

83 May 2

# STATE REGISTER

STATE OF MINNESOTA



**VOLUME 7, NUMBER 44**

**May 2, 1983**

**Pages 1565-1588**



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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			
45	Monday Apr 25	Monday May 2	Monday May 9
46	Monday May 2	Monday May 9	Monday May 16
47	Monday May 9	Monday May 16	Monday May 23
48	Monday May 16	Monday May 23	Monday May 30

\*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 spring of 1984. 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:

Issues 1-13, inclusive

Issues 14-25, inclusive

Issue 26, cumulative for 1-26

Issue 27-38, inclusive

Issue 39, cumulative for 1-39

Issues 40-51, inclusive

Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

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## PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, 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.

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## Department of Commerce Board of Examiners in Watchmaking

### Proposed Repeal of Rules Governing Official Approvals

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Board of Examiners in Watchmaking proposes to repeal the above-entitled rules without a public hearing. The board has determined that the proposed repeal of these rules will be non-controversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (1982).

All interested persons shall have thirty (30) days to submit comments on the proposed repeal of rules governing official approvals. The proposed rule may be modified if the modifications are supported by the data and views submitted.

Unless seven or more persons submit written requests for a public hearing on the proposed repeal within the thirty-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. §§ 14.14-15 (1982).

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

**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

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Helen Boyer  
Board of Examiners in Watchmaking  
500 Metro Square Building  
St. Paul, Minnesota 55101.

Authority for the repeal of these rules is contained in Minn. Stat. chs. 214 and 326.54 *et seq.* Additionally, a statement of need and reasonableness that describes the need for and reasonableness of the proposed repeal of rules governing official approvals is available from the board upon request.

Any person who desires to be notified when the proposed repeal and record herein are submitted to the Attorney General should so inform the Board of Examiners in Watchmaking. Publication is hereby ordered.

March 15, 1983.

Gregory M. O'Donnell, Chairman

### Rule as Proposed

#### WB 16 Fees.

The board shall charge the following fees:

Examination for Certificate of Registration and License	\$25.00	\$75
Certificate and License by Reciprocity	25.00	40
Reexamination for Certificate of Registration	10.00	35
Annual Renewal of License—Not to exceed	15.00	40
Apprentice Certificate	3.00	5
Annual Renewal of Apprentice Certificate	3.00	5
Temporary <del>Sixty</del> 60-day permit	2.00	5
Duplicate Certificate of Registration	2.50	5
Penalty Fee	2.00	5

Repealer. WB 36 is repealed.

## ADOPTED RULES

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The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 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. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

## Department of Commerce Insurance Division

### Adopted Amendments to Rules Governing the Solicitation of Proxies, Consents, or Authorizations

The rules proposed and published at *State Register*, Volume 6, Number 27, pages 1229-1255, January 4, 1982 (6 S.R. 1229) and Volume 6, Number 45, pages 1842-1843, May 10, 1982 (6 S.R. 1842) are adopted with the following modifications:

**Rules as Adopted****4 MCAR § 1.9257 Solicitations to which rules apply.**

Rule 4 MCAR § 1.9264 applies to every solicitation that is subject to 4 MCAR § 1.9255. Rules 4 MCAR §§ 1.9256-1.9263 and 1.9265 apply to every solicitation that is subject to 4 MCAR § 1.9255 except the following:

C. any solicitation by a person in respect of securities of which it is the beneficial owner; or

D. any solicitation through the medium of a newspaper advertisement which informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy and any other soliciting material and does no more than name the issuer, state the reason for the advertisement, and identify the proposal or proposals to be acted upon by security holders; ~~or~~

~~E. any solicitation which the commissioner finds for good cause should be exempted from this rule or any part thereof.~~

**4 MCAR § 1.9258 Information to be furnished to security holders.**

D. Information to beneficial owners. If the issuer knows that securities of any class entitled to vote at a meeting with respect to which the issuer intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, bank or voting trustee, or their nominees, the issuer shall ~~require~~ inquire of the record holder at least ten days prior to the record date for the meeting of security holders whether other persons are the beneficial owners of the securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply the material to beneficial owners. The issuer shall supply the record holder in a timely manner with additional copies in the quantities, assembled in the form and at the place, the record holder reasonably requests in order to address and send one copy of each to each beneficial owner of securities so held. The issuer shall pay, upon the request of the record holder, its reasonable expenses for mailing the material to security holders to whom the material is sent.

**4 MCAR § 1.9261 Material required to be filed.**

E. Information that need not be filed. Copies of replies to inquiries from security holders requesting further information and copies of communications which do no more than request that forms ~~of~~ of proxy previously solicited be signed and returned need not be filed pursuant to 4 MCAR §§ 1.9255-1.9269.

**4 MCAR § 1.9267 Schedule A; information required in proxy statement.**

G. Directors and executive officers. If action is to be taken with respect to the election of directors, furnish the information required by 1.-11., in tabular form to the extent practicable, with respect to each person nominated for election as a director and each other person whose term of office as a director will continue after the meeting. If the solicitation is made on behalf of persons other than the issuer, the information required need be furnished only as to nominees of the persons making the solicitations solicitation.

H. Remuneration of directors and officers. Furnish the information required by 1.-7. if action is to be taken with respect to the election of directors; any bonus, profit sharing or other remuneration plan, contract or arrangement in which any director, nominee for election as a director, or officer of the insurer will participate; any pension or retirement plan in which any such person will participate; or the granting or extension to any such person of any options, warrants or rights to purchase any securities other than warrants or rights issued to security holders, as such, on a pro rata basis. If the solicitation is made on behalf of persons other than the issuer, the information required need be furnished only as to nominees of the persons making the solicitation and associates of the nominees.

4. Options, warrants, or rights.

b. Instructions.

(2) Other tabular presentations are acceptable if they include the necessary data. Tabular presentation ~~may~~ shall not be needed if only a very few options ~~have been granted~~ do not exceed five percent of the outstanding shares.

II. Matters related to accounting. If the solicitation is made on behalf of the issuer and relates to an annual meeting of security holders at which directors are to be elected or financial statements are included, furnish the information contained in 1.-~~5~~ 3.

4. ~~For the fiscal year most recently completed, describe each professional service provided by the principal accountant~~

**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.

## ADOPTED RULES

and state the percentage relationship which the aggregate of the fees for all nonaudit services bear to the audit fees; and, except as provided in 5-, state the percentage relationship which the fee for each nonaudit service bears to the audit fees. Indicate whether, before each professional service provided by the principal accountant was rendered, it was approved by, and the possible effect on the independence of the accountant was considered by, any audit or similar committee of the board of directors; and for any service not approved by an audit or similar committee, the board of directors.

### 5- Instructions-

a- For purposes of 5-, all fees for services provided in connection with the audit function, including reviews of quarterly reports, may be computed as part of the audit fees. Indicate which services are reflected in the audit fees computation.

b- If the fee for any nonaudit service is less than three percent of the audit fees, the percentage relationship need not be disclosed.

c- Each service should be specifically described. Broad general categories such as "tax matters" or "management advisory services" are not sufficiently specific.

d- Describe the circumstances and give details of any services provided by the issuer's independent accountant during the latest fiscal year that were furnished at rates or terms that were not customary.

e- Describe any existing direct or indirect understanding or agreement that places a limit on audit fees for the current or future years, including fee arrangements that provide fixed limits on fees that are not subject to reconsideration if unexpected issues involving accounting or auditing are encountered. Disclosure of fee estimates is not required.

K. Options, warrants or rights. If action is to be taken with respect to the granting or extension of any options to purchase securities of the issuer or any subsidiary, furnish the information contained in I.-4.

2. State separately the amount of options received or to be received by the following persons, naming each person:

a. each director ~~of~~ or officer named in answer to H.1.:

T. Amendment of charter, by-laws, or other documents.

1. If action is to be taken with respect to any amendment of the issuer's charter, by-laws or other documents as to which information is not required in 4 MCAR §§ 1.9255-1.9267, state briefly the reasons for and general effect of the amendment.

### 4 MCAR § 1.9270 Alternative compliance.

Notwithstanding the provisions of 4 MCAR §§ 1.9255-1.9269, the commissioner ~~may~~ shall permit the solicitation of proxies, consents, or authorizations if the manner of solicitation and the form of proxy, proxy statement and other documents used in the solicitation comply with the National Association of Insurance Commissioner's Model Regulation and the Schedules thereto.

## Department of Public Welfare Mental Health Bureau

### Adopted Rules Governing Grants for Services to Adult Mentally Ill Persons in Residential Facilities (12 MCAR §§ 2.0120-2.0129)

The rules proposed and published at *State Register*, Volume 7, Number 28, pages 1033-1040, January 1, 1983 (7 S.R. 1033) are adopted with the following modifications:

#### Rules as Adopted

#### 12 MCAR § 2.0129 Termination or return of a grant.

B. Funds not properly used. If the commissioner determines that funds are not being used according to the approved application and budget, all or part of the grant may be terminated upon 30 days notice to the affected county board with a copy to the affected facility. The commissioner may require repayment of any funds not used according to the approved application and budget. If the commissioner receives a written appeal from the county board within the 30-day period, opportunity for a hearing pursuant to the Administrative Procedure Act, Minnesota Statutes, chapter 14, shall be provided before the grant is terminated or is required to be repaid. The 30-day period shall begin upon the county board's receipt of the commissioner's notice by certified mail.

D. Delayed payments. If the commissioner's grant award letter states that a grant payment is contingent upon compliance with specific conditions required by 12 MCAR §§ 2.0120-2.0129; and if the affected county board, its contracting facilities, or



subcontractors fail to meet the conditions, the commissioner may delay the grant payment until the conditions are met or until the conditions are revised through the process in 12 MCAR § 2.0128. The commissioner shall not delay the payment longer than three months unless he or she first issues a grant termination notice pursuant to B. After this notice is issued, the commissioner may continue to delay the payment until completion of the hearing provided in B.

E. Severability. If a paragraph or clause of a rule is declared void, the paragraph or clause is severable without effect to the other paragraphs or clauses in the rule.

## **Revenue Department Estate and Fiduciary Tax Division**

### **Repeal of Rules Relating to Inheritance and Estate Tax**

The rules proposed and published at *State Register*, Volume 7, Number 27, page 1015, January 3, 1983, (7 S.R. 1015) have been repealed as proposed except for Inh Tax 219. Proposed Rule 13 MCAR § 1.2220 and the repeal of Inh Tax 219 have been withdrawn.

April 12, 1983

## **Waste Management Board**

### **Adopted Rules to Evaluate Applicants for Permits to Operate Hazardous Waste Process Facilities**

The rules as proposed and published at *State Register*, Volume 7, No. 31, pp. 1116-1120, January 31, 1983 (7 S.R. 1116) are now adopted without modification.

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## **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.

Gerald Bebler,  
Appellant,  
v.  
The Commissioner of Revenue,  
Appellee.

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

Order dated April 15, 1983

Docket No. 3570

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, on October 5, 1982, at the Courthouse in Blue Earth, Minnesota.

Joseph R. Gadola, attorney, Wells, Minnesota, appeared on behalf of the Appellant.

James W. Neher, Special Assistant Attorney General, appeared on behalf of Appellee.

### **Syllabus**

Where an adjustment is made in a gift tax return by the Federal Internal Revenue Service prior to the expiration of the Minnesota Statute of Limitations, the taxpayer must notify the Commissioner of Revenue of the federal adjustment and the time for adjustment by the Commissioner is extended to 90 days after such notice.

### **Findings of Fact**

1. Appellant filed his 1976 Minnesota Gift Tax Return on or about January 25, 1977, reporting conveyances by gift of certain farm land to his two sons. At that time Appellant paid \$5,041.23 in gift tax.

2. In March, 1977, the Commissioner requested certain information relative to incumbrances on the farm land, and Appellant furnished this information by letter dated March 16, 1977.
3. On August 5, 1980, the Federal Internal Revenue Service issued a report explaining an adjustment to Appellant's federal tax liability which had been agreed to between Appellant and the Internal Revenue Service. The adjustment reflected an increase in the value of the farm land from \$144,020.50 to \$200,020.50.
4. By letter dated December 28, 1981, the Commissioner notified Appellant that the state had received notice of the federal increase in value and requested in substance that Appellant either file an amended return in conformity with the federal adjustment or state wherein Appellant believed the adjustment to be in error.
5. By letter dated December 30, 1981, Appellant in response to the Commissioner's inquiry notified the Commissioner that Appellant was not required to file an amended return on the ground that the Minnesota Statute of Limitation had expired prior to the federal adjustment.
6. On February 24, 1982, based on the federal increase in value to which Appellant had consented, the Commissioner issued his Order assessing additional gift tax in the amount of \$3,470.00 plus interest from April 16, 1977.
7. Minnesota Stat. § 292.08, subd. 6 provides that the tax return as filed shall be final unless the Commissioner serves notice of adjustment within 3½ years after the last day prescribed by law for filing the return. In this case the last day for filing the return was April 15, 1977, so the Statute of Limitation for adjustment expired October 15, 1980. This expiration was extended when the Internal Revenue Service adjusted the federal return on August 5, 1980, and the extension was for 90 days from the time Appellant notified the Commissioner of the federal adjustment. The earliest record of Appellant's notifying the Commissioner was Appellant's letter of December 28, 1981, so the Order dated February 24, 1982, assessing additional gift tax was well within the 90 day period allowed to the Commissioner.
8. The Order of the Commissioner dated February 24, 1982, should be affirmed.

#### Conclusions of Law

1. The federal adjustment to the value of the gift property was made prior to expiration of the Minnesota Statute of Limitations prescribed in Minn. Stat. § 292.08, subd. 6 (1978).
2. The Commissioner's assessment of additional gift tax, based on the federal adjustment, was timely made under the provisions of Minn. Stat. § 292.08, subd. 7(d)(e) (1978).
3. Even if the Commissioner's inquiry for further information in March of 1977 was considered to be an audit of the return, it would not preclude the Commissioner from assessing additional gift tax based on a subsequent federal redetermination of value.
4. The Commissioner's Order dated February 24, 1982, assessing additional gift tax in the amount of \$3,470.00 plus interest from April 16, 1977, is hereby affirmed.

IT IS SO ORDERED.

By the Court,  
Carl A. Jensen, Judge  
Minnesota Tax Court

#### Memorandum

Minnesota Statutes § 292.08, subd. 6 (1978), reads as follows:

Subd. 6. Time effective. Except as otherwise expressly provided by chapter 292, the amount of any tax assessed by that chapter shall be deemed to be the amount of tax as computed on the return filed unless within a period *not later than three and one-half years after the return was filed (whether or not such return was filed on or after the date prescribed)* the commissioner shall have prepared a notice of tax assessment and mailed same to the taxpayer. Notice of assessment shall be deemed to have been made within the meaning of this subdivision when a letter containing such notice has been mailed to the last known address of the person upon whom the assessment is made. *If a return of tax imposed by this chapter is filed before the last day prescribed by law for the filing thereof, the return shall be considered as having been filed on such last day for the purpose of this subdivision.* (Emphasis added).

This section clearly provides that the time for adjustment by the Commissioner is 3½ years from the due date which in this case was April 15, 1977, so the time for adjustment expired October 15, 1980.

The facts are not in question that the federal order of adjustment was issued August 5, 1980, so it was issued clearly within the time for adjustment under Minnesota Statutes.

Minnesota Statutes § 292.08, subd. 7(d) (1978), states as follows:

(d) Prior to the expiration of the period of limitations prescribed in subdivision 6 with respect to gifts subject to the tax imposed by this chapter (1) where the value of the gift returnable to the United States treasury department under present federal

law has been changed or corrected by the commissioner of internal revenue, the taxpayer or a proper representative of the taxpayer shall report such changed or corrected value to the commissioner of revenue and shall concede the accuracy of such determination or state wherein it is erroneous. . . .

It is further provided under Minn. Stat. § 292.08, subd. 7(e) (1978), that:

(e) Notwithstanding other provisions of this chapter, the statute of limitations for the assessment of tax under this chapter shall not terminate prior to 90 days after the taxpayer, whenever required to do so, has complied with the provisions of (d) of this subdivision in the manner prescribed therein.

This clearly extends the time available to the Commissioner for adjustment by 90 days from the time the taxpayer reports the changed value to the Commissioner. This notice was given by Appellant by letter dated December 31, 1981. The Commissioner had 90 days from this date to issue the Order of adjustment, so the Order issued February 24, 1982, was clearly within the time allowed.

A question was raised as to whether or not a prior audit had been made by the Commissioner and that the result of such audit was final, so that no change could be made after a federal audit. There is a serious question as to whether or not the request for information by the Commissioner in March of 1977 constituted an audit. Even if it did constitute an audit, it would not prevent adjustment after a subsequent federal audit in which the Appellant agreed to the adjustment. This is clearly stated in *Merton J. Bell v. Commissioner of Taxation*, 188 N.W. 2d 827 (Minn. 1971), in which the Court states the following:

We are persuaded that a reasonable construction of the statute does not deny the contested authority to the commissioner. We impute to the legislature the knowledge that the commissioner has no means of knowing whether the Internal Revenue Service will audit a particular gift tax return and that the commissioner, in the competent discharge of his responsibilities, must proceed to audit returns without waiting for action by the Internal Revenue Service. In view of the practical necessity for proceeding without awaiting action by the Internal Revenue Service, a reading of the notice provisions of subd. 7(d) as authorizing the commissioner to act upon that notice only if he has not previously audited the taxpayer's return would, in the case of undervalued gift property, be of minimal utility. We think it must be given a practical construction that will effectuate the legislature's basic intent that a gift tax be computed on the "full and true value" of the gift. § 292.03, subd. 1.

C.A.J.

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## **SUPREME COURT**

### **Decisions Filed Friday, April 22, 1983**

#### **Compiled by Wayne Tschimperle, Clerk**

C7-82-1053 *State of Minnesota, Appellant, v. Scott Bradley Boynton, Olmsted County.*

District court was justified in staying imposition of sentence of criminal defendant.

Affirmed. Amdahl, C. J. Took no part, Kelley, J.

C1-82-1338 *Robert L. Fulton, petitioner, Appellant, v. State of Minnesota. Ramsey County.*

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

Affirmed. Amdahl, C. J.

C9-83-75 *Norman C. Gant, 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.

C8-82-1112 *State of Minnesota v. William Byndum, Appellant. Hennepin County.*

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

Affirmed. Amdahl, C. J.

C2-82-988 *Thomas Flanery v. Total Tree, Inc., Appellant. Dakota County.*

Under the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. § 65B.41-71 (1982), an uninsured reparation obligor is entitled to subrogation upon payment of uninsured motorist benefits to the extent its insured will achieve a duplicate recovery.

Affirmed. Todd, J.

## SUPREME COURT

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**C2-82-957 State of Minnesota v. David Beito, Appellant. Blue Earth County.**

Trial court properly concluded that defendant did not meet his burden of proving the defense of not guilty by reason of mental illness.

Evidence was sufficient to support defendant's convictions of escape and theft.

One of defendant's two sentences is vacated pursuant to Minn. Stat. § 609.035 (1982).

Convictions affirmed; one sentence vacated. Scott, J.

**C1-82-738 Dent-Air, Inc. and Raynard P. Nyberg, The Midway National Bank of St. Paul, v. Beech Mountain Air Service, Inc. and Eugene G. Bradshaw, Appellants. Hennepin County.**

Appellants do not have the requisite "minimum contacts" with Minnesota which would permit the constitutional exercise of personal jurisdiction over them in this state.

Reversed. Wahl, J.

**C8-82-977 Butler Taconite Project, et al., Appellants, v. Minnesota Public Utilities Commission. Ramsey County.**

The Public Service Commission's 1978 decision to permit Minnesota Power & Light Company to earn a current return on one-half of the financing cost attributable to the construction of Clay Boswell No. 4 and to assign the resulting rate increase to the large power class, the only consumer class deriving a benefit from the construction project prior to its completion, permanently eliminated the uncanceled portion of the financing cost from the rate base.

It is within the statutory authority of the Public Utilities Commission to order that a rate change shall become effective less than 90 days after a public utility files its petition therefor.

Affirmed. Coyne, J.

**C2-82-1171 Henry J. Miller, Jr. and Barbara Miller, individually and as husband and wife, v. Astleford Equipment Co., Inc., Prudential Property and Casualty Insurance Company, a corporation, proposed intervenor, Appellant. Hennepin County.**

Trial court erred by denying motion to intervene of right where proposed intervenor claimed a subrogation interest in the lawsuit and its claimed interest would be impaired absent intervention.

Reversed. Coyne, J.

## STATE CONTRACTS

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

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

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### Department of Administration State Building Construction Division

#### Notice of Availability of Contracts for Architects, Engineers and Landscape Architects

The Department of Administration (DOA) intends to retain the services of qualified professionally registered architects, engineers and landscape architects to design, prepare construction drawings and monitor construction of a number of projects during the year commencing July 1, 1983. These projects will be varied in nature and scope and will involve new construction, remodeling projects and facility studies. The cost of construction or remodeling projects will be less than \$400,000.00 and the fees associated with facility studies will be less than \$35,000.00. Particular emphasis will be placed on the background and experience of the firm on similar projects as well as the firm's geographic proximity to the project.

Firms wishing to be considered for these projects are asked to submit a short brochure or resume consisting of no more than 10 pages giving qualifications and experience of the firm to the Division of State Building Construction, Rm. G-10, State

Administration Building, St. Paul, Minnesota 55155, Attention: George Iwan. Qualified applicants will be contacted as the need arises and may be requested to appear in St. Paul for an interview. Firms which responded during the past year need only provide a letter indicating continued interest.

## **Department of Administration State Building Construction Division**

### **Notice of Availability of Contracts for Registered Professional Testing Services**

The Department of Administration (DOA) intends to retain the services of qualified professionally registered firms to conduct site surveys, materials testing and soil borings and tests during the year commencing July 1, 1983. These projects will be varied in nature and scope. The fees associated with these projects will generally be less than \$2,000.00 although the fees for some projects may exceed this amount.

As projects arise, it is the intention of DOA to contact firms who have expressed an interest in providing such services to the State. The final selection will be made on the basis of the background and experience of the firm, the geographic proximity of the firm to the project site, and an estimate of the fees to be charged for the specific project. Such estimates will be requested when a specific project exists.

Firms wishing to be considered for these projects are asked to submit a short brochure or resume consisting of no more than 10 pages outlining their background, qualifications, and fields of expertise to the Division of State Building Construction, Room G-10, State Administration Building, St. Paul, Minnesota 55155, Attention: George Iwan. Since selections may begin in advance of July 1, 1983, firms are encouraged to submit their brochures or resumes as soon as possible. Qualified applicants will be contacted as the need arises and may be requested to appear in St. Paul for an interview.

Firms which have previously responded to this request need only provide a letter expressing continued interest.

Names of qualified firms will be retained on file with DOA until June 30, 1984. Names of firms will be provided to other state agencies having a need for the services described herein.

In submitting their brochures or resumes, firms shall indicate the area or areas of the list shown below in which they feel qualified.

- |                              |                                    |
|------------------------------|------------------------------------|
| 1) Research and Programming  | 9) Arts, including Performing Arts |
| 2) Educational               | 10) Exhibition and Display         |
| 3) Health and Medical        | 11) Landscape and Site Planning    |
| 4) Correctional              | 12) Interiors                      |
| 5) Restoration               | 13) Water and Waste Facilities     |
| 6) Office and Administration | 14) Energy Supply and Distribution |
| 7) Recreational              | 15) Pollution Control              |
| 8) Service and Industrial    | 16) Acoustics                      |

The names of firms responding will be provided to other state agencies having a need for the services described herein.

Names of qualified firms will be retained on file with DOA until June 30, 1984.

Designers for projects with estimated costs or fees in excess of those shown above will be selected by the State Designer Selection Board. Projects referred to the board will be advertised through the board.

## **Department of Corrections Minnesota Correctional Facility—Stillwater**

### **Notice of Request for Proposals for Provision of Physical Examinations**

Notice is hereby given that the Minnesota Correctional Facility, Stillwater, is requesting proposals for provision of physical examinations for approximately 120 correctional counselor trainees for the period of July 1, 1983, through June 30, 1985. The estimated cost will not exceed \$12,600.00 for two years or \$6,300.00 each year.

The proposal shall include the following: Completion of a comprehensive health history questionnaire by medical personnel providing the exam, routine diagnostic blood and urine laboratory tests, audiogram, pulmonary function screening when

## **STATE CONTRACTS**

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necessary as determined by the physician, an examination by a licensed physician, and baseline measurements of height, weight, blood pressure, and vision screening.

These proposals must be submitted by 4:30 p.m., June 10, 1983, to David Corbo, Personnel Director. Please contact Mr. Corbo at (612) 439-1910, extension 320, if interested.

### **Department of Corrections Minnesota Correctional Facility—Stillwater**

#### **Notice of Request for Proposals for Provision of Food Services**

Notice is hereby given that the Minnesota Correctional Facility—Stillwater is requesting proposals for the professional management of our Food Service activity for the period of July 1, 1983, through June 30, 1985. The estimated cost will not exceed \$420,000 for the two years or \$210,000 each year. This proposal shall include all civilian personnel to operate the service. The proposals must be submitted by 4:30 p.m., June 10, 1983, to John S. Twohig, Assistant Institution Administrator. Please contact Mr. Twohig at (612) 439-1910, extension 337, if interested.

### **Department of Public Welfare Chemical Dependency Program Division**

#### **Notice of Request for Proposals for Dual Disability (MI/CD) Services**

Notice is hereby given that the Chemical Dependency Program Division (CDPD) of Minnesota's Department of Public Welfare is seeking proposals for the provision of outpatient treatment services for individuals with the dual diagnosis of Mental Illness and Chemical Dependency. A single grant award of \$90,000 is available for the project which would begin on or about September 1, 1983 and last approximately 18 months.

Proposals must be submitted on a CDPD grant application form that can be obtained by contacting Dorrie Hennagir at 612/296-4617 or at a bidders conference that will be held Monday, May 16, 1983 at 2:00 p.m. in Conference Room D of the Veterans Administration Building, St. Paul, Minnesota. Six copies of the proposal submitted must be in the CDPD office by 4:20 p.m. on June 20, 1983 in order to be considered. The project funded will provide, at least, the following things:

1. Outpatient primary treatment services to individuals with problems of both mental illness and chemical dependency.
2. Provide professional training on dual disability to groups or organizations identified by the CDPD staff.

Any further requests for information or clarification concerning this RFP should be directed to:

Bob Robertson  
Chemical Dependency Program Division  
658 Cedar, 4th Floor  
St. Paul, MN 55155  
612/296-4620

### **Minnesota State Retirement System**

#### **Notice of Availability of Actuarial Consultant Contract for the Two Year Period Ending June 30, 1985**

The Minnesota State Retirement System intends to engage the services of an "approved actuary" as defined in Minn. Stat. § 352.01, subd. 15, to perform the four year investigation as of the fiscal year ending June 30, 1983 and actuarial valuations required by Minn. Stat. ch. 356 each of the two years ending June 30, 1983 and 1984; to prepare and submit the reports required therein; to provide consulting and advisory services to the management on technical, policy or administrative problems and to provide actuarial cost estimates of plan amendments as requested.

Estimated Cost: \$100,000

Contact Person: Paul L. Groschen, 529 Jackson, St. Paul, Minnesota 55101, Telephone No. 296-2761

Final Submission Date: June 3, 1983

# OFFICIAL NOTICES

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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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## **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 the Rules for Licensure of Vocational Education Personnel**

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 Rules for Licensure of Vocational Education Personnel. The following rules are being amended: 5 MCAR § 1.0782 C. New instructional positions; 5 MCAR § 1.0790 A. Qualifications for licensure for post-secondary vocational instructional personnel; 5 MCAR § 1.0798 Post-secondary licensure chart. The promulgation of these rules is authorized by Minn. Stat. §§ 121.11, subd. 12; 121.21, subd. 6; and 125.185, subd. 4.

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:

Dr. Rosemary T. Fruehling  
Division of Vocational-Technical Education  
541 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 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 May 31, 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.

May 2, 1983

Mary Thornton Phillips  
Assistant Commissioner  
Division of Vocational-Technical Education

## **Department of Health Health Systems Division**

### **Notice of Vacancy**

Poison Information Center Advisory Council has one vacancy open for a physician specializing in internal medicine. Applicants cannot be a resident of St. Louis, Hennepin, Olmsted, Nobles, Clay or Scott counties and may not be affiliated with the designated poison information center. The council advises the Commissioner of Health on establishing a poison information center to provide poison information and educational services to the public and to health professionals. Members receive no compensation, but do receive reimbursement for travel expenses. For specific information contact the Poison Information Center Advisory Council, 717 Delaware St. S.E., Minneapolis 55414; (612) 623-5284.

## OFFICIAL NOTICES

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### **State Board of Investment Investment Advisory Council**

#### **Notice of Regular Meetings**

The State Board of Investment will meet on Friday, May 13, 1983 at 8:30 a.m. in Conference Room "D", Fifth Floor, Veterans Service Building, 20 West Twelfth Street, Saint Paul.

The Investment Advisory Council will meet at 7:30 a.m. on Thursday, May 12, 1983 in the MEA Building Conference Room, 41 Sherburne, Saint Paul.

### **State Board of Medical Examiners**

#### **Notice of Intent to Solicit Outside Opinion Concerning a Proposed Rule Regarding the Citizenship Requirement for those Physicians and Osteopaths Seeking Licensure to Practice Medicine in Minnesota**

Notice is hereby given that the Minnesota Board of Medical Examiners is considering the adoption of a rule which would eliminate the existing rule that a physician or osteopath applying for licensure to practice medicine in Minnesota must have United States or Canadian citizenship, must be a lawful permanent resident of the United States and have made a declaration of intent to become a United States citizen, or have a preference visa approved by the Department of Justice which will allow the applicant to remain in the United States and to become eligible for lawful permanent status. Requirements placed upon the applicant, who has a lawful permanent status or has a preference visa in order to remain eligible after licensure, are also eliminated. These requirements apply to physicians and osteopaths seeking licensure under general application, reciprocity, endorsement, temporary permit and certification, and foreign graduation.

The proposal rule is authorized by Minnesota Statute § 147.02, which establishes authority for the Board of Medical Examiners to license physicians and osteopaths, which includes establishing licensure requirements which are deemed to be in the interest and protection of the public, and to eliminate those licensure requirements that are no longer felt to be in the best interest and protection of the public.

All interested or affected persons or groups may submit information on this subject. The rule may be revised on the basis of comments received. Any written material received will become part of the record of any rule hearings held on this subject. Written or oral information and comments should be addressed to:

Arthur W. Poore, Executive Secretary  
Minnesota Board of Medical Examiners  
717 S.E. Delaware Street, Suite 352  
Minneapolis, Minnesota 55414

All statements of information and comments must be received by

Arthur W. Poore  
Executive Secretary

#### **Notice of Intent to Solicit Outside Opinion Concerning a Proposed Rule Regarding the Use of the Examinations for those Physicians and Osteopaths Seeking Licensure to Practice in Minnesota**

Notice is hereby given that the Minnesota Board of Medical Examiners is considering the adoption of a rule which would eliminate the existing rule which would fail an applicant who failed two or more sections of the examination for licensure, even if the applicant had an overall average score which was passing. However, according to this proposed rule an applicant failing the examination must retake the entire examination, not just those sections which were failed, and the test may be retaken only five times. These requirements apply to physicians and osteopaths seeking licensure under general application and reciprocity.

The proposed rule is authorized by Minnesota Statute § 147.02, which establishes authority for the Board of Medical Examiners to license physicians and osteopaths, which includes establishing licensure requirements which are deemed to be in the interest and protection of the public.

All interested or affected persons or groups may submit information on this subject. The rule may be revised on the basis of comments received. Any written material received will become part of the record of any rule hearings held on this subject. Written or oral information and comments should be addressed to:



Arthur W. Poore, Executive Secretary  
Minnesota Board of Medical Examiners  
717 S.E. Delaware Street, Suite 352  
Minneapolis, Minnesota 55414

All statements of information and comments must be received by July 1, 1983.

Arthur W. Poore  
Executive Secretary

### **Notice of Intent to Solicit Outside Opinion Concerning a Proposed Rule Regarding the Practice of Physical Therapy**

Notice is hereby given that the Minnesota Board of Medical Examiners is considering the adoption of a rule for the regulation of the practice of physical therapy which will modify the information required on the application form, change the requirements for registration without examination, establish registration requirements for foreign-trained applicants, establishes the legal supervisory and delegatory relationship of the physical therapist with the physical therapist assistant and the physical therapy aide, establishes the Professional Examination Service examination for physical therapists or comparable tests as the examinations for registration, changes in the requirements for the physical therapist to retain records of prescriptions, elimination of the time limits placed upon prescriptions for physical therapists and the establishment of appointment guidelines for the Physical Therapy Council.

This proposed rule is authorized by Minnesota Statute § 148.70, which established authority for the Board of Medical Examiners with the advice and assistance of the Physical Therapy Council to regulate the practice of physical therapy in the interest and protection of the public.

All interested or affected persons or groups may submit information on this subject. The rule may be revised on the basis of comments received. Any written material received will become part of the record of any rule hearings held on this subject. Written or oral information and comments should be addressed to:

Arthur W. Poore, Executive Secretary  
Minnesota Board of Medical Examiners  
717 S.E. Delaware Street, Suite 352  
Minneapolis, Minnesota 55414

All statements of information and comments must be received by July 1, 1983.

Arthur W. Poore  
Executive Secretary

### **Notice of Intent to Solicit Outside Opinion Concerning a Proposed Rule Regarding Changes in the Continuing Medical Education Requirements Necessary for Physicians and Osteopaths to Retain their Licenses to Practice Medicine**

Notice is hereby given that the Minnesota Board of Medical Examiners is considering the adoption of a rule which will lower the overall continuing medical education requirement, necessary for relicensure, from 150 hours to 75 hours, modify the maximum and/or minimum level of the five CME categories for which the physician or osteopath may obtain credit, and exempt those physicians or osteopaths under the emeritus registration from the CME requirement.

This proposed rule is authorized by Minnesota Statute § 214.12, which establishes the authority for health manpower regulatory authorities to implement Continuing Medical Education requirements as a means of improving the professional skills of the licensees or registrants on an ongoing basis.

All interested or affected persons or groups may submit information on this subject. The rule may be revised on the basis of comments received. Any written material received will become part of the record of any rule hearings held on this subject. Written or oral information and comments should be addressed to:

Arthur W. Poore, Executive Secretary  
Minnesota Board of Medical Examiners  
717 S.E. Delaware Street, Suite 352  
Minneapolis, Minnesota 55414

All statements of information and comments must be received by July 1, 1983.

Arthur W. Poore  
Executive Secretary

## **OFFICIAL NOTICES**

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### **Notice of Intent to Solicit Outside Opinion Concerning a Proposed Rule Regarding the Establishment of an Emeritus Registration Status for those Physicians or Osteopaths No Longer Wishing to Remain in Practice**

Notice is hereby given that the Minnesota Board of Medical Examiners is considering the adoption of a rule which will establish an emeritus registration for those physicians and osteopaths no longer wishing to practice medicine and who have not been the subject of disciplinary action during their professional careers. The registration is not a license to practice medicine, but will certify the completion of one's career without disciplinary action. The cost of a document certifying the emeritus registration status will be set at five dollars, requirements for the emeritus registration and for reverting back to licensure are included in the rules.

The proposed rule is authorized by Minnesota Statute § 147.02, which establishes authority for the Board of Medical Examiners to license physicians and osteopaths, which includes establishing licensure requirements which are deemed to be in the interest and protection of the public.

All interested or affected persons or groups may submit information on this subject. The rule may be revised on the basis of comments received. Any written material received will become part of the record of any rule hearings held on this subject. Written or oral information and comments should be addressed to:

Arthur W. Poore, Executive Secretary  
Minnesota Board of Medical Examiners  
717 S.E. Delaware Street, Suite 352  
Minneapolis, Minnesota 55414

All statements of information and comments must be received by July 1, 1983.

Arthur W. Poore  
Executive Secretary

## **Minnesota Public Utilities Commission**

### **Notice of Extension of Time for Comments**

On April 4, 1983, the Minnesota Public Utilities Commission (the commission) published at 7 S.R. 1429 a Notice of Intent to Adopt Rules without a Public Hearing for a Proposed Rule Governing Schedule Changes of Common Carriers.

That notice stated that interested persons who have 30 days to submit comments on the proposed rule.

The commission hereby provides notice that it will accept comments on the proposed rule through May 16, 1983.

Randall D. Young  
Executive Secretary

## **Department of Public Welfare Support Services Bureau**

### **Notice of Intent to Solicit Outside Opinion Concerning Proposed Temporary Rules Governing Reimbursement for Nursing Home Providers**

Notice is hereby given that the Department of Public Welfare is drafting proposed temporary rules to implement proposed legislation on nursing home reimbursement.

The proposed temporary rules if adopted would replace present 12 MCAR § 2.049, Rules for determining welfare per diem rates for nursing home providers under the Title XIX, Medical Assistance Program (Rule 49).

Authority for present Rule 12 MCAR § 2.049 is found in Minn. Stat. § 2568.

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

Eleanor Weber  
Support Services Bureau  
Department of Public Welfare  
Centennial Office Building  
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at 612/297-3583.

All statements of information and comment must be received by May 27, 1983. Any written material received by the department shall become part of the rule record.

## **Errata**

At *State Register*, Volume 7, Number 43, April 18, 1983, p. 1525, in 4 MCAR § 3.0452 D.5.b., change "excluding 4.g." to read: "excluding 4.f."

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