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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 7			
33	Monday Jan 31	Monday Feb 7	Monday Feb 14
34	Monday Feb 7	Friday Feb 11	Monday Feb 21
35	Friday Feb 11	Friday Feb 18	Monday Feb 28
36	Friday Feb 18	Monday Feb 28	Monday Mar 7

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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

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How to Follow State Agency Rulemaking Action in the *State Register*

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

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

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

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in late summer 1983. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* 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:

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Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
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The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

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PROPOSED RULES

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

1. that they have 30 days in which to submit comment on the proposed rules;
 2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
 3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

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

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Energy, Planning and Development Energy Division

Proposed Rules for the Administration of the District Heating Bonding Act Regarding Construction Loans

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Energy, Planning and Development (Minnesota Energy Agency), hereinafter "department," intends to adopt the above-entitled rules without a public hearing. The Commissioner of the Department has determined that the adoption of the rules will not be controversial and has elected to follow the procedures set out in Minnesota Statutes § 14.21-14.28.

In the 1981 session, the Minnesota Legislature enacted the District Heating Bonding Act, Laws of 1981, Chapter 334, hereinafter "Act," for the purpose of fostering the establishment and improvement of district heating systems. The department has developed these rules under the authority of Section 1, Subdivision 11 of the Act, for the purpose of administering a program of loans to municipalities for district heating construction.

The objective of the District Heating Construction Loan program is to encourage the development and expansion of economically viable district heating systems which have the potential to save energy and/or displace scarce fuels such as petroleum and natural gas.

Temporary rules for construction loans were duly promulgated and became effective on March 26, 1982. They are published in the *State Register* of February 22, 1982 (6 S.R. 1465) with modifications in April 12, 1982 (6 S.R. 1716).

Copies of the proposed rules may be obtained by writing or calling Mary Lesch-Gormley at the address or telephone number given below.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed rules to submit comments in writing on the proposed rules and to object to the lack of public hearing on the proposed rules. Your written comments or request for hearings should be submitted to the Department of Energy, Planning and Development, % Mary Lesch-Gormley, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, telephone 612/297-2324. Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, no public hearing will be held. If seven or more persons request hearings on the proposed rules, the department will order public hearings in accordance with Minn. Stat. §§ 14.13-14.20. The department may modify the proposed rules if modification is supported by the data and views submitted in written comments and if no substantial change results from the modification.

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

PROPOSED RULES

If no hearing is required, and the department decides to adopt the rules as proposed, or as modified if written comments justify modification, the department will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the rules as proposed, the rules as adopted, the order adopting the rules, any written comments received by the department, the department's statement of need and reasonableness supporting adoption of the rules, and any written comments received by the department in response to the earlier notices seeking outside opinions. Any person may request notification of the date the department makes the submission to the Attorney General. If you desire to be so notified you must inform the department in writing during the 30-day comment period.

The department has prepared a statement of need and reasonableness in support of the proposed rules which is also available from the department by contacting the address or telephone indicated above.

The department's authority to promulgate the proposed rules can be found in Minn. Stat. § 116J.10(a) and § 116J.36 subd. 11.

Please be advised that Minnesota Statutes Chapter 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone 612/296-5615.

January 21, 1983

Robert G. Renner, Jr.
Commissioner

Rules as Proposed (all new material)

6 MCAR § 2.4021 Definitions.

- A. Scope. For the purposes of 6 MCAR §§ 2.4021-2.4034, the terms defined in B.-L. have the meanings given them.
- B. Act. "Act" means Minnesota Statutes, section 116J.36.
- C. Assistant commissioner of energy. "Assistant commissioner of energy" means the Assistant Commissioner of the Energy Division of the Department of Energy, Planning and Development.
- D. Commissioner. "Commissioner" means the Commissioner of the Department of Energy, Planning and Development.
- E. Debt service cost. "Debt service cost" means the sum of all costs amortizing lease indebtedness, bond indebtedness, urban development action grant indebtedness, and any state indebtedness that is attributed to the project on an annual basis.
- F. Debt service coverage. "Debt service coverage" means the gross revenue of the project minus the operating expenses, plus the debt service cost. The debt service coverage is expressed as a percentage of the debt service cost.
- G. Department. "Department" means the Department of Energy, Planning and Development.
- H. Financial consultant. "Financial consultant" means a reputable person or firm experienced in working with complex revenue-supported financial plans and qualified to assess the financial condition and operation of the project.
- I. Gross revenues. "Gross revenues" means all revenues, fees, user charges, rents, franchise fees, special assessments, and other income and receipts derived from the ownership or operation of the project, the proceeds of any insurance that insures against the loss of gross revenues, any investment income from money or securities derived from the state loan under the act, and any other income and receipts attributable to the ownership or operation of the project from whatever source derived, calculated on an annual basis.
- J. Operating expenses. "Operating expenses" means all expenses directly and properly attributable to the operation of the project on an annual basis. Examples are: expenses for operation, maintenance, repairs, ordinary replacement, ordinary acquisition of equipment, fuel and heat, labor and fringe benefits, lease rental payments, insurance premiums, administration, legal services, engineering services, payments of all indebtedness, and any other current expenses or obligations required to be paid by the municipality or owner of the project, all to the extent properly and directly attributable to the operation of the project. Operating expenses do not include any costs or expenses for new construction or any allowance for depreciation.
- K. Project. "Project" means a district heating construction project as described by the business plan.
- L. Take-or-pay contract. "Take-or-pay contract" means a contract between a district heating system and a thermal load customer whereby the customer agrees to take a predesignated amount of thermal energy over a certain time period or to pay a sum equivalent to the value of the predesignated amount of thermal energy, even if less is taken.

6 MCAR § 2.4022 Purpose.

The purpose of rules 6 MCAR §§ 2.4021-2.4034 is to allow district heating projects that have already completed comprehensive engineering, economic, and design studies to make prompt and proper application for construction loans. Rules 6 MCAR §§ 2.4021-2.4034 set forth the procedures that municipalities must follow to apply for loans and to establish the criteria by which the applications are reviewed.

6 MCAR § 2.4023 Scope of rules.

Rules 6 MCAR §§ 2.4021-2.4034 apply to the department and to any municipality applying for construction loans under the act.

6 MCAR § 2.4024 Contents of application.

The application for construction loans shall contain the following information:

- A. name, address, and telephone number of the responsible official of the municipality;
- B. a comprehensive business plan for the project, as described in 6 MCAR § 2.4025;
- C. a resolution in support of the project from the governing body of the municipality, as described in 6 MCAR § 2.4029;
- D. identification of all licenses, permits, zoning regulations, and any other requirements of federal, state, or local governments with which the project would be expected to comply, and the present status of each;
- E. a list of key personnel and their qualifications as they relate to the project;
- F. an estimate of the type and amount of fuel saved per year from the full operation of the district heating system compared to the type and amount of fuel to be used by the system; and
- G. a copy of the environmental assessment worksheet or environmental impact statement prepared for the project. If neither is required, then the applicant shall submit a statement as to the environmental effects of the project.

6 MCAR § 2.4025 Comprehensive business plan.

The comprehensive business plan required by 6 MCAR § 2.4024 B. must include all of the following information:

- A. a complete engineering design of the project, as described in 6 MCAR § 2.4026;
- B. a market study of customers of the district heating system defined by the business plan who represent 90 percent or more of the proposed thermal load, as described in 6 MCAR § 2.4027;
- C. a preliminary plan that shows how the system could be expanded to serve other parts of the community;
- D. a complete economic analysis, as described in 6 MCAR § 2.4028, that includes cash flow, income, and balance sheets for a 20-year planning period, and a financing and development plan for the district heating system prepared by a financial consultant;
- E. a certification by the municipality that a bid package for the construction of the project has been completed and is available to the department if requested;
- F. a copy of the standard contract entered into with customers of the project with a list of customers already under contract, listing the thermal load of each customer presently under contract and comparing the total of the thermal load already contracted with the total load of the project; and
- G. a copy of the contract for the furnishing of the heat source or fuel for the project.

6 MCAR § 2.4026 Engineering design.

The complete engineering design of the project required by 6 MCAR § 2.4025 A. must include at least the following information:

- A. an analysis of the proposed piping layout that addresses the areas of optimum service to the total designated area, reliability of service, system temperatures and pressure requirements, thermal and hydraulic operability for normal and emergency conditions, optimum piping configuration to provide service, and flexibility for future expansion;

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

PROPOSED RULES

B. an analysis of the proposed piping design that addresses the areas of reliability of service, ease of construction, ease of maintenance, installation methods, and specifications and standards; and

C. an analysis of the heat source design that defines the proposed roles of the following heat sources in the development and the future operation of the system: base load heating plant, peaking plants, large boiler plants in existing buildings, mobile boilers, accumulators, and future heat sources such as solid waste, solar, and industrial waste heat.

6 MCAR § 2.4027 Market study.

The market study required by 6 MCAR § 2.4025 B. must show detailed information on present fuel consumption or heating demand and the present heating system in each building.

6 MCAR § 2.4028 Economic analysis.

The economic analysis required by 6 MCAR § 2.4025 D. must include a cost estimate and expenditure schedule for all transmission and distribution piping; heat source conversion, purchase, or rental; operating and maintenance costs, excluding fuel costs; and building heating conversion costs.

6 MCAR § 2.4029 Resolution in support of project.

The resolution required by 6 MCAR § 2.4024 C. must include the pledges the municipality proposes to make to guarantee repayment of the construction loan and evidence of the municipality's financial capability to sponsor the project.

6 MCAR § 2.4030 Application procedures.

A. Submitting. Applications for construction loans under the act and 6 MCAR §§ 2.4021-2.4034 must be submitted to the commissioner.

B. Effective date. The period for accepting applications begins on the date 6 MCAR §§ 2.4021-2.4034 become effective.

C. Copies. Ten complete copies of the application must be submitted to the commissioner.

6 MCAR § 2.4031 District heating advisory task force.

A. Membership. Under Minnesota Statutes, section 15.014, the assistant commissioner of energy shall appoint a district heating advisory task force consisting of at least four members in addition to the assistant commissioner of energy who shall act as chairperson.

Task force members must be knowledgeable in the area of district heating, but cannot be directly or indirectly involved in any district heating project under consideration by the commissioner.

The assistant commissioner of energy may from time to time add or delete task force members, subject only to the limitations in A.

B. Task force duties. The task force shall review each application for a loan under the act, and shall advise and assist the commissioner in carrying out the requirements of the act and 6 MCAR §§ 2.4021-2.4034. The commissioner shall retain final responsibility for all statutory and rule requirements.

6 MCAR § 2.4032 Feasibility assessment.

The commissioner shall review each application as received according to the following feasibility assessment parameters:

A. the eligibility and priorities criteria of Minnesota Statutes, section 116J.36, subdivisions 3 and 4;

B. the debt service coverage represented by the business plan;

C. the debt service coverage from revenues currently under contract;

D. the total cost of the project;

E. the ratio of the state loan under the act to the total cost of the project;

F. the terms of the contracts with customers; and

G. the total number of customers for the project.

6 MCAR § 2.4033 Evaluation of application.

Upon reviewing each application, the commissioner shall award points to applicants based upon the following criteria:

A. four points to applicants that have a debt service coverage of at least 130 based upon the revenues currently under contract;

B. four points to applicants that have take-or-pay contracts for at least the term of the state loan under the act; two points, if the contracts are for a term less than the term of the state loan under the act;

C. two points to applicants whose total project cost is less than \$5,000,000 or whose state loan under the act would be less than 50 percent of the project's total cost;

D. two points to applicants that have 50 or more customers identified in the marketing study of their business plans, if these customers comprise at least 50 percent of the project's thermal load.

6 MCAR § 2.4034 Recommendation.

A. Tallying points. The commissioner shall tally the points awarded to each applicant under 6 MCAR § 2.4033 and shall make recommendations based upon the standards set forth in B. and C.

B. Eight or more points. For applicants who have been awarded a total of eight or more points, the commissioner shall recommend that the revenues of the project be pledged for repayment of the state loan under the act. In addition, the state loan may take a position subordinate to other financing.

C. Seven or fewer points. For applicants who have been awarded a total of seven or fewer points, the commissioner shall recommend that the applicant pledge additional funds adequate to ensure the repayment of the state loan under the act. If additional funds are not available or the applicant chooses not to pledge them, then the applicant may pledge to levy an ad valorem tax of a similar amount.

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**Tax Court**

Jack Kaufman,
v.
Commissioner of Revenue,
Appellee.

In the Matter of the Appeal from the Commissioner's
Order dated August 20, 1981, Relating to the Income
Tax of Appellant for the Year 1980.

Order dated January 24, 1983
Docket No. 3448

The above entitled matter was heard by the Minnesota Tax Court on October 1, 1982, Judge Carl A. Jensen presiding.

Jack Kaufman, Appellant, appeared in his own behalf.

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

Briefs were subsequently filed by both parties.

Syllabus

1. A so-called lifetime sale of "personal services property" between Jack Kaufman, the Appellant herein, and P. & T.S., which was stated to be a trust of some kind does not affect the taxability of income that Kaufman received from his employer. The employer is required to withhold income taxes, pay social security taxes, carry workers compensation, and do any other things required of any other employer.

2. An attempt to avoid withholding taxes by an employee by claiming more exemptions or deductions than are allowable and making said claims on his tax return is tantamount to fraud and willful evasion of taxes under Minnesota Statutes 290.53.

Findings of Fact

1. The Appellant herein, Jack Kaufman, is a cash-basis, calendar year taxpayer and resident of the State of Minnesota. The taxable year at issue herein is 1980.

2. During the entire year 1980, Appellant Jack Kaufman (hereinafter, "Kaufman") was employed by the United States Postal Service. Kaufman's employment with the Postal Service began in 1970 and continues up to the present day. By reason of this employment Kaufman was paid by the Postal Service a total of \$23,166.94 in compensation during the taxable year 1980.

TAX COURT

3. During the entire year 1980, Kaufman was clearly an employee of the Postal Service. This employment relationship was proven by Kaufman's own testimony, by the compensation paid to him, by the issuance of W-2 forms and by the fact that he was subject to all the controls and entitled to all the employee benefits (e.g., vacations, pension benefits, etc.) as all other employees of the United States Postal Service. Kaufman never quit, or attempted to quit, his employment relationship with the Postal Service.

4. In July, 1980, Kaufman became familiar with an organization called Professional and Technical Services (hereinafter, "P & TS") located in New York, and operated by an individual named Frank Forrester. On July 29, 1980, Kaufman signed a document called a "personal services contract" with P & TS by which he allegedly assigned or sold all of his future personal services, and the income derived therefrom, to P & TS. However, Kaufman's employer was never made aware of this alleged contract.

5. Under the alleged arrangement between Kaufman and P & TS, Kaufman was to take all of his paychecks received from the Postal Service and sign them over to either P & TS or its designee: International Dynamics, Incorporated (hereinafter, "IDI") an organization also controlled by Forrester. In actual fact, Kaufman received his paychecks, which were made out to him, endorsed them over to IDI, and then mailed them to Forrester in New York. After these transactions Forrester then proceeded to make payments of money to Kaufman, which Kaufman called "gifts" to himself. These payments back to Kaufman amounted to 90% of his Postal Service income.

6. The above-described arrangement is in substance a single tax avoidance transaction used by Kaufman but controlled by Frank Forrester of New York, who the evidence shows is in charge of P & TS and IDI; and who actually wrote the materials which Kaufman read at trial as if it were his own testimony.

7. The "personal services contract" entered into by Kaufman did not in any way sever or otherwise change his status as an employee of the United States Postal Service. (Finding of Fact 2, *supra*). Despite its ostensible "ownership" of Kaufman's personal services, P & TS never contacted the Postal Service in any manner regarding the employment status of Kaufman, nor did P & TS ever enter into any contract with the Postal Service regarding Kaufman's employment, nor did P & TS ever attempt to find a job for Kaufman.

8. On line 1 of Appellant's 1980 Minnesota income tax return, federal adjusted gross income was reported by Kaufman. This figure was arrived at after Kaufman subtracted from his wage income a total of \$8,748.00 for what he called "Factors discount on accounts receivables—resold" (hereinafter, "Factors Discount"), representing the amount of his 1980 paychecks he had signed over to IDI.

9. Upon audit by the Commissioner of Revenue, Kaufman's claimed subtraction for "Factors discount" was disallowed and the Appellant's correct 1980 income tax liability was computed by the Commissioner. As a result of these changes, the following additional tax, plus interest, was assessed against Appellant:

<u>Year</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
1980	\$698.30	\$15.45	\$713.75

The Commissioner issued his Order of assessment on August 20, 1981.

10. A so-called lifetime sale of "personal services property" between Jack Kaufman, the Appellant herein, and P. & T.S., which was stated to be a trust of some kind does not affect the taxability of income that Kaufman received from his employer. The employer is required to withhold income taxes, pay social security taxes, carry workers compensation, and do any other things required of any other employer.

11. An attempt to avoid withholding taxes by an employee by claiming more exemptions or deductions than are allowable and making said claims on his tax return is tantamount to fraud and willful evasion of taxes under Minnesota Statutes 290.53.

Conclusion of Law

The Commissioner's Order of assessment for additional taxes for the year 1980 is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

By the Court,
Carl A. Jensen, Judge

Memorandum

This case is very similar to the case of *Gerald and Betty Landsberger v. Commissioner of Revenue*, Docket No. 3354, which was decided by this Court June 11, 1982, and which was confirmed by Order of the Supreme Court dated November 10, 1982.

Appellant in his brief, which appears to have been written by Frank Forrester, states the following:

"The Landsberger's case is not similar since the Landsberger's case is filled with LIES, FRAUDS, DISHONESTY, DISHONOR, and MALIGNANT PREJUDICE. All of the LIES in the Landsberger's case do not add up to a single truth."

We would be inclined to agree with the above summation of Landsberger and his statements and allegations, although we did not go quite that far in our decision in the *Landsberger* case.

Appellant's brief is replete with the use of the word "lies." Appellant charges the Appellee with lies but the Appellee did not testify. Apparently Appellant is characterizing the arguments of Appellee's attorney as being lies. Appellee's statements in his brief are all based on testimony of the Appellant. Appellee's interpretation of the statements of Appellant are in accord with the findings of this Court.

There is some difference between this case and the *Landsberger* case in that Landsberger was a participant in the scheme devised by Frank Forrester and his dummy corporations and trusts.

This case is almost identical to the case of *Dale and Rhonda Korkowski*, Minnesota Tax Court Docket Nos. 3372 and 3587, dated January 10, 1983. This Court sustained the Commissioner's Orders of assessments for additional taxes in the *Korkowski* case. We stated and repeat from the *Korkowski* case the following:

"The United States Supreme Court in *Lucas v. Earl*, 281 U.S. 111, 50 S. Ct. 241, 74 L. Ed. 731 (1930), clearly stated the law as follows:

'This case is not to be decided by attenuated subtleties. It turns on the import and reasonable construction of the taxing act. There is no doubt that the statute could tax salaries to those who earned them and provide that the tax could not be escaped by anticipatory arrangements and contracts however skillfully devised to prevent the salary when paid from vesting even for a second in the man who earned it. That seems to us the import of the statute before us and we think that no distinction can be taken according to the motives leading to the arrangement by which the fruits are attributed to a different tree from that on which they grew.'

This holding in *Lucas vs. Earl*, *supra*, has been consistently upheld and reaffirmed.

In *United States v. Bayse*, 410 U.S. 441, 450, 93 S. Ct. 1086, 35 L. Ed. 2d 412 (1973), the Court said that:

'The principle of *Lucas v. Earl*, that he who earns income may not avoid taxation through anticipatory arrangements no matter how clever or subtle, has been repeatedly invoked by this Court and stands today as a cornerstone of our graduated income tax system.'

The holding in these cases has been consistently adopted and applied to the Income Tax Laws of Minnesota. *Drew v. Commissioner of Taxation*, 222 Minn. 186, 23 N.W. 2d 565 (1946); *Fury v. Commissioner*, Dkt. No. 2626 (Aug. 24, 1978), affirmed by order of the Minnesota Supreme Court dated June 11, 1959; *Baldwin v. Commissioner of Revenue*, 309 N.W. 2d 750 (Minn., 1981); and *Landsberger v. Commissioner of Revenue*, Tax Court Dkt. No. 3354 (June 11, 1982), affirmed by the Minnesota Supreme Court dated November 10, 1982."

One difference in the instant case that we find somewhat reprehensible is that Jack Kaufman is employed by the United States Postal Service. In his brief Appellant stated the following:

5. During the year 1980 Appellant worked for P&TS, and as agent-leased employee of P&TS did perform services at the location of the user-sub-contractor, postal services.

There was no evidence that the postal service subcontracted with P. & T.S. All of the evidence indicates that the Appellant was an ordinary employee of the Postal Service which made the same deductions from Appellant's wages as from all other employees. If Appellant does not wish to be employed by the Postal Service, he should notify the Postal Service probably in writing. If the Postal Service is subcontracting the kind of services that Appellant does, the Postal Service may be obligated to let these contracts out on bids. We doubt very much that the Appellant desires to terminate his status as an employee of the Postal Service. If we are correct in this conclusion, we do find that there is something reprehensible about a U.S. government employee attempting to avoid his legitimate income taxes while he is working for the United States government.

C.A.J.

State of Minnesota

Arnold A. Carlson, Anna C. Carlson,
Fred Fredrickson, d/b/a Laura-Lynn,
Inc.,

Appellant,

v.

Commissioner of Revenue,

Appellee.

Tax Court

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER FOR JUDGMENT

File No. 3483

Order dated January 19, 1983

This is an appeal from an Order of the Commissioner of Revenue dated October 16, 1981, assessing additional income tax against Arnold A. Carlson and Anna Carlson for calendar year 1979.

The original hearing on the above entitled matter was had before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, at the Old Courthouse at Fourth and Vermillion Streets in the City of Hastings, Dakota County, Minnesota, on Friday, June 11, 1982, at 10:20 a.m.

On December 2, 1982, the Appellant filed a petition requesting an Order allowing the Petitioner to re-open the matter for the purpose of offering additional testimony. On December 7, 1982, this Court issued an Order granting the petition to reopen the matter to allow Appellant to offer additional testimony and setting the date for rehearing as December 21, 1982, at 10:00 a.m. Pursuant to that Order the matter came on for hearing before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, on December 21, 1982, at approximately 10:00 a.m. in the courtroom of the Tax Court on the Fifth Floor of the Space Center, 444 Lafayette Road, St. Paul, Minnesota.

The issue is whether or not an election to be taxed as a small business corporation of Form M-161 which was received in the Office of the Commissioner of Revenue on September 18, 1978, should be considered as a valid election for calendar year 1979.

Edmund C. Meisinger of the firm of Meisinger & Meisinger, 965 South Robert Street, West St. Paul, Minnesota, appeared as counsel on behalf of the Appellants. Thomas K. Overton, Special Assistant Attorney General, appeared as counsel on behalf of the Appellee.

Syllabus

For the purpose of determining whether or not an election to be taxed as a small business corporation was timely, the first month of the taxable year of a new corporation does not begin until the corporation has shareholders or acquires assets or begins doing business, whichever is the first to occur, in spite of what date appears on the election form.

From the evidence adduced at the trial and at the rehearing, from the files and records herein and being fully advised in the premises, the Court now makes the following:

Findings of Fact

1. The Notice of Appeal was prepared by Arnold A. Carlson in his own handwriting, apparently without the help of counsel, but clearly places in issue the question of whether or not an election to be taxed as a small business corporation on Form No. M-161 by the corporation as Laura-Lynn, Inc., hereinafter referred to as the Corporation, was effective for calendar year 1979.

2. Sometime prior to August 1, 1978, Arnold A. Carlson and Fred Fredrickson commenced the formation of the Corporation, a Minnesota business corporation, for the purpose of land development. The only shareholders of the Corporation were Arnold A. Carlson and Fred Fredrickson. A Certificate of Incorporation was issued by the Secretary of State on August 1, 1978.

3. During the process of incorporation, Arnold A. Carlson, as president of the Corporation, executed an election by small business corporation to be taxed as a partnership on Minnesota Form M-161. The election was dated August 15, 1978. The information on the form indicated that the election was to be effective for the taxable year beginning August 1, 1978. The election was received by the Commissioner of Revenue on September 18, 1978.

4. On September 26, 1978, the Corporation was assigned a federal employers number.

5. The election on Form M-161 was subsequently returned to the taxpayer without any indication on its face that the election was invalid or rejected. The Commissioner contends that the following form letter was routinely sent to a corporation when an election was received more than 30 days after the date of incorporation:

Gentlemen:

Form M-161 was filed late. Generally the election must be made within one month of the beginning of the taxable year for which the election applies.

A retroactive election under Section 290.972, Subd. 3(1), may be made within twelve months following the close of the taxable year for which the election is sought. However, a statement, signed by all shareholders must be submitted indicating the reason for the late application to elect, and, in addition, a copy of the document from the Internal Revenue Service granting Federal election must be furnished.

Please submit the above requested information promptly. Upon receipt of the information, the election will be processed.

Sincerely,

M. M. Peterson, Tax Examiner
Income Tax Division—Corporation Section
Centennial Office Building—Second Floor

The taxpayer has no recollection of receiving the letter.

6. The Corporation's federal election to be taxed as a small business corporation was received by the Internal Revenue Service on September 20, 1978. Through the provisions of P.L. 95-628 and proposed Regulation No. 1.2372(d), the Corporation was allowed to retroactively validate its federal election.

7. The Corporation had no assets until August 30, 1978. On that date Arnold A. Carlson deposited the sum of \$500 in the corporate account. On September 19, 1978, Fred Fredrickson deposited an additional \$500 in the Corporation account, thereby completing the minimum asset requirement of Chapter 301.

8. On September 7, 1978, the Corporation issued its first check drawn on corporate funds payable to the Minnesota Department of Revenue in the amount of \$1.00. It was not honored until September 29, 1978.

9. On June 18, 1980, the Corporation filed a Minnesota Small Business Corporation Income Tax Return on Form M-3S-4 for calendar year 1979 showing a loss of \$118,154. The loss is not disputed. One-half of that loss was deducted on the Individual Income Tax Return of the Appellant. That is the issue in dispute.

10. The Corporation did not file a 1978 Minnesota Income Tax Return, but did file the above mentioned return for calendar year 1979 and also filed small business corporation returns for calendar years 1980 and 1981, which have not been contested by the Commissioner.

11. On July 8, 1980, the Commissioner mailed to the Corporation a form letter indicating that the Corporation had failed to file an election and further indicating the steps necessary to validate a late filing. Appellant has no recollection of receiving said letter, but testified that if it was received, it was turned over to his accountant.

12. All of the Corporation's records were destroyed in a fire in the accountant's office in late December of 1980. From the time of its incorporation until after the fire, all correspondence from the Internal Revenue Service and the Commissioner of Revenue was turned over to Mr. Marvin Lucking, the accountant who was retained to take care of all of those matters for the Corporation. After the fire, the Corporation dismissed Mr. Lucking and retained Mr. Dennis McGill as accountant for the Corporation.

13. In May of 1981, the Corporation received a letter from the Commissioner informing it that the Commissioner did not have a valid election under Minn. Statute Section 290.972 for the year ending December 31, 1980, and requested that an election for small business corporation status be filed within thirty days. The Corporation responded within thirty days by filing the election for small business corporation status but requested an effective date as of January 1, 1979, to cover the 1979 return which was filed as a small business corporation and which represented the first year in which the corporation had business activity. Upon receiving the election, the Commissioner proceeded to strike the effective date of January 1, 1979, and insert January 1, 1980, and then accepted the election for calendar year 1980. Appellee concedes that the election filed on June 18, 1981, was timely and valid for calendar year 1980 and all subsequent years.

14. The Memorandum herein is hereby made a part of these Findings.

Conclusions of Law

1. Under Minn. Stat. Chap. 301 the Corporation did not come into existence until September 19, 1978, when the second \$500 was deposited to its account, bringing the total assets up to the required \$1,000.

2. The election on Form M-161 which was received in the Office of the Commissioner of Revenue on September 18, 1978, was a valid election for calendar year 1979.

3. The Order of the Commissioner of Revenue is hereby reversed.

TAX COURT

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

Dated: January 19, 1983

By the Court,
John Knapp, Chief Judge
Minnesota Tax Court

Memorandum

An electing small business corporation and its shareholders are taxed as though the Corporation were a partnership. Minn. Stat. Sec. 290.972. In the instant case, an election to be taxed as a small business corporation on Form M-161 was received by the Commissioner of Revenue on September 18, 1978. On its face the election indicated that the election was to be effective for the taxable year beginning August 1, 1978, however, on said date said Corporation did not have shareholders, had no assets, and did not begin doing business until much later. In substance, the Corporation was non-existent until September 19, 1978.

The issue is: Was the election effective for calendar year 1979?

The adoption by the Minnesota Legislature of the concept of the Small Business Corporation Act was an indication of a desire by the Legislature to give tax relief to small businesses. It was designed to remove tax consequences as a factor in selecting a form of business organization.

The Commissioner contends that the time for the filing of the election commences to run from the date the Certificate of Incorporation was issued by the Secretary of State (August 1, 1978). He also contends that because August 1, 1978, was inserted on Form M-161 in the space entitled "Election is to be effective for the taxable year beginning," he has no alternative but to reject the election as ineffective because it was received by him more than 30 days after August 1, 1978. He further contends that if the election was not effective for calendar year 1978, it also was not effective for calendar year 1979.

What the Commissioner appears to be saying is that because the Certificate of Incorporation was issued on August 1, 1978, and because the election to be taxed as a small business corporation, on its face, indicates that the election is made for the taxable year beginning August 1, 1978, the Commissioner cannot look to the substance and is, therefore, precluded from accepting the election which was received on September 18, 1978. We do not agree with that contention. In tax matters we always look to substance rather than form. *Barts v. Commissioner of Taxation*, Minn. Tax Court Docket No. 1971, *Midwest Federal Savings and Loan v. Commissioner of Revenue*, 259 N.W. 2d 596, *Safeco Products Co. v. Commissioner of Revenue*, 266 N.W. 2d 875.

The statute in effect at the time of the filing of the election was Minn. Stat. Sec. 290.972, subd. 4 provides as follows:

Subd. 4 YEARS FOR WHICH EFFECTIVE. An election under subdivision 1 shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subdivision 5.

It is obvious from the facts that the election was intended to be made for the first taxable year of the Corporation.

It is the function of a Court to try to apply to a tax statute such meaning as will encompass the legislative intent insofar as the Court can ascertain what that is. *Midwestern Press, Inc. v. Commissioner of Taxation*, 203 N.W. 2d 344, 295 Minn. 59.

The apparent purpose of the statute is to give the Commissioner some notice of what the taxpayer intends to do so that the taxpayer cannot make an "after-the-fact" election if that proves to be advantageous. In the instant case the election proved to be advantageous, but there is no doubt in the Court's mind that the taxpayer made the election in September of 1978 without knowing whether or not the election would be advantageous to the taxpayer. Obviously he was hopeful that it would be advantageous or he would not have made the election.

The regulations adopted by the Commissioner of Revenue provide in pertinent part as follows:

2097.2 (3) MANNER AND TIME FOR MAKING ELECTION AND FILING SHAREHOLDERS' CONSENT.

For purposes of this subparagraph, the first month of the taxable year of a new corporation does not begin until the corporation has shareholders or acquires assets or begins doing business, whichever is the first to occur.

We consider the above paragraph of that regulation to be reasonable and find that the first month of the taxable year of the new corporation in the instant case did not begin until September 19, 1978, when the Corporation first had the minimum assets required by Minn. Stat. Sec. 301.04 (6). Prior to that date the Corporation had no shareholders, no assets, and did not begin doing business.

Because we have found that the corporate existence did not begin until September 19, 1978, the election was timely, was effective for the short taxable year which ended December 31, 1978, and was effective for calendar year 1979. The Corporation is a creature of statute and does not come into existence until the minimum provisions of the statute have been complied with.

Minn. Stat. Sec. 301.04 (6) requires that the minimum amount of stated capital with which a corporation will begin business shall be not less than \$1,000. Minn. Stat. Sec. 301.13 states that a corporation shall not begin business nor incur any debts until consideration shall for its shares, equal to the amount of stated capital with which it will begin business, as set forth in the Articles of Incorporation, has been fully paid in. In the instant case that was not accomplished until September 19, 1978. Minn. Stat. Section 301.18 provides that no certificate of shares shall be issued until the shares represented thereby have been fully paid for.

Here the Certificate of Incorporation was issued on August 1, 1978. The election to be taxed as a small business corporation was received by the Commissioner on September 18, 1978. The year in issue is calendar year 1979. We can see nothing in the statute which prohibits the Commissioner from accepting the election as being timely for calendar year 1979, regardless of whether or not it was timely for the short taxable year of August 1, 1978, to December 31, 1978, particularly in view of the fact that the corporate existence did not begin until September 19, 1978, when the Corporation first met the minimum requirement of Chapter 301.

Minnesota Statutes Section 290.972 has been a troublesome statute ever since its enactment in 1961. During the years the legislature has made numerous amendments giving the Commissioner authority to extend the time for filing the election and, in general, relaxing the strict interpretation of the statute. But the statute has still continued to cause problems as is evidenced by the instant case. In 1981 the legislature finally repealed the entire statute and substituted Laws 1981, Chapter 344, Section 4, which reads as follows:

290.9725. ELECTION BY SMALL BUSINESS CORPORATION. Any corporation having a valid election in effect under section 1372 of the Internal Revenue Code of 1954, as amended through December 31, 1980, shall not be subject to the taxes imposed by this chapter, except the tax imposed under section 290.92.

It appears to the Court that this latest amendment is a reasonable statement of the intent of the legislature and does away with all of the conflicting requirements, which have caused so much confusion in the past, and should be considered by the Court in determining legislative intent.

In the instant case, the interpretation placed upon the statute by the Commissioner would make the Corporation subject to Minnesota income taxes, whereas it is exempt from Federal Income Taxes, and would not allow the Appellants to deduct the losses on their Minnesota Income Tax Return, whereas they were allowed the deduction on their Federal Income Tax Return. This seems to be contrary to the intent of the legislature.

This is not a case of fraud. It is clear from the evidence that there was no illegal intention on the part of the Appellants to avoid the payment of the tax by filing the election in the manner that it was filed. On the contrary, it is clear that if the Corporation had filed Form M-161 during December of 1978 instead of filing it on September 18, 1978, the Commissioner would not have disallowed the deductions of losses from the Corporation. From all the evidence, it is clear that Appellants intended to comply with the law.

In the instant case, the equities are all on the side of the Appellants. In *Spektor and Shaw v. Commissioner*, Tax Court Docket Nos. 2614 and 2615, this Court said:

"The only effect an affirmance of the Commissioner's Orders would have would be an unjust enrichment of the State of Minnesota at the expense of the Appellants resulting from their ignorance."

Here it is also clear that an affirmance of the Commissioner's Order would have the effect of an unjust enrichment of the State of Minnesota at the expense of the Appellants resulting from their ignorance.

Because the federal law is different from the state law, it is not surprising that the Appellant was confused and was, therefore, not aware of the need to file another election on Form M-161. The Commissioner has conceded that under federal law for all tax years beginning before January 1, 1979, the twelve-month requirement is essentially waived.

It is our finding that the election was effective for calendar year 1979 because the election was received by the Commissioner of Revenue within the statutory period. Until September 19, 1978, the Corporation did not have shareholders, had no assets and could not begin doing business because it had not complied with the minimum requirements of Chapter 301. To hold otherwise would be a miscarriage of justice.

J.K.

TAX COURT

State of Minnesota
County of Lyon

Vernon & Dora Prairie,
Appellants,

v.

Commissioner of Revenue,
Appellee.

Docket No. 3594

Tax Court
Regular Division

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT

Order dated January 19, 1983

This is an appeal from an Order of the Commissioner of Revenue dated June 21, 1982 assessing additional income tax for the years 1970 through 1976. The hearing was held October 7, 1982 in the Lyon County Courthouse in Marshall, Minnesota before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court. The Appellants were allowed additional time to submit documents.

Vernon Prairie appeared pro se. Neil F. Scott, Special Assistant Attorney General, appeared for the Appellee.

Decision

The Order of the Commissioner of Revenue is hereby affirmed for the years 1973 through 1976 and reversed for the years 1970 through 1972.

Findings of Fact

1. The Appellants were residents of Minnesota during the years 1970 through 1976 and filed self-assessed Minnesota Income Tax Returns showing no income tax due.
2. The Appellants also filed self-assessed Federal Income Tax Returns showing no federal income tax due during the same period.
3. The Internal Revenue Service (IRS) audited the Appellants for the years 1970 through 1976 and made several changes to the Appellants' adjusted gross income resulting in the assessment of additional income tax.
4. The Appellants appealed the federal assessments to the United States Tax Court and, for each year, the United States Tax Court affirmed the assessment in full. See Order of the United States Tax Court, Docket Number 8574-73, decided October 23, 1975 affirming the assessments for 1970 through 1972; Docket Number 7174-76 decided June 12, 1978 affirming the assessment for 1973 through 1975 and Docket Number 809-78 decided October 22, 1979 affirming the assessment for 1976.
5. Per routine exchange of information the Appellee was notified by the IRS that changes had been made to the Appellants' 1970 through 1976 taxable income and the changes had been affirmed by the United States Tax Court.
6. The Appellee made changes to the Appellants' Minnesota taxable income for the years 1970 through 1976. These changes were based on the federal audit reports, except that credit was allowed for income allocable to other states.
7. The Appellant has presented no evidence to indicate that either the federal or state assessments are invalid or incorrect for the years 1973 through 1976.
8. At the hearing, Appellant, Vernon Prairie admitted that the amount of income attributed to him and his wife was correct.

Conclusions of Law

1. The assessment for the years 1970 through 1972 was issued after the time period allowed by Minn. Stat. 290.56, subd. 3 and is hereby reversed.
2. The assessment for the years 1973 through 1976 is hereby affirmed in full.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 19, 1983

By the Court
John Knapp, Chief Judge
Minnesota Tax Court

Memorandum

The state and federal audits made several changes to the Appellants' adjusted gross income. However, in the Notice of Appeal and at trial the Appellants took exception only to the disallowance of a claimed loss on real property occurring in 1957. The Appellants have failed to present documentation that a loss did occur and, if so, their basis in the property at the time of the loss.

It should also be noted that the Appellants had an opportunity to present the same issue to the United States Tax Court. The Court also rejected the Appellants' contention that they were entitled to a deduction for the alleged loss occurring in 1957.

The basis of the Appellants' claim, is that the Appellant claims that in the 1930's he borrowed approximately \$4,000 from his mother. He purchased farm land with the money—putting the property in his mother's name. His mother then willed the property to Appellant. His mother died in 1957. A probate challenge was made by the Appellant's brothers and sisters. Judge Mann rejected Vernon's contention that the property was his and threw out the will. The property was split evenly among the children. Since the Court's decision had the authority of the State of Minnesota behind it, the Appellant felt that the State of Minnesota had cheated him and a loss had been incurred. The Appellant has claimed that loss on his tax returns every year since 1957.

JK

SUPREME COURT**Decisions Filed Friday, January 28, 1983
Compiled by John McCarthy, Clerk**

CX-81-839 State of Minnesota v. Keith W. Pleas, Appellant. Hennepin County.

Trial court did not err in denying defendant's motion to suppress evidence on fourth amendment grounds.

Affirmed. Amdahl, C. J.

82-595 State of Minnesota v. Stephen Carl Schmit, Jr., Appellant. Rice County.

Presence of aggravating circumstances justified imposition of a sentence of two times the presumptive sentence duration.

Affirmed as modified. Amdahl, C. J.

C7-82-694 State of Minnesota v. Sanford L. Peterson, Appellant. Kandiyohi County.

Record fails to establish presence of aggravating circumstances justifying departure in the form of consecutive sentence.

Affirmed as modified. Amdahl, C. J.

C6-82-802 State of Minnesota v. James Mallory, Appellant. Dakota County.

Defendant was appropriately sentenced to a Guidelines sentence of 90 months pursuant to Minn. Stat. § 609.11, subd. 5 (1982), which provides that "Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, used a firearm shall be committed to the commissioner of corrections for a mandatory minimum term of imprisonment of not less than 5 years * * *."

Affirmed. Amdahl, C. J.

C4-82-913 State of Minnesota v. Ross E. Torgerson, Appellant. Hennepin County.

In comparing the criminal history score of an offender who had not attained the age of 21 at the time he committed the felony for which he is being sentenced, the trial court may assign a total of one point for prior juvenile adjudications if the defendant had two such adjudications for offenses that would have been felonies if committed by an adult, provided that the adjudications were pursuant to offenses occurring after the offender's sixteenth birthday.

Affirmed as modified. Amdahl, C. J.

C3-82-921 Richard Desmond Jackson, petitioner, Appellant, v. State of Minnesota. Ramsey County.

Factors cited by trial court justified dispositional departure in the form of execution of a presumptively stayed sentence but did not justify durational departure.

Affirmed as modified. Amdahl, C. J.

SUPREME COURT

82-1020 William Gross, petitioner, Appellant, v. State of Minnesota. Hennepin County.

Postconviction court properly denied petition seeking resentencing according to the Minnesota Sentencing Guidelines.

Affirmed. Amdahl, C. J.

82-598 Kenneth Langenberger, as father and natural guardian of Daniel Langenberger, a minor, *et al.*, v. Vickie M. Dahl, as Administratrix of the Estate of Patricia Louise Austin, deceased, *et al.*, Charles Arthur Griep, *et al.*, and State Farm Mutual Automobile Insurance Company, Appellant. Hennepin County.

Under the Minnesota No-Fault Automobile Act as originally enacted in 1974, an insurer who has paid basic economic loss benefits to its insured has a subrogation right against its insured by virtue of the fact of double recovery.

Reversed and remanded. Scott, J. Took no part, Coyne, J.

Decision Filed Monday, January 24, 1983

82-1459 Kit Hymanson and Lucky Lanes, Inc., Appellants, v. City of St. Paul, *et al.* Ramsey County.

Revocation of various licenses of a liquor establishment are sustained against appellant's contention that the proceedings were defective for lack of notice and appointment of a hearing examiner and that the revocation was arbitrary and capricious.

Affirmed. Peterson, J. Concurring specially, Amdahl, C. J. Dissenting Scott, Todd, and Yetka, JJ.

STATE CONTRACTS

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

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

Department of Energy, Planning and Development

Notice of Request for Proposals for Production of an Economic Development Manual

The Department of Energy, Planning and Development is seeking proposals for the research and design of an economic development manual. The agency or individual awarded the contract will produce a working manual to be used in conjunction with the Minnesota Star Cities Program.

Projected dates for the contract will extend from March 7, 1983 through April 20, 1983. The estimated amount of the contract will not exceed \$50,000.00.

The guidelines and topics to be used in the preparation of the proposal are available from the Department of Energy, Planning and Development, Business Development Division. Deadline for receipt of proposals in the office is 4:00 p.m., Monday, Feb. 28, 1983. Write or call:

Linda Koerner
Department of Energy, Planning and Development
Development Resources Division
480 Cedar Street, Room 100
St. Paul, Minnesota 55101
(612) 296-3977

Department of Health Health Systems Division Emergency Medical Services Section

Notice of Request for Proposals for Minnesota Poison Information Center

The Minnesota Department of Health is requesting proposals from non-profit corporations and units of government to provide 24-hour poison information and referral services to the general public and to health professionals. Maximum state funding for this grant will not exceed \$125,000 for the year July 1, 1983 to June 30, 1984. The availability and specific amount of funding are contingent on the outcome of state and federal budget deliberations.

Criteria for selection include five factors listed in the enabling statute (Minn. Stat. § 145.93) plus such general considerations as the availability of matching funds and in-kind support and the ability to pursue additional funding for a statewide poison control program from other sources. All selection criteria are described in a request for proposal available from the Minnesota Department of Health. Selection will follow the review of all proposals received before the deadline and a recommendation by a statutory Advisory Council. Responders will be expected to demonstrate ability to initiate service as soon as possible following selection and awarding of funds. The deadline for applications is 4:00 p.m. March 25, 1983.

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

Peter Carr
Emergency Medical Services Section
Minnesota Department of Health
717 Delaware St. S.E.
P.O. Box 9441
Minneapolis, Minnesota 55440
612/623-5284

Transportation Department

Contract Available for Bridge Construction Plans

The Mn/DOT requires the services of a qualified consultant to prepare construction plans for the bridges described below.

Bridge No. 19818, Trunk Highway 35E under C.S.A.H. 31 (Pilot Knob Road), and Bridge No. 19864, TH 35E under C.R. 28 (Yankee Doodle Road), in Eagan.

Estimated fee is about \$150,000.

The work is anticipated to start in May with approximately four (4) months allowed for design and plan preparation.

Minnesota firms will be given first consideration. Firms desiring consideration should express their interest to Mn/DOT before 4:30 p.m. February 28, 1983. Furnish a copy of Federal forms 254 and 255, and a company brochure. Identify personnel to conduct the project and include resume of their training and work experience.

The Bridge Contractor Selection Committee will solicit a proposal from the list of responders.

Send your response to:

K. V. Benthin
State Bridge Engineer
Room 610 D
Transportation Building
St. Paul, Minnesota 55155

January 25, 1983

OFFICIAL NOTICES

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

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

Department of Administration

Notice of State Surplus Property Sale

In compliance with Minnesota Statutes § 94.09, *et seq.*, the Commissioner of Administration offers for sale by sealed bid an unimproved one acre parcel of wooded land in Nordland Township of Aitkin County. The parcel was originally purchased as a site for a forestry tower, but the tower was never built. The parcel is landlocked, that is, it cannot be reached from a public road without crossing lands owned by others. Nearest public road is 1/8 mile.

The parcel is described legally as follows:

Beginning at the Quarter Corner between Section Thirty (30) and Nineteen (19), Township Forty-six (46), Range Twenty-six (26), thence West Two Hundred and Nine (209) feet, thence South Two Hundred and Nine (209) feet, thence East Two Hundred and Nine (209) feet, thence North Two Hundred and Nine (209) feet to the point of beginning. Said tract to contain one acre more or less.

Arrangements for viewing the parcel may be made by contacting

Les Blakesley, District Forester
318 First Street N.W.
Aitkin, Minnesota
Telephone (218) 927-2414

The bids will be opened and read aloud publicly at Room G-22 Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155 at 2:30 p.m. on February 10, 1983.

Bidders shall be required to submit a Cashier's Check or a Money Order with their bids in an amount not less than 10% of the bid. The remittance of unsuccessful bidders will be returned. The remittance by the successful bidder will be used by the state as a down payment. The balance remaining after the down payment shall be due on or before May 12, 1983. The State of Minnesota shall pay all taxes and assessments due and payable in 1982 and all prior years.

For details and bid forms contact:

Real Estate Management
50 Sherburne Avenue
St. Paul, Minnesota 55155
Telephone (612) 296-6674

State Board of Education Department of Education Special Services Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Administrative Staffing for Elementary and Secondary Schools

Notice is hereby given that the State Board of Education is seeking information or opinions from sources outside the agency in preparing to promulgate rules EDU 23 and EDU 46 governing administrative staffing for elementary and secondary schools. The promulgation of these rules is authorized by Minn. Stat. § 121.11, subd. 12.

The State Board of Education requests information and comments concerning the subject matter of these rules. Interested or affected persons may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Dr. George B. Droubie, Manager
Personnel Licensing and Placement
Division of Special Services

610 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-2046 and in person at the above address.

All statements of information and comments shall be accepted until March 4, 1983. Any written material received by the State Board of Education shall become part of the record in the event that the rules are promulgated.

January 26, 1983

Dr. Will Antell, Assistant Commissioner
Division of Special Services

State Board of Education (State Board for Vocational Education) Department of Education Vocational-Technical Education Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Post-secondary and Adult Vocational-Technical Education

Notice is hereby given that the State Board of Education (State Board for Vocational Education) is seeking information or opinions from sources outside the agency in preparing to amend Chapter Six: Post-secondary Vocational-Technical Education, 5 MCAR §§ 1.0100-1.01101 and Chapter Six A: Adult Vocational-Technical Education, 5 MCAR §§ 1.0111-1.0117.

These rules govern program approval; administrative and support service requirements; tuition and fees; instructional aid; post-secondary vocational supply aid; post-secondary vocational equipment aid; contingency fund; construction; debt service aid; student eligibility and reciprocity among states for vocational education; and adult new jobs fund. The promulgation of these rules is authorized by Minn. Stat. §§ 121.11; subd. 12; 121.21 subd. 6; 124.561, subd. 2a; 124.5621, subd. 13; 124.5625; 124.5626; 124.565, subd. 6; 124.572, subd. 3; 124.573, subd. 3a.

The State Board of Education (State Board for Vocational Education) requests information and comments concerning the subject matter of these rules. Interested or affected persons may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Ms. Rosemary Fruehling
Division of Vocational-Technical Education
541 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-3387 and in person at the above address.

All statements of information and comments shall be accepted until March 7, 1983. Any written material received by the State Board of Education (State Board for Vocational Education) shall become part of the record in the event that the rules are amended.

January 28, 1983

Mary Thornton Phillips
Assistant Commissioner
Division of Vocational-Technical Education

State Department of Education Instruction Division

Public Meeting Notice

The Minnesota Special Education Advisory Council will hold a meeting on February 11, 1983. The meeting is scheduled to begin at 9:00 a.m. in the Walnut Room of the Capp Towers Best Western Hotel in Downtown St. Paul. Agenda items include: Review Draft of FY 84-86 State Plan; Legislative and Rules Updates; and Low Incidence Planning Efforts.

For additional information contact Barbara Burke, Special Education Section, at (612) 296-8588.

**Pollution Control Agency
Office of Planning and Review**

**Notice of Intent to Solicit Public Comments on the Preliminary List of Minnesota
Counties Designated as Sensitive to Acid Deposition**

Notice is hereby given that, pursuant to the Minnesota Acid Deposition Control Act, Minn. Stat. §§ 116.42-116.45 (1982), the Minnesota Pollution Control Agency has published a preliminary list of counties determined to contain natural resources sensitive to the impacts of acid deposition. The counties included on the preliminary list were designated as sensitive on the basis of the following:

- (a) the presence of plants and animal species which are sensitive to acid deposition;
- (b) geological information identifying those areas which have insoluble bedrock which is incapable of adequately neutralizing acid deposition; and
- (c) existing acid deposition reports and data prepared by the Minnesota Pollution Control Agency and the federal Environmental Protection Agency.

A copy of the preliminary list may be obtained from the Minnesota Pollution Control Agency by contacting J. David Thornton, Acid Rain Coordinator, Minnesota Pollution Control Agency, 1935 W. County Road B-2, Roseville, Mn. 55113. Telephone (612) 296-7219.

Notice is also hereby given that, pursuant to Minn. Stat. § 116.44, subd. 1(c) (1982), the Minnesota Pollution Control Agency shall be conducting public meetings on the preliminary list of acid deposition sensitive areas. These meetings are scheduled as follows:

- February 3, 1983 2:00 and 7:30 p.m., MPCA Board room, Roseville
- February 7, 1983 2:30 and 7:30 p.m., County Commissioners' Board room, County Courthouse, Duluth
- February 8, 1983 3:15 and 7:30 p.m., Room 107, Mesabi Community College, Virginia
- February 9, 1983 7:30 p.m., Room 126, Vermillion Community College, Ely
- February 10, 1983 7:30 p.m., County Courthouse, Grand Marais
- February 15, 1983 7:00 p.m., American Legion Hall, Park Rapids
- February 16, 1983 7:30 p.m., Wilson Hall, Itasca Community College, Grand Rapids
- February 17, 1983 7:30 p.m., County Courthouse, Brainerd
- February 23, 1983 7:30 p.m., Room 125, Friedel Building, 1200 South Broadway, Rochester
- March 1, 1983 7:30 p.m., MPCA Board room, Roseville

Written comments may be submitted on the preliminary list to J. David Thornton, at the address listed above. Comments must be received by March 7, 1983.

Interested persons should be aware that the preliminary list is subject to change in light of comments made during the public meeting and additional information and data. Possible deletions or additions to the preliminary list may also be discussed at the public meetings. For additional information regarding this matter, contact J. David Thornton at the address and phone number listed above.

**Minnesota Pollution Control Agency
Water Quality Division**

**Surface Water Management: Nonpoint Source Pollution and Stormwater Runoff
(Part 2, 208) Plan**

The Twin Cities Metropolitan Council has submitted its "Surface Water Management: Nonpoint Source Pollution and Stormwater Runoff" (Part 2, 208) Plan for the Seven-County Metro Area to the Minnesota Pollution Control Agency (MPCA). In accordance with Federal requirements, the MPCA has 120 days to review and have the Governor certify the Metropolitan

Council's 208 Plan to the U.S. Environmental Protection Agency. The MPCA will review the Council's 208 Plan at the March, 1983 MPCA Board meeting. The Governor's certification of the Plan will take place subsequent to MPCA Board action.

Further notices will be made regarding MPCA's action on the Plan and the Governor's certification.

Sandra Gardebring
Executive Director

Minnesota Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Regarding Revision of Existing Rule 6 MCAR § 4.0041 (Offset Rule)

Notice is hereby given that the Minnesota Pollution Control Agency (agency) is seeking information or opinions from sources outside the agency regarding the revision of the existing rule 6 MCAR § 4.0041, entitled Offset Rule. This rule governs the agency's permit program for the growth or expansion of industry in nonattainment areas. The present issue, precipitated by federal action, concerns whether net or gross increases in emissions should be the basis for defining those major new or expanding emission facilities that are subject to the requirements of this rule.

The agency requests information and comments concerning the subject matter of the present issue. Interested persons or groups may submit statements of information orally or in writing. Written or oral statements should be directed to Douglas M. Benson at the address and telephone number listed below. Oral comments and inquiries will be accepted by Douglas M. Benson during regular business hours over the telephone and in person at the agency office.

Douglas M. Benson
Minnesota Pollution Control Agency
Division of Air Quality
1935 West County Road B2
Roseville, Minnesota 55113

All statements of information and comments shall be accepted until March 15, 1983. Any written material received by the agency shall be a part of the hearing record in the event amendments to the rule are proposed and public hearings are held.

Dated this 26th day of January 1983.

Sandra S. Gardebring
Executive Director

Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Wadena County

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minn. Stat. § 105.391, subd. 1 (1980) will be held in the Auditorium, lower level, Court House, Wadena, MN, on February 18, 1983, commencing at 10:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Marvin Pulju, Rural Route, Menahga, MN 56464, Department of Natural Resources representative Merlyn Wesloh, Route 5, Box 41A, Bemidji, MN 56601, and County Soil and Water Conservation District representative Thomas Schulz, Route 1, Sebeka, MN 56477.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minn. Stat. § 105.391 (1980) and the criteria contained in Minn. Stat. § 105.37, subs. 14 and 15 (1980). Please take notice that waters listed in para. A.2. may sometimes also be considered for designation, in the alternative, as wetlands.

A. PUBLIC WATERS

1. Watercourses.

<u>Name</u>	<u>Section</u>	<u>From</u> <u>Township</u>	<u>Range</u>	<u>Section</u>	<u>To</u> <u>Township</u>	<u>Range</u>
None						

OFFICIAL NOTICES

2. Preliminarily designated under section 105.37, subs. 14(a)-14(h).

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
80-3: Simon Lake	12	134 (Thomastown)	33

B. WETLANDS

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
80-25: Unnamed	3	138 (Shell River)	34

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minn. Stat. §§ 15.0424 and 15.0425 (1980).

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minn. Stat. § 105.42, subd. 1 (1980). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minn. Stat. § 105.391, subs. 10 and 12 (1980).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to:

David B. Milles
DNR — Division of Waters
Third Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101
Telephone: 612/297-2835

January 20, 1983

Joseph N. Alexander, Commissioner
Department of Natural Resources

Errata

At 7 S.R. 985, change "6 MCAR § 1.1503 Minimum energy efficiency standards." to read "6 MCAR § 2.2503 Minimum energy efficiency standards."

STATE OF MINNESOTA

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

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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

Interoffice
