County State-Aid highways which:

(1) Carry relatively heavier traffic volumes or are functionally classified as collector or arterial as identified on the county's functional plans as approved by the county board;

(2) And connect towns, communities, shipping points, and markets within a county or in adjacent counties;

(a) Or provide access to rural churches, schools, community meeting halls, industrial areas, state institutions, and recreational areas;

(b) Or serve as principal rural mail routes and school bus routes;

(3) And occur at reasonable intervals consistent with the density of population;

(4) And provide an integrated and coordinated highway system, affording within practical limits a State-Aid highway network consistent with traffic demands.

b. Municipal State-Aid streets which:

(1) Carry relatively heavier traffic volumes or are functionally classified as collector or arterial as identified on the urban municipality's functional plan as approved by the urban municipality's governing body;

(2) And connect the points of major traffic interest within an urban municipality;

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(3) And provide an integrated street system affording within practical limits a State-Aid street network consistent with traffic demands.

3. Route designations. All County State-Aid highways and Municipal State-Aid streets shall be selected by resolution of the respective boards of county commissioners, or the respective governing bodies of urban municipalities. The highway or street designations, as contained in the resolution, shall be reviewed by the district engineer of that area and his recommendation shall be filed with the commissioner. ~~Within three months after receipt by~~ The commissioner after receipt of each such resolution and recommendation ~~he shall approve all or such part of said highway or street designations contained in the resolution, as complies with the criteria and other requirements set out in these rules.~~ The commissioner shall certify to the respective boards of county commissioners or governing bodies of urban municipalities the approved portion of ~~their resolution~~ the highway or street designation. All highways or streets so approved shall become a part of the County State-Aid highway system or the Municipal State-Aid street system, subject to such additions or revisions as may be, from time to time, requested and approved.

a. Turnback designations. Prior to release of a former trunk highway to the jurisdiction of a county or urban municipality, the commissioner shall notify the board of county commissioners or the governing body of the urban municipality, through its county or city engineer, which portions of the turnback are eligible for designation as part of its State-Aid system and which portions are eligible for restoration or reconstruction with turnback funds. Upon a request for the designation of such eligible portions from the board of county commissioners or the governing body of the urban municipality, the commissioner shall issue the official order for designation and notify the county or municipal screening committee of this action.

F. State-Aid apportionments. All State-Aid apportionments shall be made from the County State-Aid highway fund and the Municipal State-Aid street fund as provided by law. Apportionments to the respective counties and urban municipalities shall be released in accordance with 14 MCAR § 1.5032 G.

### 1. Money needs.

a. Construction costs estimates. To provide data to implement the formulas for State-Aid apportionment, each county engineer and city engineer shall prepare cost estimates of construction required to improve his County State-Aid or Municipal State-Aid system to approved standards.

b. Incidental costs. In addition to the direct construction or maintenance costs permitted under law, the cost of the following incidental items will be considered as eligible for inclusion in the total estimate of needs:

#### (1) County State-Aid highways:

(a) Automatic traffic control signals.

(b) Lighting of intersections and bridges within approved standards.

(c) Proportionate share of all drainage costs within municipalities, to reflect the responsibility of the State-Aid highway.

#### (2) Municipal State-Aid streets:

(a) Right-of-way.

(b) Automatic traffic control signals.

(c) Lighting of intersections and bridges within approved standards.

(d) Proportionate share of all drainage costs, to reflect the responsibility of the State-Aid street.

c. Deductible items. The respective screening committees shall consider reports from the commissioner, consisting of, but not limited to, the County State-Aid allotments to townships, or the Municipal State-Aid payments on state trunk highways or County State-Aid highways, covering all said allotments or payments made during the preceding year; and shall recommend to the commissioner the amount of deductions to be made in the money needs for each such county or municipality, in order to equalize their status with other counties or municipalities not making similar expenditures.

### 2. Screening committees.

a. Annual reports. A detailed report of the State-Aid mileage and cost estimates shall be tabulated and referred to the respective screening committees appointed pursuant to law. These committees shall investigate and review all such mileage, cost estimates and the reports of those expenditures listed under deductible items, and shall, on or before the first day of November of each year, submit their findings and recommendations in writing to the commissioner as to the mileage and adjusted money needs for each of the governmental subdivisions represented by the respective committees.

b. Local road research account. Within the limitations provided by law, the respective screening committees shall annually determine, and recommend, the amount the commissioner shall set aside from the County State-Aid highway fund or the Municipal State-Aid street fund, for the purpose of local road research. These funds, along with such federal funds as may be provided, shall be

used for conducting research as provided by law. The use and proportionate share of such county and municipal funds shall be as specifically authorized in the project approval as provided for in 14 MCAR § 1.5032 L.3.b.

3. Compilation of data by commissioner. The commissioner shall determine the apportionment percentage due each county and urban municipality in accordance with the formulas established by law.

4. Notice of annual apportionment. Not later than January 25 of each year, the commissioner shall certify the annual apportionment to each respective county or urban municipality.

G. State-Aid payments. Annual apportionments to the respective counties and to urban municipalities shall be released in the following manner:

1. Maintenance apportionments. As soon as the annual county and urban municipal State-Aid allotments have been determined, the commissioner shall apportion and set aside the following amounts:

a. County—Regular Account. Forty percent of the regular County State-Aid allotment for the general maintenance of County State-Aid highways.

b. County—Municipal Account. Forty percent of the County-Municipal Account allotment for the maintenance of the County-State-Aid highways within municipalities of less than 5,000 population.

c. Revisions of county maintenance apportionments. The commissioner may, upon recommendation of the screening committee or upon receipt of a resolution from a county board and for good cause shown, increase or decrease the proportion to be used for maintenance under either 14 MCAR § 1.5032 G.1.a. and/or b. above.

d. Urban account. Twenty-five percent of the total allocation, or \$1,500.00 per mile of improved municipal State-Aid streets, whichever is the least, as the minimum allotment for the general maintenance of the approved State-Aid system. The commissioner may modify the minimum payment to the extent necessary to accommodate the screening committee resolutions pertaining to trunk highway turnback maintenance allowances. Those municipalities desiring to receive an amount greater than the established minimum shall file a request not later than December 15 preceding the annual allocation and shall agree to file a detailed annual maintenance expenditure report at the end of the year.

e. Transfer of unexpended balance. Any unobligated balance remaining in the State-Aid maintenance account to the credit of any county or urban municipality, after final settlement has been made for the annual maintenance expenditures, shall be automatically transferred to the construction account of said county or municipality.

f. Payment schedule. At the earliest practical date, after the allotments have been determined, the commissioner shall release the following amounts to the respective counties and urban municipalities:

(1) Fifty percent of the maintenance allotment from the regular account of each county.

(2) Fifty percent of the maintenance allotment from the municipal account of each county that has filed a request for advance payments prior to the annual apportionment in January of each year. Such request shall include the estimate of the maintenance expenditures anticipated within said account during the calendar year.

(3) Fifty percent of the maintenance allotment to each urban municipality.

g. On or about July 1 of each year, the commissioner shall release an additional advance from the respective maintenance accounts listed above, in an amount not to exceed forty percent of the total maintenance allocations. The commissioner shall retain the remaining amounts within said allocations pending determination of the final amount due, based upon a report of actual maintenance expenditures and receipt of the district engineer's certification of acceptable maintenance performance. Urban municipalities receiving the minimum maintenance allotment as outlined in 14 MCAR § 1.5032 G.1.d. above will be eligible to receive the balance remaining in their maintenance account upon the commissioner's receipt of the district engineer's certification of acceptable maintenance.

2. Construction apportionments. The construction portion of the annual allocation to each county and urban municipality shall be credited to their respective accounts and retained by the commissioner for payment on approved projects in accordance with the following procedure:

a. State-Aid contracts. The commissioner, upon receipt of an abstract of bids and a certification as to the execution of a contract and bond therein, shall promptly release from the funds available to said county or urban municipality up to ninety ninety-five percent of the State-Aid portion of said contract. The commissioner, unless otherwise requested, shall retain the remaining percentage of the State-Aid share of said contract, provided funds are available therefor, until the final cost is determined and the project accepted by the district engineer.

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b. Federal-Aid contracts. The commissioner, under authority of an agency agreement with the governing body of a county or urban municipality, and acting as its agent in Federal-Aid operations, will release from State-Aid funds available therefor, ~~ninety~~ ninety-five percent of the county's or urban municipality's share of the entire contract obligation for immediate redeposit in an agency account, to be used in paying the county's or urban municipality's share of the partial estimates and for advancing the federal share of such estimated payments. The commissioner shall retain the remaining percentage of the contract cost of said project until the final cost is determined and the project accepted by the district engineer. Where other than State-Aid funds are to be used for depositing in the agency account, one hundred percent of the local governmental share of said contract amounts shall be deposited in the agency account prior to award of the contract.

c. Force account agreements. Partial estimates will be accepted on all projects approved for construction by local forces, using the agreed unit prices for determining the value of the completed work. The commissioner shall promptly release from funds available therefor ~~ninety~~ ninety-five percent of the cost of current accomplishments as reported by said partial estimates. Upon request of the county or urban municipality, the commissioner will set aside and retain their State-Aid funds in an amount equal to the agreed total cost of the entire project to ensure final settlement of the completed construction when final estimate is submitted and upon acceptance by the district engineer.

d. Payment limitations. Approval of State-Aid projects by the commissioner does not imply that State-Aid payments will be made in excess of the construction funds available from current State-Aid allotments. Any county or urban municipality having depleted their currently available funds during the calendar year will not be eligible for reimbursement from future allotments unless request for advance encumbrance has been approved or a project is completed in a subsequent year and funds are available.

e. Engineering costs.

(1) Preliminary engineering. Requests for reimbursement of preliminary engineering costs shall be submitted with the report of State-Aid contract or with the initial partial estimate on an approved force account project. The commissioner shall upon receipt of such request supplemented by such documentation as may be requested by the commissioner authorize the reimbursement for actual engineering costs, not to exceed eight percent of the total estimated contract or agreement amount.

(2) Construction engineering. Requests for payment of construction engineering costs shall be submitted along with the final estimate report. The commissioner shall upon receipt of such request, authorize a construction engineering payment which will either be limited to five percent of the eligible construction costs where there are no unusual traffic or construction problems, or which may at the commissioner's discretion be paid in the maximum amount of ten percent of said construction costs on complex projects involving difficult construction features or the continuous movement of dense traffic.

f. Right-of-way. State-Aid payments for right-of-way costs on approved projects shall be limited to ~~ninety~~ ninety-five percent of the approved claim until the acquisition of all right-of-way required for the project is actually completed and the final costs established.

g. Advances from county funds. When the commissioner approves a request from the county board for the construction of an approved County State-Aid project, which requires County State-Aid highway funds in excess of the available allotment and which excess costs will be initially paid for from other local sources, then and in that event, the commissioner will, to the extent authorized by law, repay those locally financed expenditures out of subsequent construction apportionments to the county's State-Aid accounts in accordance with the terms and conditions specified in the approved request.

h. Advance of County State-Aid highway funds. Advance of County Regular Account funds to County Municipal Account fund. Where the commissioner approves a request from the county board for the advance of County-Regular Account funds for use on a municipal section of an approved County State-Aid highway project, and where repayments to the county regular account fund are to be made from subsequent accruals to the county municipal account fund, such repayments will be made by the commissioner, to the extent authorized by law, in the form of transfers from the county municipal account fund to the county regular account fund, in the amounts and at the time specified in the authorization.

i. Advances from urban municipal funds. When the commissioner approves a request from the governing body of an eligible urban municipality for the construction of an approved Municipal State-Aid street project, which requires funds in excess of the available allotment and which excess costs will be initially paid from other local sources, then and in that event, the commissioner will, to the extent authorized by law, repay these locally financed expenditures out of subsequent construction apportionments to the urban municipal account of that municipality in accordance with the terms and conditions specified in the approved request.

j. County or Municipal Bond Account. Any county or urban municipality that resolves to issue bonds payable from the appropriate State-Aid fund in accordance with law for the purpose of establishing, locating, relocating, construction, reconstructing or improving State-Aid streets or highways under its jurisdiction shall certify to the commissioner within thirty days following issuance of the bond, the amount of the total obligation and the amount of principal and interest that will be required annually to liquidate the bonded debt. The commissioner shall set up a bond account therefor, itemizing the total amount of principal and interest involved and he shall annually certify to the Commissioner of Finance the amount needed from the appropriate State-Aid construction fund to pay the



principal due on the obligation, and the amount needed from the appropriate State-Aid maintenance fund to pay the current interest. Proceeds from bond sales are to be expended only on approved State-Aid projects and for items determined to be eligible for State-Aid reimbursement. A county or urban municipality which intends to expend bond funds on a specific State-Aid project shall notify the commissioner of this intent forthwith upon the award of contract or the execution of a force account agreement. Upon completion of each such project, a statement of final construction costs shall be furnished to the commissioner by the county or the urban municipality.

k. Municipal State-Aid funds for County State-Aid or trunk highway projects. The governing body of an urban municipality desiring to use a portion of its State-Aid funds for improvements within its boundaries of any state trunk highway or County State-Aid highway, shall request such authorization by resolution. Before any such funds are released for said purposes, the resolution shall be approved by the commissioner. A copy of the approved resolution shall be filed with the State-Aid engineer. This subparagraph does not apply to payments made for interest on bonds sold under Laws of Minnesota 1959, ch. 538.

3. Semi-annual statements. Within thirty days after the close of each six month period, the commissioner shall submit to each county or urban municipality semi-annual statements as to the status of its respective State-Aid accounts.

4. Other authorized payments. Certain specific allotments or transfers of State-Aid funds have been authorized by law. These will be processed as hereinafter provided:

a. Transfers for hardship conditions or other local use. The county board or governing body of any urban municipality desiring to use a part of its State-Aid funds for this purpose shall certify to the commissioner either that all of its existing State-Aid routes are improved to State-Aid standards or that it is experiencing a hardship condition in regard to financing its local roads or streets, while holding its current road and bridge levy equal to or greater than said levy for previous years. Where a hardship transfer is requested, the commissioner may require fiscal information showing the extent of the financial deficiency. Within thirty days of the receipt of a request for transfer, the commissioner shall act to authorize or deny the transfer of State-Aid funds for use outside of the approved State-Aid system. Upon approval of the requested transfer, the commissioner without requiring any progress reports, shall within thirty days, authorize immediate payment of not less than fifty percent of the total amount authorized, with the balance to be paid within ninety days; or schedule immediate payment of the entire amount authorized if he determines there are sufficient funds available.

b. Township allotments. Upon receipt of a certified copy of a county board resolution, allocating a specific amount of its County State-Aid construction funds for aid to its townships, which resolution shall indicate compliance with the law governing such allocations and be forwarded to the commissioner on or before the second Tuesday of January of each year, the commissioner shall authorize payment of the amount requested for distribution by the county for the construction of township roads.

c. Construction of selected park projects. As provided by law, a portion of the County State-Aid highway funds shall be set aside and used for the construction, reconstruction and improvement of County State-Aid highways which provide access to the headquarters of or the principal parking lot located within a state park. Such funds, so set aside, ~~may~~ shall be expended for this purpose only on a request from the Commissioner of Natural Resources. Projects so selected will be approved by the Commissioner of Transportation in accordance with the procedure established for other State-Aid operations.

d. Disaster account. Any disaster appropriation approved by the commissioner for a county or urban municipality in accordance with law, shall be promptly paid to the county or urban municipality for which such appropriation was authorized. The funds so allotted and paid to the county or urban municipality can only be spent for the purpose for which they were authorized, and within a reasonable time period specified by the commissioner. Forthwith upon completion of the work for which the disaster payment was made, or the expiration of the time specified for doing such work, whichever occurs first, the county or urban municipality shall file a report certifying the extent of the authorized work completed, and showing the total expenditure made therein. In the event the total disaster allotment was not required or used for the purpose specified, the remainder shall be promptly returned to the commissioner for redeposit in the County State-Aid highway fund or the Municipal State-Aid street fund, as the case may be, and apportioned by law. Damage estimates submitted by a county or urban municipality must exceed ten percent of the current annual State-Aid allotment to the county or urban municipality before the commissioner shall authorize the disaster committee to inspect the disaster area.

e. Research account. County and Municipal State-Aid funds that may be annually allocated to the research account shall be used solely for those research projects recommended by the local road research board and approved by the commissioner. Unexpended balances in this account shall at the end of each year be transferred back to the State-Aid fund from which they were obtained.

f. Turnback accounts. A percentage of the Net Highway User Tax Distribution Fund has been set aside by law and apportioned to separate accounts in the County State-Aid highway fund and the Municipal State-Aid street fund, and respectively

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identified as the county turnback account and the municipal turnback account. Further, a percentage of the county turnback account has been set aside and shall be used for replacement or reconstruction of town bridges 10 feet or more in length, in those counties that have two or more towns, pursuant to law. This latter account shall be known as the county town bridge account.

(1) Town bridge monies allocation. The sums of monies set aside for town bridges shall be allocated to the eligible counties on the basis of town bridge needs.

(2) Surplus turnback funds. At any time the commissioner determines that either the county or municipal turnback accounts, notwithstanding the town bridge accounts, has accumulated a surplus not needed for turnback purposes, he shall properly notify the Commissioner of Finance requesting the transfer of such surplus to the respective County State-Aid highway fund or Municipal State-Aid street fund for apportionment as provided by law.

(3) Advances from County or Urban Municipal Funds. When the commissioner approves a request from the governing body of a county or urban municipality for the construction of an approved County State-Aid or Municipal State-Aid turnback project which will require funds in excess of the available turnback fund balance and which excess costs will be initially paid for from other sources, then and in that event, the commissioner will reimburse those locally financed expenditures out of subsequent apportionments to the county's or urban municipality's turnback fund in accordance with the terms and conditions specified in the approved request. The total of such advances to be reimbursed from the respective turnback funds shall not exceed forty percent of the last county or municipal turnback allotment. Any advances shall be repaid in accordance with the terms of the approved request from money accruing to the respective turnback funds.

(4) Advances from the town bridge account. When the commissioner approves a request from the governing body of a county for the replacement or reconstruction of a town bridge which will require funds in excess of the county's available town bridge account and which excess costs will be initially paid for from other sources, then and in that event, the commissioner will reimburse those locally financed expenditures out of subsequent apportionments to the town bridge account in accordance with the terms and conditions specified in the approved request. The total of such advances to be reimbursed from the town bridge account shall not exceed forty percent of the last town bridge apportionment. Any advances shall be repaid in accordance with terms of the approved request from monies accruing to the respective town bridge accounts.

(5) Release of Turnback Account Funds. Upon receipt of an abstract of bids and a certification as to the execution of a contract and bond on an eligible project, the commissioner shall release to a county or urban municipality from turnback account funds up to ~~ninety~~ ninety-five percent of the turnback share of said contract. The commissioner shall retain the remaining percentage of the turnback share of said contract, until the final cost is determined and the project accepted by the district engineer. On force account agreements partial estimates will be accepted on turnback projects approved for construction by local forces, using the agreed unit prices for determining the value of the completed work. The commissioner shall release from the respective turnback account ~~ninety~~ ninety-five percent of the value as reported by said partial estimates on an eligible turnback project. Requests for reimbursement of preliminary and construction engineering costs on an eligible turnback project shall be submitted and payment will be authorized in accordance with 14 MCAR § 1.5032 G.2.e.(1), (2) engineering costs.

(6) Release of town bridge account funds. Upon receipt of an abstract of bids and a certification as to the execution of a contract and bond on an eligible project, the commissioner shall release to a county, from town bridge account funds, up to ~~ninety~~ ninety-five percent of the town bridge account share of said contract. The commissioner shall retain the remaining ~~ten~~ five percent until the final cost is determined and the project is accepted by the district engineer.

g. Transfer of accumulated county municipal account funds to county regular account fund. Upon receipt of a certified copy of a county board resolution requesting the transfer of a portion of or the total accumulated amount in the county municipal account fund, to the county regular account fund, the commissioner ~~may~~ shall transfer said funds provided:

(1) The county submits a written request to the commissioner and holds a public hearing within 30 days of the request to receive and consider any objections by the governing bodies of cities within the county having a population of less than 5,000 and no written objection is filed with the commissioner by any such city within 14 days of that hearing.

(2) If within 14 days of the public hearing held by the county a city having a population of less than 5,000 files a written objection with the commissioner identifying a specific county state-aid highway within the city which is requested for improvement and the commissioner investigates the nature of the requested improvement and finds the identified highway is not deficient in meeting minimum state-aid street standards or the county has shown evidence that the identified highway has been programmed for construction in the county's five-year capital improvement budget in a manner consistent with the county's transportation plan or there are conditions created by or within the city beyond the control of the county that prohibit programming or reconstruction of the identified highway.

### H. Minimum State-Aid standards.

#### 1. Geometric design standards.

a. The following standards shall apply to all rural design undivided roadways:

RURAL UNDIVIDED GEOMETRIC STANDARDS

Projected ADT	Lane Width	Shoulder Width	(1) Inslope	(2) Recovery Area	(3) Design Speed	Surfacing	Design Strength	New & (*) Rehabilitated Bridges Width Curb-Curb	Bridges to Remain	
									Width Curb-Curb	Structural Capacity
0-49	11'	1'	3:1	7'	30-50	Traffic Bound	--	24'	22'	H-15
50-99	11'	3'	3:1	9'	30-50	Traffic Bound	--	28'	22'	H-15
100-399	12'	4'	4:1	15'	40-50	Paved	7 Ton Ult. 9 Ton	32'	24'	H-15
400-749	12'	4'	4:1	20'	40-60	Paved	7 Ton Ult. 9 Ton	32'	24'	H-15
750-999	12'	6'	4:1	25'	40-60	Paved	7 Ton Ult. 9 Ton	36'	28'	H-15
1000 & Over	12'	8'	4:1	30'	40-60	Paved	9 Ton	40'	30'	H-15

- (1) Applies to Slope Within Recovery Area Only.
- (2) Obstacle Free (Measured from edge of Traffic Lane) Culverts with less than 27" Vert. height allowed without protection in recovery area.
- (3) Subject to Terrain.
- (4) Minimum widths listed shall apply, except that lesser widths may be approved upon justification where the bridge length exceeds 200' - HS-20 loading required.

- b. The following standards shall apply to those roadways that meet indicated conditions:

## SUBURBAN GEOMETRIC DESIGN STANDARDS\*

Projected ADT	Lane Width	Shoulder Width	(1) Inslope	(2) Recovery Area	(3) Design Speed	Structural Design	New & Rehabilitated Bridges Width Curb-Curb (4)	Bridges to Remain	
								Width Curb-Curb	Structural Capacity
Less Than 1000	12'	6'	4:1	20'	40	9 Ton	36'	28'	H-15
1000 & Over	12'	8'	4:1	20'	40	9 Ton	40'	30'	H-15

\*This standard shall apply only when the project is located in an area where the following conditions exist:

1. A platted area or an area in a detailed development process, or
2. Physical restraints are present which prevent reasonable application of the Rural Design Standards.

(1) Applies to slope within recovery area only.

(2) Obstacle free (measured from edge of traffic lane).

(3) Desirable design speed 50 mph.

(4) Minimum widths listed shall apply, except that lesser widths may be approved upon ~~sufficient~~ justification where the bridge length exceeds 200'. HS-20 Loading required.

c. The following standards shall apply to all urban design roadways:

URBAN ROADWAY-WIDTHS GEOMETRIC STANDARDS

TOTAL WIDTH IN FEET  
FACE TO FACE OF OUTER CURBS

No. of Through Lanes	Density	Undivided, No Parking Lanes	With Median, No Parking Lanes		Undivided, With Parallel Parking Lanes		With 4' Median and Two Parallel Parking Lanes
			4' Median	14' Median	One Side	Both Sides	
2 (Collector)	Low	28			34	40	
	High	32			36	46	
4 (Collector)	Low	46	50	60	56	64	70
	High	50	54	64	60	68	74
2 (Arterial)	Low	36			38	48	
4 (Arterial)	Low	50	54	64	60	68	74
	High	52	58	68	62	72	80
6 (Arterial)	High	76	82	92	86	96	104

URBAN ROADWAY CLASSIFICATION

CLASSIFICATION	FACILITY FUNCTION	DESIGN CHARACTER	TYPICAL TRIP LENGTH	ADT RANGE
Collector (Low Density)	Serves as feeder facility from neighborhood and local streets to the collector/arterial network. Also serves local access/parking function for local business and residential development	Low to Moderate operating speeds of 20-25 mph.	Short -- generally less than 1/2 mile on this type facility	200-3000 ADT
Collector (High Density)	Collects traffic from local and feeder streets and connects with arterials. Can serve local business districts	Variable -- should provide for equal service to access and mobility	Variable	1000-7000 ADT
Arterial (Low Density)	Should serve intra-community travel. Augments high density arterial system	Some access control with emphasis on mobility	Variable	5000-10,000 ADT
Arterial (High Density)	Forms backbone of urban network along with freeway system. Serves as through facility. Also can serve major traffic generators such as shopping centers, stadiums, etc.	High. Must provide for through nature of traffic and also accounts for frequent turning movements. Control of access and width for separation of turning movements. Speeds generally 30-50 mph.	Longer -- usually greater than 1-2 miles	8000 ADT and up

- d. The following minimum requirements shall apply to rural roadways on resurfacing projects:

SPECIAL RESURFACING PROJECTS					
(Overlays)					
COUNTY STATE AID HIGHWAYS					
(Minimum Requirements)					
Present A. D. T.	Strength In Tons Per Axle	Surface		Shldr - Shldr Width	Design Speed
		Type	Width		
Under 100	7	Paved	22	26	35
100 - 749	7	Paved	22	26	45
750 - 999	7	Paved	22	30	45
1000 - 2000	7	Paved	24	32	45
2001 - Over	7 Ult 9	Paved	24	32	45

Widths of bridges to remain in place must equal roadway pavement width

- e. The following vertical clearances for underpasses shall apply:

VERTICAL CLEARANCES FOR UNDERPASSES		
	Rural-Suburban Design Vertical Clearance	Urban Design Vertical Clearance
Highway under roadway bridge	16'4"	14'6"
Highway under railroad bridge	16'4"	14'6"
Highway under pedestrian bridge	17'4"	14'6"
Highway under sign structure	17'4"	14'6"
Railroad under roadway bridge	22'0"	22'0"



2. Specifications. Specifications for construction shall be the latest approved Minnesota Department of Transportation specifications, except as modified by special provisions which set forth conditions or requirements for work or materials not covered by the approved specifications, or which set forth conditions or requirements to meet exigencies of construction peculiar to the approved project.

3. Right-of-way. The minimum widths of right-of-way for all State-Aid routes shall be not less than sixty feet within municipalities and sixty-six feet in rural areas, except for conditions where modifications can be justified to the satisfaction of the commissioner. Prior to construction the counties shall acquire control of such additional widths of right-of-way in rural areas, as may be necessary to properly maintain the ditch section.

4. Parking provisions.

a. The following criteria must be used in establishing diagonal parking:

**Minimum Design Standards for 45° & 60° Diagonal Parking**

Parking Angle	Stall Width	Stall <del>or</del> <del>Curb</del> Depth	Traffic Aisle Width	Length along Curb	½ Roadway Width (Minimum)	Present ADT	Legal Speed Limit
45°	9'	19.8	<del>13.0'</del> <u>13.2'</u>	12.7'	33'	Less than 3000	30 MPH or less
60°	9'	21.0'	18.0'	10.4'	39'	Less than 3000	30 MPH or less
45°	9'	19.8'	<del>25'</del> <u>25.2'</u>	12.7'	45'	<del>More than</del> 3000 <u>and over</u>	30 MPH or less
60°	9'	21.0'	<del>30'</del>	10.4'	51'	<del>More than</del> 3000 <u>and over</u>	30 MPH or less

b. Diagonal parking provisions shall be established by cooperative agreement between the local road authority and the commissioner.

(1) The cooperative agreement shall indicate the angle of parking, provide for pavement marking of the parking lanes and the provision that the road authority may alter parking provisions if traffic volumes exceed the design criteria.

c. The minimum design standards for roadways with parallel parking are shown in these rules under 14 MCAR 1.5032 H.1.c.

d. Minn. Stat. § 169.34 must be adhered to in determining diagonal parking spacing.

I. State-Aid operations. State-aid funds allotted to counties and urban municipalities shall be expended in accordance with the following provisions:

1. Maintenance.

a. The commissioner shall require a reasonable standard of maintenance on all State-Aid routes within the county or urban municipality, consistent with available funds, the existing street or road condition and the traffic being served. This maintenance shall be considered to include, but shall not be limited to:

(1) The maintenance of all road surfaces, shoulders, ditches and slopes and the cutting of brush and weeds affecting the respective state-aid systems;

(2) The maintenance and inspection of all bridges, culverts and other drainage structures pursuant to Minn. Stat. § 165.03;

(3) The maintenance of all regulatory and direction signs, markers, traffic control devices and protective structures in conformance with the current manual on uniform traffic control devices affecting the respective state-aid systems;

(4) The striping of all pavements of 22 feet or more in width, consistent with the traffic service provided, and for which there are no pending improvements;

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## ADOPTED RULES

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(5) The exclusion of advertising signs, billboards, buildings and other privately owned installations other than utilities of public interest from the right of way of any approved State-Aid projects.

(6) The installation of ~~approved~~ route markers on all rural County State-Aid highways in ~~accordance with the current manual on uniform traffic control devices.~~

(a) Route markers shall be a minimum of 16" x 16" square with black letters or numerals on a white background.

(b.) Wherever county road authorities elect to establish and identify a special system of important county roads, the route marker shall be pentagonal shape and shall consist of a reflectorized yellow legend (county name, route letter and number) and border on a blue background of a size compatible with other route markers.

b. Unsatisfactory maintenance. When, in the opinion of the commissioner, the maintenance of any County or Municipal State-Aid route is determined to be unsatisfactory, he shall retain up to ten percent of the current annual maintenance apportionment to the responsible county or urban municipality. Funds so retained shall be held to the credit of that county or urban municipality until the unsatisfactory condition has been corrected and a reasonable standard of maintenance is provided.

c. Biennial report. The commissioner's biennial report to the Legislature shall enumerate all such funds retained more than ninety days, together with an explanation for this action.

2. Construction. Survey, plans and estimates for all State-Aid projects shall be made by or under the immediate direction of the county or city engineer in accordance with standards as to form and arrangement prescribed by the commissioner.

a. Plans and estimates. Plans and estimates for each State-Aid construction project must be submitted for review. Each plan shall show all subsequent stages required for the completion of the improvement, portions of which may be covered by later contracts or agreements. Only those projects for which plans are approved by the State-Aid engineer prior to the award of contract or approval of a force account agreement shall be eligible for State-Aid construction funds.

b. Project numbers. Approved projects will be assigned State-Aid project numbers and shall be so identified in records of the Minnesota Department of Transportation and the local governmental unit.

c. Contract information. Upon award of a State-Aid contract by any county or urban municipality the engineer thereof shall furnish the commissioner with an abstract of bids and a certification as to the specific contract and bond executed for said approved construction work.

d. Force account. Any county or urban municipality desiring to use funds credited to it on a force account basis shall have its engineer file a request with the commissioner for each construction project to be built by the county or urban municipality at agreed unit prices, which shall be based upon estimated prices for contract work, less a reasonable percentage to compensate for move-in, move-out taxes and contractor's profit. Such requests shall contain a complete list of pay items and the unit prices at which it is proposed to do the work. Prior to the approval by the commissioner, the district engineer shall file his recommendations with the commissioner as to the request and the cost estimate. Items of work other than those listed as a pay item or approved by supplemental agreements shall be considered incidental work not eligible for State-Aid payment.

e. Project reports. Prior to final acceptance of each construction project by the commissioner, the county engineer or the city engineer shall submit to the commissioner such final project records as the commissioner may deem necessary or desirable.

f. Project payments. On all State-Aid construction projects payments will be made in accordance with 14 MCAR 1.5032 G.2.a., b., c., d.

3. Turnback accounts. The funds in the county and municipal turnback accounts shall be expended only as payments to a county or urban municipality for the approved reconstruction or improvement of those former trunk highways that have reverted to county or municipal jurisdiction and which meet the eligibility requirement as set forth herein. Further, a percentage of the county turnback account has been set aside, as provided by law, and shall be used for replacement or reconstruction of town road bridges that are 10 feet or more in length in those counties that have two or more towns.

a. Eligibility.

(1) Any former trunk highway reverted to county or urban municipal jurisdiction subsequent to July 1, 1965, and which is part of the County State-Aid highway or Municipal State-Aid street systems, shall be eligible for payment from the respective turnback account for all costs covering the restoration or the reconstruction and improvement of said highways as detailed on approved plans. Approval of plans for the initial construction of such projects shall be limited to a period of five years from the date of revision. After plan approval for the construction of the initial part of a turnback project, plans for other portions of the same route must be approved within ten years from the date of reversion to be eligible for turnback funds. Each such approved project shall be advanced to construction status within one year after notification to the county or urban municipality that sufficient funds are available for the construction of said projects. Payment for such reconstruction and improvement of any section will terminate all eligibility for reconstruction and improvement of that section with turnback funds.

(2) Any town bridge, 10 feet or more in length, is eligible for replacement or reconstruction if after all pertinent data supplied by local citizenry, local units of government, the Regional Development Commission or the Metropolitan Council, is reviewed by the county board and a formal resolution by the county board is adopted identifying the town bridge or bridges to be replaced or reconstructed. Payment to the counties will be limited to ~~ninety~~ ninety-five percent of the cost of the bridge, and will be made in accordance with 14 MCAR § 1.5032 G.4.f.(6).

b. Plan approval and construction requirements. Plans for all County or Municipal State-Aid turnback or town bridge projects must be submitted to the commissioner and be approved before any reconstruction or improvement work is undertaken. All of the State-Aid rules that are consistent with the turnback regulations shall apply to all projects to be financed from the county or municipal turnback accounts or the town bridge account.

c. Construction authorization. As soon as the plans for a State-Aid turnback or town bridge project are approved, the county or urban municipality shall be furnished either an authorization to proceed with construction or a notice that sufficient funds are not available within the applicable turnback account or town bridge account and that a priority has been established for said project for construction authorization as soon as funds are available. Where local funds are advanced by the county or urban municipality to construct an approved project for which sufficient funds are not available in the turnback account or town bridge account authorization to proceed with construction will be notification that the agreement for reimbursement of funds, in accordance with 14 MCAR § 1.5032 G.4.f.(3) has been approved by the commissioner.

J. General rules. In addition to those provisions heretofore mentioned, expenditures of State-Aid funds by any county or urban municipality shall conform to the following rules:

1. Legal requirements. State-Aid construction projects shall comply with all federal, state, and local laws, together with all ordinances, rules and regulations applicable to the work. Responsibility for compliance shall rest entirely with the local unit of government.

2. Bridge plans. Plans for all bridge construction or bridge reconstruction projects shall be approved by the bridge engineer of the Minnesota Department of Transportation prior to the approval by the State-Aid engineer.

3. Reports and records. Annual reports, status maps, and all maintenance and construction reports and records shall be filed at the time and in the form specifically requested by the commissioner or his authorized representatives.

4. Non-compliance. The commissioner, upon determination that a county or urban municipality has failed to comply with the established State-Aid requirements, other than for unsatisfactory maintenance, or has failed to fulfill an obligation entered into for the maintenance or improvement of any portion of a state trunk highway or interstate route, shall determine the extent of the failure and the amount of such county's or urban municipality's apportionment that shall be retained until such time as suitable compliance is accomplished, or the obligation fulfilled, as the case may be. The amount withheld shall reasonably approximate the extent of the noncompliance or the value of the unfulfilled obligation.

5. Defective work. Whenever unsatisfactory conditions are found to exist on an approved construction project, the district State-Aid engineer can, if necessary, order the suspension of all work affected thereby until said condition is satisfactorily corrected. Failure to conform with such suspension order shall be considered willful non-compliance. All work or materials which fail to conform to the requirements of the contract or force account agreement shall be considered as defective. Unless the work is satisfactorily remedied or repaired before final acceptance is requested, the commissioner shall either withhold funds in accordance with paragraph 4., or shall establish the reasonable value of the defective work as the basis for settlement with the county or urban municipality.

6. Engineering and technical assistance. The commissioner may, as authorized by law, execute agreements with any county or urban municipality for technical assistance from the Department of Transportation. These services, if furnished, shall be paid for by the governmental subdivision at the rates established by the Department of Transportation.

K. General State-Aid limitations. The extent of State-Aid participation on special items shall be limited as follows:

1. Lighting. The lighting of hazardous or accident prone locations, when concurred in by the traffic engineer of the Minnesota Department of Transportation shall be considered as eligible expense to the following extent:

a. New construction. Cost of complete lighting at approved locations only on multiple-lanes.

b. Cost of lighting approved intersections on single-lane design.

c. Locations where the municipality would normally install lighting units are not considered as an eligible expense. The county or urban municipality shall furnish traffic information or other needed data to support its request.

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d. Reconstruction. All costs incidental to the necessary revision or relocation of existing lighting facilities, up to and including the cost of completing the new base.

2. Traffic control signals.

a. State-Aid projects.

(1) Plans for the construction or reconstruction of ~~all~~ the electrical portion of traffic control signals ~~may~~ shall be designed ~~and certified~~ by a master electrician licensed in the State of Minnesota or by an electrical engineer registered in the State of Minnesota.

(a) The District State-Aid Engineer ~~may~~ shall review said plans upon submittal by the local engineer and make recommendations to the State-Aid Engineer.

(b) The State-Aid Engineer ~~may~~ shall approve the electrical portion of said plan based on the certification of the master electrician or by the electrical engineer and the remainder of the plan based on the certification of a registered professional civil or highway engineer. ~~geometries of the signal standards if in accordance with the current "Manual on Uniform Traffic Control Devices."~~

(2) Plans for the construction or reconstruction of the electrical portion of all traffic control signals not certified by a master electrician or registered electrical engineer shall be approved by the Traffic Engineer of the Minnesota Department of Transportation prior to the approval ~~by~~ of the State-Aid engineer.

b. Federal Aid projects. Plans for the construction or reconstruction of ~~all~~ traffic control signals shall be approved by the traffic engineer of the Minnesota Department of Transportation prior to the approval by the State-Aid engineer.

c. The extent of State-Aid participation in ~~all~~ signal installations shall be determined by the State-Aid engineer in relation to the proportion of State-Aid routes involved at each installation.

3. Right-of-way. The cost of any lands and properties required to accommodate the design width of the street or highway as governed by the State-Aid standards, including necessary width for sidewalks, shall be considered as eligible expense. This cost ~~may~~ shall include relocation and moving costs as provided by law and ~~may~~ shall include damages to other lands if reasonably justified to the satisfaction of the commissioner.

4. Sidewalks. On County State-Aid projects, sidewalks shall be considered as an eligible expense only where the proposed construction necessitates the alteration of existing walks. On Municipal State-Aid street projects, State-Aid payment for sidewalk ~~may~~ shall be made when requested by the urban municipality.

5. Storm sewers. Plans containing items for storm drainage shall be reviewed by the hydraulics engineer for the Minnesota Department of Transportation and his recommendations obtained as to design features and the proportionate share chargeable to the State-Aid system. These recommendations along with those of the district engineer shall be considered in determining the maximum State-Aid participation in said work.

L. Local road research board.

1. The commissioner shall appoint a local research board consisting of the following members:

a. Four county engineers, only one of whom may be from a county containing a city of first class.

b. Two city engineers, only one of whom may be from a city of first class.

c. Two Department of Transportation staff engineers.

d. One University of Minnesota staff engineer.

e. One ex officio secretary, who shall be the department's research coordination engineer.

2. Future appointments. All appointments of county and city engineers, except for unexpired terms shall be for three years. The other members shall serve at the will of the commissioner.

3. Operating procedure:

a. The board shall initially meet on call from the commissioner, at which time they shall elect a chairman, and establish their own procedure for the selection of research projects to be recommended to the commissioner. Final determination on all such research projects shall be made by the commissioner, and the cost thereof shall be paid out of the State-Aid research accounts provided for by law.

b. In the event that the board recommends a project covering research in methods of and materials for the construction and maintenance of both the County State-Aid highway system and the Municipal State-Aid street system, the board shall also recommend to the commissioner the proportionate share of the cost of such project to be borne by the respective County State-Aid highway research account, and the Municipal State-Aid street research account, based on the benefits to be realized by each system from such research project.

M. Variance.

1. Any formal request by a political subdivision ~~local unit or units of government~~ for a variance from these rules shall be submitted to the commissioner in writing.

2. Contents of request. ~~A request shall be accompanied by an application fee of \$1,000 to ensure the reimbursement of expenses of any committee member so appointed by the commissioner to evaluate said request.~~

a. The specific rule or standard for which the variance is requested. Any monies not needed to compensate committee members shall be returned pro rata to the local units of government from which they were received.

b. The reasons for the request.

c. The economic, social, safety and environmental impacts which may result from the requested variance.

d. Effectiveness of the project in eliminating an existing and projected deficiency in the transportation system.

e. Effect on adjacent lands.

f. Number of persons affected.

g. Safety considerations as they apply to:

(1) Pedestrians.

(2) Bicyclists.

(3) Motoring public.

(4) Fire, police and emergency units.

3. The commissioner shall publish notice of the variance request in the State Register and shall request comments from all interested parties be directed to the commissioner within 20 calendar days from date of publication. Any variance objected to in writing or denied by the Commissioner is subject to a contested case hearing as required by law.

a. ~~The costs of a contested case hearing shall be the responsibility of the local unit or units of government.~~

4. The commissioner may appoint a committee to serve as required to investigate and determine a recommendation for each variance. No elected or appointed official that represents a political subdivision requesting the variance may serve on the committee. The committee shall consist of any five persons of the following:

a. The committee shall consist of any five of the following persons:

a- (1) ~~Not more than two county engineers only one of whom may be from a county containing a city of the first class.~~

b- (2) ~~Not more than two city engineers only one of whom may be from a city of the first class.~~

e- (3) ~~Not more than two county officials only one of whom may be from a county containing a city of the first class and~~

d- (4) ~~Not more than two city officials only one of whom may be from a city of the first class.~~

5. ~~No elected or appointed official may serve on the committee that represents a governmental unit or agency requesting the variance.~~

6. b. Operating procedure.

a- (1) ~~The committee shall meet on call from the commissioner at which time they shall elect a chairperson and establish their own procedure to investigate the requested variance.~~

b- ~~The commissioner shall publish notice of the variance request in the State Register and shall request comments from all interested parties be directed to the commissioner within 20 calendar days from date of publication.~~

(1) ~~If a written objection is received a contested case hearing will be held as required by law.~~

e- ~~The committee, after considering all data pertinent to the requested variance and considering the economic, social, safety and environmental impacts which will result from the requested variance, shall recommend to the commissioner an acceptance or rejection of the requested variance.~~

(1) ~~If the committee recommends rejection of the requested variance, a contested case hearing will be held as required by law.~~

d- ~~If no objection to the requested variance is received and the committee recommends acceptance of the requested variance, the commissioner may approve said request and direct the State Aid Engineer to approve said variance.~~

(1) ~~If the commissioner determines to deny the request, a contested case hearing will be held as required by law.~~

7. Criteria to be considered in evaluating a variance request:

(2) The committee shall consider:

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(a) The economic, social, safety and environmental impacts which may result from the requested variance in addition to the following criteria:

- ~~a-~~ (b) Effectiveness of the project in eliminating an existing and projected deficiency in the transportation system.
- ~~b-~~ Economic consideration.
- ~~c-~~ (c) Effect on adjacent lands.
- ~~d-~~ (d) Number of persons affected.
- ~~e-~~ (e) Effect on future maintenance.
- ~~f-~~ (f) Safety considerations as they apply to:
  - ~~(1)~~ (i) Pedestrians.
  - ~~(2)~~ (ii) Bicyclists.
  - ~~(3)~~ (iii) Motoring public.
  - ~~(4)~~ (iiii) Fire, police and emergency units.
- (g) Effect that the rule and standards may have in imposing an undue burden on a political subdivision.

(3) The committee after considering all data pertinent to the requested variance shall recommend to the commissioner approval or disapproval of the request.

4. The commissioner shall base his decision on the criteria as specified in 14 MCAR § 1.5032 M.4.b.(2), (a)-(g) and shall notify the political subdivision in writing of his decision.

5. Any variance objected to in writing or denied by the commissioner is subject to a contested case hearing as required by law.

N. Personal expenses authorized board or committee members. The commissioner will authorize the payment of all necessary personal expenses in connection with meetings of board and committee members, appointed by him for State-Aid purposes. These expenses shall be reported on forms furnished by the commissioner and paid from the State-Aid administrative fund.

O. Identification and numbering. The commissioner is authorized and empowered to change the numbering system of the approved rules.

P. Severability. The provisions of these regulations shall be severable, and the invalidity of any paragraph, subparagraph or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision or any other part.

## Department of Public Welfare Bureau of Support Services

### Adopted Temporary Rule Governing Limitation of Nursing Hours in the Nursing Home Reimbursement Rule (12 MCAR § 2.049)

The proposed temporary rule 12 MCAR § 2.049 published at *State Register*, Volume 4, Number 48, pp. 1893-1894, June 2, 1980 (4 S.R. 1893) was adopted on July 1, 1980, approved by the Office of the Attorney General on July 2, 1980, and filed with the Office of the Secretary of State July 15, 1980, with the following amendments:

#### 12 MCAR § 2.049 D.2. Nursing care and attendant limitations.

a. Nursing care. Nursing-care costs will be limited by a maximum number of nursing hours per patient day as follows:

Skilled	2.9 hours
ICF I	2.3 hours

If the actual average nursing hours per patient day exceed the above limit, the reasonable cost limitation will be calculated by multiplying the ratio of the above stated limit to the average actual nursing hours per patient day for the year times the actual cost per patient day. This limitation will not apply to facilities that qualify for the exception under D.8.d.(3) or facilities licensed under DPW Rule 80, or facilities mandated by a correction order from the Department of Health to provide additional nursing care.

c. Nursing care exceptions. Facilities in which the nursing hours exceeded 2.8 hours per day for skilled nursing care and 2.2 hours per day for intermediate care during calendar year 1979 shall be limited to a maximum of 3.2 hours per day for skilled nursing care and 2.45 hours per day for intermediate care. The cost of additional nursing hours in excess of 2.8 hours for skilled care and 2.2 hours for intermediate care shall be exempted from the rate provision of B.4.b. This provision is effective for facilities with fiscal years ending after May 31, 1980 and before June 30, 1981 submitting cost reports after July 1, 1980 and before July 1, 1981; however, no facility may claim this exception more than once during the above time frame unless this rule or statute is amended.

# 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

Sidney R. Baldwin,

v.

The Commissioner of Revenue,  
Docket No. 2752

## Tax Court

Appellant,

Appellee.

Order Dated July 17, 1980.

This is an appeal from an Order of the Commissioner of Revenue denying a claim for refund of \$1,498.56 and assessing an additional tax in the amount of \$277.18, including interest for the taxable period ending December 31, 1977. The Appellant claims that all of his income is exempt from Minnesota income taxes because it was assigned through a vow of poverty to an auxiliary church of the Basic Bible Church of America known as the Order of Almighty God, Chapter 7909. Appellant claims to be an ordained minister of said church. The issue is whether or not Appellant's income is subject to Minnesota state income tax.

Sidney R. Baldwin, appeared pro se,  
Paul R. Kempainen, Special Assistant Attorney General, appeared for appellee.

### Decision

The Order of the Commissioner of Revenue is hereby affirmed.

### Findings of Fact

#### Earl B. Gustafson

1. The Appellant, Sidney R. Baldwin, is a cash basis taxpayer residing at 1985 Yorkshire Avenue, St. Paul, Minnesota.
2. During the taxable year 1977, Appellant was employed as an electrician by both Premier Electric Construction Corp. of Minneapolis, Minnesota, and by the International Brotherhood of Electrical Workers, Local 292. By reason of his employment Appellant was paid \$20,350.02 by Premier Electric and \$979.81 by Local 292.
3. During the year 1977, Appellant was an employee of both Premier and Local 292, as indicated by the compensation paid to him and by the fact that both employers covered the Appellant with their qualified employee pension plans and also because Appellant was covered as an employee in Local 292's health insurance plan.
4. Sometime during the taxable year 1977 the Appellant heard about an organization known as the Basic Bible Church of America, and shortly thereafter contacted its president, Jerome Daly.
5. After this contact the Appellant received from Jerome Daly, on or about October 5, 1977, a certificate of ordination purporting to ordain Appellant as a minister, and a certificate of doctorate of divinity. Aside from a short oral examination during which Appellant wrote down his answers, Appellant took no formal training for either of these certificates. In connection with receiving these documents Appellant paid Jerome Daly the sum of \$750.00, sometime between October 5, 1977 and November 5, 1977.
6. After contributing this money, Appellant received from Jerome Daly, on or about November 5, 1977, a church charter and a set of by-laws purportedly establishing the Appellant as an auxiliary church known as the Order of Almighty God, Chapter 7909 (hereafter "Chapter 7909"). The Appellant took no part in drafting any of these documents. Instead, the documents were drafted by Jerome Daly, and the Appellant relied upon the advice and counsel of Jerome Daly in setting up Chapter 7909 and handling the income tax questions relating thereto.
7. Under the church charter, Chapter 7909 was supposedly governed by three or more trustees, who were named in the charter as Sidney Baldwin (the Appellant herein), Sharon R. Baldwin (the Appellant's wife), Brett J. Baldwin (the Appellant's son) and Kipp W. Baldwin (also Appellant's son).  
However, under the Chapter by-laws the sole authority to govern Chapter 7909 was vested in a life-time office called the "Head of the Chapter," who was named in the by-laws to be the Appellant herein. Neither the trustees nor any other members had the right to vote and could act in an advisory capacity only. The Head of the Chapter, Appellant, also had sole authority to control and dispense the funds and property of Chapter 7909 for his own support.
8. In all relevant matters concerning finances, property, and the spending of funds, there was complete separation and independence between the national organization known as the Basic Bible Church of America and the local Chapter 7909 controlled by the Appellant herein.
9. Under the by-laws, total discretion was vested in the Appellant to spend the funds of Chapter 7909 without any interference from Jerome Daly or the national Basic Bible Church.
10. Chapter 7909 has never been incorporated under the laws of any state.

11. On the same day he received his church charter and by-laws, Appellant signed a vow of poverty form purportedly transferring all his income to Chapter 7909. Thereafter, Appellant deposited his paychecks earned as an electrician into a bank account held in the name of Basic Bible Church of 1985 Yorkshire. The only person authorized to draw checks on this account was the Appellant. The money in this account was then used by the Appellant to pay his personal debts and living expenses, plus some of the mortgage payments, taxes and interest on Appellant's home which was owned in the name of the Appellant's wife and continued to be his personal residence and that of his family.

12. After receiving his ordination certificate and signing the vow of poverty form, the Appellant continued in his same employment as an electrician.

13. On or about March 10, 1978, the commissioner received Appellant's 1977 Minnesota individual income tax return with W-2 forms attached. On this return the Appellant claimed a deduction of his entire income, \$21,329.83, as a contribution to his local Chapter 7909. As a result of this purported deduction, Appellant claimed a refund of \$1,498.56, which was equal to the amount withheld from his 1977 paychecks. No other deductions or credits of any kind were claimed by the Appellant on his 1977 return.

14. The Minnesota Department of Revenue subsequently conducted an audit of the Appellant's 1977 return, and the Appellant's contribution deduction claim was denied. The Appellant's correct 1977 income tax was thereupon computed by the Department of Revenue, using the standard deduction and whatever credits available information indicated the Appellant was entitled to receive. The Appellant filed an administrative protest of the audit's findings and an administrative hearing was held on July 25, 1978. No change was made in the Audit's findings as a result of this hearing.

15. On August 4, 1978, the Commissioner of Revenue issued his Order, assessing additional income tax liability against the Appellant in the amount of \$277.18, including interest. The Appellant has filed a timely appeal with the Tax Court from this Order.

#### Memorandum

The Appellant, Sidney R. Baldwin, is a cash basis taxpayer who earned \$21,329.83 in 1977, working as a journeyman electrician. In his 1977 Minnesota Income Tax Return he indicated under Itemized Deductions: "Entire salary is turned over to the Basic Bible Church of America. See attached Federal Return."

Although Appellant claimed on his return that his entire salary was a deduction as a religious contribution, it is evident from the hearing and the post-trial briefs that he is claiming a tax exemption, not a tax deduction. Under Minn. Stat. § 290.21, subd. 3(f) (i), deductions for charitable and religious contributions are limited to 10% of an individual taxpayer's gross income. Here Appellant claims 100% of his income is tax exempt. His fundamental claims seem to be that all of his earnings were either earned by himself as a tax exempt "church," or that he didn't actually receive these earnings individually, but merely as the agent for a tax exempt "church." Under this later theory, he was only a conduit for these earnings that passed immediately through him to a "church" he founded known as the Order of Almighty God: Chapter No. 7909. This Chapter is affiliated with the parent church, Basic Bible Church of America, Minneapolis, Minnesota.

The first claim—that Sidney Baldwin, the individual, is a "church" exempt from Minnesota income taxes—is quickly disposed of. Sidney Baldwin may be a "church" according to his own beliefs, according to scripture, and according to some theologians, and his right to hold and proclaim this belief is protected by the First Amendment to the United States Constitution. Sidney Baldwin, the individual, is not, however, a tax exempt "church" under Minnesota tax law. Minn. Stat. § 290.05, subd. 1(i) is the applicable statute and it reads in pertinent part as follows:

Subd. 1 The following corporations, individuals, estates, trusts, and organizations shall be exempted from taxation under this Chapter

(i) Any corporation, fund, foundation, trust or association organized for exclusively scientific, literary, religious, charitable, educational, or artistic purposes. . . . if no part of the net income of any such corporation, fund, foundation, trust or association inures to the benefit of any private member, stockholder, or individual. (emphasis added)

The Appellant not being a "corporation, fund, foundation or association" does not qualify for tax exemption.

The alternative theory of tax exemption argued by Appellant is based upon a "vow of poverty" which was introduced into evidence. By this "vow of poverty" Appellant assigned all of his income to his "church," Chapter No. 7909 of the Order of Almighty God. He reasons that this means he never received the money and therefore it is not taxable to him. The "church" of course, is claimed to be tax exempt and therefore his earnings are never taxed.

It is a settled principle of income tax law that all income is taxed to the party who earns it, and that tax liability may not be avoided by an anticipatory assignment of that income to another. *Lucas v. Earl*, 281 U.S. 111, 50 S. Ct. 241, 74 L. Ed. 731 (1930); *Drew v. Commissioner of Taxation*, 222 Minn. 186, 23 N.W. 2d 565 (1946); *Fury v. Commissioner of Revenue*, Tax Ct. Dkt. #2626 (Aug. 24, 1978). Identical claims of assignment of income to a "church" through a "vow of poverty" were made in the case of *Fury v. Commissioner of Revenue*, Tax Ct. Dkt. #2629. This Court denied these claims and affirmed the Commissioner. The *Fury* case was appealed to the Minnesota Supreme Court which affirmed summarily on June 11, 1979. There are no significant facts that distinguish this case from the *Fury* case. *Fury v. Commissioner*, supra, therefore controls and the Commissioner's Order should be affirmed.

In his post-trial brief the commissioner raised additional grounds for denying Appellant's claim for tax exemption including the complete control Appellant exercises over his "church" and also the separation between Chapter 7909 and the parent church, Basic Bible Church of America, which would prevent Chapter 7909 from automatically acquiring any tax exempt or non-profit designation that might be obtained by the parent church. We have no need to discuss these issues in deciding this case but our failure to address them should not be taken to mean that the Commissioner's arguments are without merit.

Earl B. Gustafson, Judge



# SUPREME COURT

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## Decisions Filed Thursday, July 3, 1980

Compiled by John McCarthy, Clerk

**50252/141 Denise R. Iverson vs. State Farm Mutual Automobile Insurance Company, Appellant, Mutual Service Casualty Insurance Company, Hennepin County.**

An exclusion in an automobile insurance policy precluding coverage for an insured if the insured is injured while operating an owned and uninsured vehicle is invalid because it is inconsistent with the compensation objectives of the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (1978).

The legislature did not intend to delegate to insurance companies the authority to enforce the mandatory obligation of vehicle owners to obtain insurance.

The No-Fault Act gives every person who is injured in a motor vehicle the right to basic economic loss benefits, and nothing in the Act requires a forfeiture of coverage when the injury arises out of the ownership, maintenance, or use of an uninsured vehicle.

Affirmed. Rogosheske, J.

**50236/166 Robert P. Erickson vs. Dennis Holland, d.b.a. Holland Trucking, Curtis of Iowa, Inc., et al, Relators, State Treasurer, Custodian of Special Compensation Fund. Workers' Compensation Court of Appeals.**

Whether a driver of a leased tractor who was injured while participating in an examination required to demonstrate his ability to operate the tractor was at that time an employee of the lessee of the equipment was a question of fact, and the finding of the Workers' Compensation Court of Appeals that he was the lessee's employee has substantial evidentiary support.

Affirmed. Rogosheske, J.

**50224/178 Dorothy Ann Wiese, petitioner, vs. Joseph Arnold Wiese, Jr., Appellant. Ramsey County.**

Trial court erred by ordering modification of alimony award where record contains no facts indicating a clear and substantial change in circumstances.

Reversed. Rogosheske, J. Dissenting, Wahl and Otis, JJ.

**49810/9 State of Minnesota vs. Dlane Ernest Pieschke, Appellant. McLeod County.**

The trial court properly admitted testimony of prior statements of defense witnesses under Minn. R. Evid. 801(d) (1) (D) where defense counsel did not object to lack of foundation for their admission and where the trial court could reasonably have concluded that the statements were made sufficiently near the time of the described accident to assure their trustworthiness.

Although prior written statements made by the same defense witnesses an hour after the accident could not properly be admitted under Rule 801(d) (1) (D), admission was not prejudicial where the statements merely repeated the content of oral statements that were properly admitted.

Evidence of prior statements that incriminated defendant and were made to police at the scene of the accident were sufficient to convict defendant, even though declarants changed their stories and exonerated defendant at trial, where the jury had ample grounds upon which to believe the prior statements rather than the statements at trial.

The presence in the courtroom of a six-pack of beer seized at the time of arrest and an unelicited reference by a police officer to a beer can found in the car defendant was allegedly driving were not prejudicial, even though neither the six-pack nor the beer can had been reviewed at a *Rasmussen* hearing, where defendant's intoxication was not in dispute, where he was not charged with a violation of the "open bottle" law, and where neither incident was intentional on the part of the prosecution.

Under Minn. Stat. § 609.04, subd. 1 (1978), defendant should have been convicted only of aggravated driving while under the influence of alcohol, not of the lesser offenses of driving while under the influence and driving after revocation of his license.

Affirmed in part; reversed in part. Peterson, J.

**50041/290 State of Minnesota vs. Richard Erwin Discher, Appellant. Ramsey County.**

Trial court did not commit prejudicial error in admitting other-crime evidence or in its instructions to jury on the use of this evidence.

Assault with a dangerous weapon is not a necessarily included offense of Minn. Stat. § 609.342(c) (1978); we do not reach issue of whether it is a necessarily included offense of § 609.342(d) (1978).

Convictions for kidnapping, criminal sexual conduct and aggravated assault affirmed. One conviction for criminal sexual conduct ordered vacated. Peterson, J.

**50113/293 State of Minnesota vs. Joseph Francis Burrows, Appellant. Anoka County.**

Trial court properly denied defense motion to prohibit use of impeachment purposes of defendant's prior convictions for unauthorized use of a motor vehicle.

Affirmed. Peterson, J.

**49004/325 State of Minnesota vs. William Albert Morgan, Appellant. Hennepin County.**

There was sufficient evidence presented at the omnibus hearing to support the trial court's conclusion that defendant's waiver of his *Miranda* rights was knowing and intelligent, and his confession was properly admitted.

Defendant's conduct clearly and unequivocally demonstrated his adoption of a third-party statement as his own admission.

The trial court properly refused to give requested instructions on various lesser offenses.

The trial court properly refused to give a requested instruction on authorized use of force.

Defendant was not prejudiced by the inadvertent delay of the prosecution in disclosing a police fingerprint identification report.

Defendant was not prejudiced by the allegedly improper impeachment by the prosecution of one of defendant's witnesses.

The trial record as a whole discloses no prejudice on the part of the judge that would have denied to defendant a fair trial.

Evidence of the victim's prior criminal convictions was properly excluded.

Affirmed. Peterson, J.

**49952/Sp. Flame Bar, Inc. vs. City of Minneapolis, et al, Appellant. Hennepin County.**

The district court lacked jurisdiction to order a liquor license reinstated when the district court proceeding was commenced after the expiration of the period for review contained in the Administrative Act, Minn. Stat. Ch. 15 (1978).

Reversed upon jurisdiction grounds. Todd, J. Dissenting, Scott, J. and Yetka, J.

**50131, 50132/269 Alexandria Lake Area Service Region, Appellant, vs. Chester D. Johnson, et al, John L. Verlennich and Gloria M. Verlennich, and Alexandria Lake Area Service Region, vs. George E. Sercl and Lenore K. Sercl. Douglas County.**

The appeal presented to this court is timely as to the original order of the trial court instructing the commissioners to include connection costs in their damage awards.

Connection costs are not a proper item of damage in an eminent domain proceeding.

Reversed and remanded. Todd, J.

**49895/291 State of Minnesota vs. Karen Linda Warren, Appellant. St. Louis County.**

Evidence of defendant's guilt was sufficient.

Defendant was not denied a fair trial by the prosecutor's unintentional, unobjected to, and nonprejudicial elicitation of evidence in violation of a court order.

Where record fails to establish that defense counsel requested submission of lesser offenses, appellate court will not consider or decide whether trial court, if requested, would have been obliged to submit lesser offenses.

Affirmed. Todd, J.

**50304/294 State of Minnesota vs. Danue E. Knight, Appellant. Ramsey County.**

Trial court did not clearly abuse its discretion in permitting use of defendant's prior convictions to impeach him.

Defendant, by failing to object to certain evidence, is deemed to have forfeited his right to have admission of this evidence considered in appeal.

Trial court did not err in admitting eyewitness identification testimony.

Trial court's instruction on eyewitness identification testimony was adequate.

Affirmed. Todd, J.

**49520/313 (1979), 50644/176 (1980) Breeanna Lynn Anderson, a minor, by her father and natural guardian, Edward F. Anderson and Edward F. Anderson, individually, Plaintiff, vs. Edna Stream and Martin Stream, defendants and third party plaintiffs, Appellants, vs. Edward F. Anderson and Mrs. Edward F. Anderson, third party defendants, and Michael Nuessle, a Minor, by Loretta Nuessle, His Guardian Ad Litem, Appellant, vs. James Nuessle. Dakota County. Ramsey County.**

Since our system places great faith in juries, we adopt the "reasonable parent" standard allowing a jury in parent-child cases to decide the broad question at the heart of negligence law: "What would an ordinarily reasonable and prudent person—taking into account the parent-child relationship—have done in similar circumstances?" and abolish the parental immunity exceptions retained in *Silesky v. Kelman*, 281 Minn. 431, 161 N.W. 2d 631 (1968).

Reversed and remanded for trial. Scott, J. Dissenting, Rogosheske, J., Sheran, C. J., Otis and Peterson, JJ.

**50524/Sp. State of Minnesota vs. Roger Elvis Moore, Appellant. Hennepin County.**

Testimony of victim failed to establish beyond a reasonable doubt that defendant committed robbery; accordingly defendant's conviction of robbery is reversed.

Reversed. Scott, J.

**49258/21 State of Minnesota vs. Jesse Lee Curtis, Appellant. Hennepin County.**

The evidence was sufficient as a matter of law to support defendant's conviction of criminal sexual conduct in the third degree.

Although it was improper for the prosecutor to suggest that the defendant's introduction of "good character" evidence was not a proper defense, the state's closing argument did not, on the whole, deprive defendant of a fair trial.

Submission of instruction on the lesser included offense of criminal sexual conduct in the fourth degree was not required where the evidence did not reasonably support a finding that penetration did not occur.

Affirmed. Wahl, J.

**50115/129 Sheet Metal Workers Local #76 Credit Union vs. Paul C. Hufnagle, Appellant. Ramsey County.**

The parties to this promissory note did not agree to sale of the collateral as exclusive remedy in case of default, so as to preclude the secured creditor from proceeding to judgment on the note and applying proceeds from the sale of the collateral to the unpaid balance under Minn. Stat. § 336.9-501 (1978).

Acceleration of payments was not proper where the promissory note contained no acceleration abuse, nor is reconsideration of the exclusion of installment payment contracts from the doctrine of anticipatory breach proper, where the defendant judgment debtor never unequivocally repudiated the note or indicated he does not feel bound by it.

Affirmed in part, reversed in part, and remanded. Wahl, J.

**50707/256 Ray G. Findorff, Relator, vs. Pinkerton's Inc., et al. Workers' Compensation Court of Appeals.**

Where the employee did not establish that there was no work which he was capable of doing available in the community, and insisted he was capable of and willing to return to the work he was doing when terminated, he did not establish permanent and total disability within the meaning of the Workers' Compensation Act.

Affirmed. Wahl, J.

**50352/267 Milliken and Company, f.k.a. Deering Milliken, Inc., Appellant, vs. Eagle Packaging Company, Inc., et al., and Dorn H. Sticha. Hennepin County.**

Under New York law, where a personal guaranty required written notice of revocation, it was not revoked by oral notice to creditor's sales representative.

The doctrines of partial performance and equitable estoppel do not operate to release the guarantor from liability under New York law, where the creditor took no action referable to the alleged oral revocation and inconsistent with the continuing guaranty.

Reversed and remanded. Wahl, J.

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**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.

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**Department of Health  
Community Services Division****Notice of Request for Proposal for Technical Services Contract**

Services for Children with Handicaps (the Crippled Children's Services agency in Minnesota) seeks to improve the health, both mental and physical, of children with diabetes by stimulating the development and availability of competent and comprehensive health education services for these children in the State of Minnesota.

## STATE CONTRACTS

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Therefore SCH is requesting a proposal from a health care and education organization or facility to assist SCH in implementing a program to accomplish its goals by means of a technical services contract.

The contractor's duties shall be to provide a nurse practitioner, nutritionist, health educator, social worker, and pediatrician skilled in the understanding and clinical management of juvenile diabetes mellitus. This team will assist SCH staff in the provision of professional services at a series of field clinics throughout the state. These duties shall include:

1. Development of planning relationships with consumer groups interested in services to children and youth with diabetes.
2. Development with SCH staff of specific program initiatives and establishment of schedules for a program of clinics and workshops during the contract period.
3. Provision of educational and orientation programs for local health professionals prior to field clinics.
4. Ongoing consultation with community health professionals to assure optimal care of children with diabetes.
5. Staffing at field clinics to provide interview, examination and counseling of children and families.
6. Submission of a report to SCH at conclusion of the contract period.

The total obligation of the state for all compensation and reimbursements to contractor shall not exceed *forty thousand dollars* (\$40,000.00).

Proposals shall be submitted to Richard P. Nelson, M.D., Director, Services for Children with Handicaps, 2829 University Avenue Southeast, Suite 840, Minneapolis, Minnesota 55414 two weeks following publication of this request. The contract period will extend from September 1, 1980 through June 30, 1981.

### **Minnesota House of Representatives Rules and Legislative Administration Committee**

#### **Notice of Request for Proposal for Long Range Compensation and Classification Study**

In February, 1980, the Chairman of the Rules and Legislative Administration Committee of the Minnesota House of Representatives appointed a special, bipartisan subcommittee of legislators and an advisory staff directors group to review the staff organization and personnel policies for the approximately 300 House employees. In June, 1980, the full Rules and Legislative Administration Committee adopted a series of recommendations from the special subcommittee. One of the recommendations authorized a long range compensation and classification study; therefore, proposals are requested.

Inquiries and formal expression of interest should be directed to:

AnnDrea M. Benson, Administrative Assistant  
Rules and Legislative Administration Committee  
Rm. 272—State Office Building  
St. Paul, MN 55155  
(612) 296-4256

A formal expression of interest must be submitted to the Rules and Legislative Administration Committee no later than 12:00 p.m. (noon), September 1, 1980.

### **Department of Public Welfare Moose Lake State Hospital**

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

Notice is hereby given that the Moose Lake State Hospital, Department of Public Welfare, is seeking the following services for the period September 5, 1980 through June 30, 1981. These services are to be performed as requested by the Administration of the Moose Lake State Hospital:

1. Services of a Psychiatrist to perform consultation services in Psychiatry one day each week at the Moose Lake State Hospital. Other consultations will occur via phone or mail as needed and as deemed appropriate. The estimated amount of the contract will not exceed \$16,800.00.

Responses for the above services must be received by August 15, 1980. Direct inquiries to:

Frank R. Milczark  
Chief Executive Officer  
Moose Lake State Hospital  
1000 Lakeshore Drive  
Moose Lake, MN 55767  
(218) 485-4411, Ext 242

## **Department of Public Welfare Social Services Division**

### **Notice of Request for Proposals for Training for Mental Health/Social Work Professionals in the Identification and Reporting of Child Abuse and Neglect**

The Division of Social Services, Social Services Bureau, Department of Public Welfare, is seeking individuals or organizations with training expertise to provide statewide training in the identification and reporting of child abuse and neglect. These training services, which will be provided under contract, are outlined in detail in the Request for Proposals (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to:

Paul M. Kiley  
Division of Social Services  
Department of Public Welfare  
4th Floor, Centennial Office Bldg.  
Saint Paul, MN 55155

It is anticipated that the activities to accomplish this training will not exceed a total cost to the state of \$16,000. The deadline for the submission of completed proposals will be the close of the working day September 4, 1980.

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## **OFFICIAL NOTICES**

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

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

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## **Department of Agriculture Planning and Development Division**

### **Notice of Intent to Prepare Department of Agriculture List for Future Rulemaking Hearings**

In accordance with Minnesota Laws 1980, Chapter 615, the Minnesota Department of Agriculture (MDA) is establishing a list of persons to receive official notice of its rulemaking proceedings. That law requires each agency or department to establish and maintain such a list to replace the list currently maintained by the Secretary of State.

If you wish to receive notice of rulemaking proceedings of the MDA, please notify the department in writing by September 1, 1980. You will then receive notice of any rulemaking proceedings initiated after that date. Please note that this procedure will put you only on the list of the MDA. Other agencies and departments will be establishing their own lists. Please send your written request to:

Gerald Heil, Director  
Planning and Development Division  
Minnesota Department of Agriculture  
90 West Plato Blvd.  
St. Paul, Minnesota 55107  
(612) 296-1486

## **Department of Economic Security**

### **Notice of Intent to Prepare a Department of Economic Security List for Future Rulemaking Hearings**

In accordance with Minnesota Laws of 1980, Chapter 615, the Department of Economic Security is establishing a list of persons to receive official notice of its rulemaking proceedings. That law requires each agency or department to establish and maintain such a list to replace the existing Secretary of State's list.

## OFFICIAL NOTICES

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If you wish to receive notice of rulemaking proceedings of the Department of Economic Security, please notify this department in writing. You will then receive notice of any rulemaking proceedings initiated after receipt of your request. Please note that this procedure will put you only on the list of the Department of Economic Security; other agencies and departments will be establishing their own lists. Please send your written request to the following address:

Mr. Bruce A. Lindsey  
Minnesota Department of Economic Security  
Management Analysis Section  
390 North Robert Street  
St. Paul, Minnesota 55101

### Ethical Practices Board

#### Advisory Opinion #65

Approved by the Ethical Practices Board on July 9, 1980

**Issued to:**

Representative Gerald Knickerbocker  
395 State Office Building  
St. Paul, MN 55155

**Re: Contributions and Expenditures on Behalf of Ballot Questions**

**Summary**

#65. Contributions and expenditures made to promote or defeat ballot questions are not subject to campaign expenditure or aggregate contribution limits, but are subject to individual contribution limits.

Expenditures by a candidate or by a candidate's principal campaign committee, and "approved expenditures," will not be considered to promote or defeat a ballot question if the communication clearly identifies the candidate; such expenditures will instead be counted toward the candidate's limits. Thus, expenditures for any of the following purposes will count toward the candidate's limits, if the expenditure is made by the candidate or his principal campaign committee: advertisements or sample ballots containing the name or picture of the candidate; a forum or broadcast in which the candidate participates; and newsletters, columns, questionnaires or mass mailings which are either (a) made for purposes other than constituent service purposes, or (b) made more than sixty days after adjournment of the legislature sine die.

Expenditures made by a political committee or political fund other than a principal campaign committee of a candidate to promote or defeat a ballot question or questions may be considered approved expenditures on behalf of a candidate in certain circumstances.

"Independent expenditures" which expressly advocate a position on a clearly identified ballot question will be treated, at least in part, as ballot expenditures, but may also be treated in part as independent expenditures on behalf of a candidate.

**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.**

#### Advisory Opinion #68

Approved by the Ethical Practices Board on July 9, 1980

**Issued to:**

Representative Al Wieser, Jr.  
332 State Office Building  
St. Paul, MN 55155

**Re: Officeholder Radio Spots**

**Summary**

#68. Free air time given to, and controlled by, a candidate, between 60 days after adjournment sine die of the legislature and such time as when the broadcasting station implements its equal time policy in accordance with FCC regulations, must be reported as in-kind contributions and campaign expenditures.

**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.**

## **Request for Advisory Opinion**

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its late August/early September 1980 Board meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to August 20, 1980.

### **Re: Campaign Literature**

Allen Clutter III  
Executive Director  
Ethical Practices Board  
Room 41 State Office Building  
St. Paul, Minnesota 55155

Dear Mr. Clutter:

I am requesting a formal opinion from the Ethical Practices Board on the following questions.

1. If a candidate distributes the attached literature, produced by a nonprofit corporation, with his personal campaign literature, does this additional piece also constitute campaign literature and therefore, should it have a disclaimer printed on it?
2. Does the attached literature encourage a person to support, oppose or influence a particular candidate?
3. If the attached literature is not campaign literature and a candidate receives the piece in bulk quantities, does he have to report it as an inkind contribution on his Ethical Practices Statement?
4. If the attached literature is not campaign literature, does the use of it by a candidate for public office require approval by the group who publishes it? If you need further information in order to render an opinion, please contact my office at 296-4256. Thank you.

Sincerely,

Willis R. Eken, State Representative

Full text of the enclosure, "1979 Report on the Minnesota Legislature" by the Legislative Evaluation Assembly of Minnesota, Inc., may be obtained from the Ethical Practices Board, (612) 296-5148.

## **Pollution Control Agency**

### **Notice of Intent to Prepare a Pollution Control Agency List for Future Rulemaking Hearings**

All persons who wish to receive written notice of rulemaking hearings of the Minnesota Pollution Control Agency must notify the agency in writing. As of August 1, 1980, the Secretary of State will no longer send notices of state rulemaking hearings. Each state agency must maintain its own mailing list for notices of rulemaking hearings, and persons on the Secretary of State's list must notify each individual agency whose notices of hearing they wish to receive.

To be placed on the MPCA's rulemaking hearing notice mailing list, please submit a written request to:

Minnesota Pollution Control Agency  
Public Information Office  
1935 West County Road B2  
Roseville, MN 55113

Please indicate if you wish to be notified of hearings for Air Quality, Water Quality, Solid Waste, or all MPCA rulemaking hearings.

## **Department of Public Welfare**

### **Notice of Intent to Prepare Department of Public Welfare List for Future Rulemaking Hearings**

In accordance with Minnesota Laws of 1980, Chapter 615, the Department of Public Welfare is establishing a list of persons to receive official notice of its rulemaking proceedings. That law requires each agency or department to establish and maintain such a list to replace the existing Secretary of State's list.

If you wish to receive notice of rulemaking proceedings of the Department of Public Welfare, please notify the department in writing by August 31, 1980. You will then receive notice of any rulemaking proceedings initiated after that date. Please note that this procedure

## OFFICIAL NOTICES

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will put you only on the list of the Department of Public Welfare; other agencies and departments will be establishing their own lists. Please send your written request to the following address:

Department of Public Welfare  
Attn: Linda M. Nelson  
Centennial Office Building  
St. Paul, Minnesota 55155

July 22, 1980

## Minnesota State Retirement System

### Regular Meeting, Board of Directors

The regular quarterly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, August 15, 1980 at 9:00 a.m. in the office of the system, 529 Jackson Street, St. Paul, Minnesota.





LIBERTY SHINES—charcoal drawing by Michael Floyd, Mayo High School, Rochester, MN.

STATE OF MINNESOTA  
OFFICE OF THE STATE REGISTER

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## FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

**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.

Legislative Reference Library  
Room 111 Capitol Hill, Mary E. Edwards  
Interoffice

