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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 8		
33	Monday Jan 30	Monday Feb 6	Monday Feb 13
34	Monday Feb 6	Monday Feb 13	Monday Feb 20
35	Monday Feb 13	Monday Feb 20	Monday Feb 27
36	Monday Feb 20	Monday Feb 27	Monday Mar 5

*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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NOTICE

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

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* 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*.

MCAR AMENDMENTS AND ADDITIONS

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.

Department of Labor and Industry Cable Communications Board

Proposed Rules Governing the Provision by Cable Companies Granted Access to Multiple Dwelling Complexes of Equipment with Sufficient Channel Capacity so as to Allow for Service by Alternative Providers

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Cable Communications Board proposes to adopt the above-entitled rules without a public hearing. The Cable Communications Board has determined that the adoption of these rules will not be controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 14.21 to 14.26 (1982).

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

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.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 14.13 to 14.20 (1982).

It is requested, but not required, that if a person wishes to object to a rule, they state in their objection the rule and the number which corresponds to the rule.

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

W. D. Donaldson, Executive Director
Cable Communications Board
500 Rice Street
Saint Paul, Minnesota
(612) 296-2545.

Authority for the adoption of these rules is contained in Minnesota Statutes sections 238.05 and 238.06 (1982) and in Subdivision 10, Section 5, Chapter 329, Laws 1983. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103, upon request.

Earlier rules on this subject were proposed by the Board under the noncontroversial rules procedure of M.S. 14.21 to 14.28 and published in the *State Register* on November 7, 1983 on pages 1069-1071. Upon receipt of 7 objections to the rule in that form, the Board on December 9, 1983 withdrew the rule for the purpose of making modifying amendments as authorized by M.S. 14.05, Subd. 3. On January 13, 1984 the Board approved the proposed rules in the modified form shown below and directed that they be adopted under the non-controversial procedures.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

A copy of the proposed rules is attached to this notice.

Comments are due not later than 4:30 P.M. March 7, 1984.

Copies of this Notice and the proposed rules are available and may be obtained by contacting W. D. Donaldson, Executive Director, Cable Communications Board, 500 Rice Street, Saint Paul, Minnesota 55103.

W. D. Donaldson
Executive Director of
Cable Communications Board

Rules as Proposed (all new material)

4 MCAR § 4.260 Definitions.

A. Scope. The terms used in 4 MCAR §§ 4.260-4.263 have the meanings given them in this rule.

B. Alternative providers. "Alternative providers" means other providers of television programming or cable communications services.

C. Association member. "Association member" means an individual owner of a cooperatively owned multiple dwelling complex.

D. Other providers of television programming or cable communications services. "Other providers of television programming or cable communications services" means operators of master antenna television systems (MATV), satellite master antenna television systems (SMATV), multipoint distributions systems (MDS), and direct broadcast satellite systems (DBS).

4 MCAR § 4.261 Conditions for access by alternative providers.

A. Channel capacity. Cable companies granted access to a multiple dwelling complex under Minnesota Statutes, section 238.25 shall provide equipment with sufficient channel capacity to be used by alternative providers of television programming or cable communications services.

B. Technical plan approval. The cable communications company shall determine the technical plan best suited for providing

the necessary channel capacity sufficient to allow access to other providers. The plan must be submitted to the property owner for approval. The owner's approval may not be unreasonably withheld. No additional compensation for evaluation of the plan may be paid or given to the property owner over and above that permitted under Minnesota Statutes, section 238.24, subdivision 8.

C. Duplicate connections. The cable communications company is not required to provide equipment for connecting more than one television receiver in one dwelling unit within the multiple dwelling complex. However, the company may provide duplicate connections at its discretion.

4 MCAR § 4.262 Reimbursement.

A. Providing alternative service. Other providers of television programming or cable communications services shall notify the cable communications company when a resident or association member occupying a dwelling unit in a multiple dwelling complex requests the services provided for by 4 MCAR §§ 4.260-4.263. After reaching agreement with the alternative service provider for reimbursement to be paid for use of the equipment, the cable communications company shall make available the equipment necessary to provide the alternative service without unreasonable delay.

B. Reimbursement determination. The amount to be reimbursed must be determined under Minnesota Statutes, section 238.24, subdivision 10. The reimbursed amount must be paid in one installment for each instance of requested use. The payment may not be refunded upon subscriber cancellation of the alternative service.

C. Financial records made available. The cable communications company, upon written request, shall make available to the alternative provider financial records supporting the reimbursement cost requested.

4 MCAR § 4.263 Appeals to board.

An interested or affected person may appeal an action taken by another person under 4 MCAR §§ 4.261 and 4.262 to the board using the procedure in 4 MCAR §§ 4.003-4.016.

Department of Health
Health Systems Division

Proposed Temporary Rule Governing the Relocation of Residents from Nursing Homes and Certified Boarding Care Homes, 7 MCAR § 1.801

Notice of Intent to Adopt a Temporary Rule

The State Department of Health proposes to adopt the above-entitled temporary rule to implement Laws of Minnesota 1983, Chapter 199, section 5, subdivision 4. Persons interested in this rule have until February 27, 1984, to submit written comments. The proposed temporary rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in substantial change in the proposed language. Written comments should be sent to:

H. Michael Tripple
Minnesota Department of Health
Survey and Compliance Section
P.O. Box 9441
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone Number: (612) 623-5448

Upon adoption of the temporary rule by the Department of Health, the proposed temporary rule as published and any modifications will be submitted to the attorney general for review as to form and legality.

This temporary rule shall be effective upon the approval of the attorney general. Failure of the attorney general to approve or disapprove the rule within five working days, as provided in Minnesota Statutes § 14.33 (1982), is approval.

As soon as practicable thereafter, notice of the attorney general's decision shall be published in the *State Register* and the adopted rule shall also be published in the manner as provided for adopted rules in Minnesota Statutes § 14.18.

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.

In accordance with Laws of Minnesota 1983, chapter 199, section 16, this temporary rule shall be effective up to 360 days after July 1, 1983, and may be continued in effect for two additional periods of 180 days each if the Commissioner of Health gives notice of continuation of each additional period by publishing notice in the *State Register* and mailing the same notice to all persons registered with the commissioner to receive notice of rulemaking proceedings. This temporary rule shall not be effective 720 days after July 1, 1983, without following the procedures in Minnesota Statutes, §§ 14.13 to 14.20.

This temporary rule will not result in any increased expenditure to local public bodies. Nor will it result in a fiscal impact in excess of $100,000 annually. See Minnesota Statutes § 14.11, subdivision 1 and § 15.065.

The temporary rule establishes the procedures to be followed by a nursing home or certified boarding care home in the event that relocation of some or all of the residents becomes necessary. The provisions contained in the rule are designed to ensure that proper and sufficient notice is given to residents and other affected parties and to require that the necessary assistance is provided to residents to properly prepare for the relocation. The following information is being provided to comply with the provisions of Minnesota Statute § 144A.29, subdivision 4 which requires that each rule promulgated by the Department contain a short statement of anticipated costs and benefits to be derived from the provisions of the rule. The development of this temporary rule is necessitated as the result of a mandate given to the Interagency Board for Quality Assurance to develop a resident relocation plan. See Laws 1983, Chapter 199, section 5, subdivision 4. Thus, the promulgation of this rule will assure compliance with that mandate. A major benefit of this rule is the fact that specific procedures are being adopted to govern the relocation process. Prior to this time, the Department has only been able to provide recommendations to a facility required to relocate residents. While those recommendations were based on provisions of the licensure rules and the Bill of Rights, the establishment of this rule will now provide a concise and readily identifiable set of standards to be followed by a facility. The Department believes that the placement of the relocation procedure in one rule will help to assure that the necessary steps are taken to safeguard the health, safety, and well-being of residents during the relocation process.

Among other requirements, the proposed temporary rule provides for timely notification to residents and family members which is essential for the appropriate and careful planning of the move to another health care facility. The rule also requires that facility staff actively participate in this process and also take any steps which might be needed to assure that there are no interruptions of the residents' care. Careful planning prior to the actual relocation of a resident is essential in order to minimize the risk or degree of "transfer trauma" that can result due to relocation. The Department believes that any costs associated with this rule will be minimal. The rule does not add to the facility's responsibility to appropriately plan for and participate in the discharge or transfer of a resident; rather, the rule combines these responsibilities in a format which can be readily followed in the event relocation of residents is necessary. A number of existing licensure rules address a facility's responsibility in the discharge and transfer process and since these responsibilities are already in place, the Department does not believe that any new responsibility is imposed on the facility.

For example, MHD 45 (h)(5)(aa) already requires the development of resident transfer procedures; MHD 48 (a)(3) requires that pertinent information relative to the care of a resident accompany that resident on discharge or transfer; MHD 49 (c)(1) requires that a resident's medical record contains information on the condition of the resident at the time of discharge or transfer; and MHD 50 (f)(13) requires that the Director of Nursing Service participate in the discharge and transfer planning for residents. While some costs will be associated with the relocation of residents from a facility, it is the Department's position that those costs are a part of the facility's current responsibility to appropriately care for residents and are not "new costs" which will be incurred only as a result of the promulgation of this rule. Any costs will, of course, vary depending upon the number of residents to be relocated, e.g., costs associated with the mailing of the required notices. For these reasons, it is not possible for the Department to specifically delineate the costs associated with this rule.

A copy of this notice and the proposed temporary rule may be obtained by contacting Marlene Randall at the Minnesota Department of Health, telephone number: (612) 623-5474.

Temporary Rule as Proposed (all new material)

7 MCAR § 1.801 [Temporary] Procedures governing relocation of residents from nursing homes and certified boarding care homes.

A. Definitions.

1. Relocation. The term "relocation" means a situation when residents are to be discharged from a nursing home or certified boarding care home as the result of the closing of the facility or the curtailment, reduction, or change of operations or services offered there.

2. Nursing home. A "nursing home" is a facility licensed pursuant to Minnesota Statutes, section 144A.01, subdivision 5.

3. Certified boarding care home. A "certified boarding care home" is a facility licensed pursuant to Minnesota Statutes, sections 144.50 to 144.56 and certified as an intermediate care facility as defined in United States Code, title 42, section 1396d, as amended through December 31, 1982.

4. Facility. For the purposes of 7 MCAR § 1.801 [Temporary], "facility" refers to a nursing home or certified boarding care home.

5. Service offered in the facility. "Service offered in the facility" includes participation in the medicare and/or medicaid programs pursuant to United States Code, title 42, sections 1395 et seq., and 1396 et seq., as amended through December 31, 1982.

B. Notice to the Department of Health.

1. The licensee of the facility shall notify the Department of Health, in writing, at least 90 days prior to the cessation or the curtailment, reduction, or change of operations or services which would result in the relocation of residents.

2. The written notice shall include the information in a.-c.:

a. the date of the closing, curtailment, reduction, or change of operations or services;

b. the number of residents to be relocated; and

c. the names and telephone numbers of the persons in the nursing home responsible for coordinating the relocation of residents.

C. Facility responsibilities.

1. The licensee of the facility and facility staff shall cooperate with representatives from the department of health and from the social service agency for the county in which the facility is located in planning for the relocation of residents.

2. The administrator of a facility shall establish an interdisciplinary team which shall be responsible for coordinating and planning the steps necessary to relocate the residents. The interdisciplinary team shall consist of members involved in providing direct care services to residents.

3. The facility shall send written notices in a.-c. at least 60 days in advance of the date by which the relocation of residents is to be completed.

a. Notice shall be sent to the resident who will be relocated and to the individual responsible for the resident's care. This notice must include the name, address, and telephone number of the individual in the facility to be contacted for assistance and further information; the social service agency for the county in which the facility is located; and the area long-term care ombudsman, provided under section 307(a)(12) of the Older Americans Act, United States Code, title 42, section 3027, as amended through December 31, 1982.

b. Notice shall be sent to the social service agency for the county in which the facility is located. This notice must include the name of each resident to be relocated, the name, address, and telephone number of the individual responsible for the resident's care, and the name and telephone number of the individual in the facility to be contacted for further information.

c. Notice shall be sent to the attending physician of the resident to be relocated. The resident's attending physician shall be requested to furnish any medical information needed to update the resident's medical records and to prepare transfer forms and discharge summaries. This written notice must include the name and telephone number of the individual in the facility to be contacted for further information.

4. A list of available beds to which the resident can be relocated must be prepared. This list must contain the name, address, and telephone number of the facility, the certification level of the available beds, the type of services available, and the number of beds that are available. This list must be made available to the resident, the individual responsible for the resident's care, the area long-term care ombudsman, and the county social service agency.

5. The facility shall conduct small group meetings for the residents and the individuals responsible for the care of the residents to notify them of the steps being taken in arranging for the transfer. Individual residents shall be assisted as necessary.

6. The inventory of the resident's personal possessions must be updated and a copy of the final inventory provided to the resident, the individual responsible for the resident's care, or both. A final accounting of personal funds held in the facility must be completed in accordance with the provisions of 7 MCAR § 1.048 A.8.d. Arrangements must be made for the transfer of the resident's possessions and personal funds.

7. Unless it is medically inadvisable, as documented by the attending physician in the resident's care record, the resident shall be assisted in making site visits to facilities to which they may be transferred.

8. All administrative duties must be completed prior to the actual relocation of the resident. Personnel in the facility to which the resident will be moved shall be provided with the information necessary to provide care and services to the resident, in accordance with 7 MCAR § 1.048 A.3. (MHD 48(a)(3)).

9. Unless otherwise agreed to by the resident or the individual responsible for the resident's care, at least a 14-day notice shall be provided to a resident prior to the actual relocation.

10. The resident shall be assisted in making arrangements for transportation to the new facility.

11. There must not be a disruption in the provision of meals, medications, or treatments of the resident during the relocation process.

12. If not previously notified, the resident's attending physician shall be informed of the new location of the resident within 24 hours after the actual relocation.

13. Commencing the week following the relocation notice to the Department of Health, the facility shall provide weekly written status reports to the Department of Health as to the progress being made in arranging for the relocation. The initial status report must include the relocation plan developed by the facility, the identity of the interdisciplinary team members, and a schedule for the completion of the various elements of the plan. Subsequent status reports must note the progress being made, any modifications to the relocation plan, any change of interdisciplinary team members, and must include the names of residents who have been relocated during the time period covered by the report. Once relocation has been completed, a listing of the residents who have been relocated and the identity of the facilities or other locations to which the residents were moved must be provided to the Department of Health.

Higher Education Coordinating Board

Proposed Adoption of Rules Governing State Scholarships and Grants-in-Aid and Part-Time Student Grants

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Higher Education Coordinating Board proposes to adopt the above-entitled rules without a public hearing. The Executive Director has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes Section 14.21-14.28 (1982). These proposed rules do not include a change in the definition of student dependency.

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

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes Section 14.13-14.15 (1982).

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

Rose Herrera Hamerlinck
Minnesota Higher Education Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
612/296-9681

Authority for the adoption of these rules is contained in Minnesota Statutes Sections 136A.111, subd. 2 (1982). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Rose Herrera Hamerlinck, Higher Education Coordinating Board, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Rose Herrera Hamerlinck, Higher Education Coordinating Board.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Rose Herrera Hamerlinck at the above address.

David Longanecker
Acting Executive Director
Minnesota Higher Education Coordinating Board

Rules as Proposed

5 MCAR § 2.2101 Scope.

Rules 5 MCAR §§ 2.2101-2.2106 govern state scholarships and grants-in-aid.

5 MCAR § 2.2102 Eligible schools.

Annually ~~by July 31,~~ the board shall adopt by resolution a list of schools at which a state scholarship or grant-in-aid may be used. To be eligible a school must meet the following requirements:

1.-3. [Unchanged]

5 MCAR § 2.2103 Application dates and student eligibility.

A.-B. [Unchanged]

C. Eligibility for initial grant-in-aid. To be eligible for an initial grant-in-aid a student must be an eligible student, as defined in 5 MCAR § 2.0100 D., and all of the following:

1.-3. [Unchanged]

4. if applying for a nursing grant, is enrolled or will be enrolled in a program leading to licensure as a registered nurse or a licensed practical nurse;

5. If under 17 years old, a recipient must have a high school diploma or the equivalent.

D. [Unchanged]

5 MCAR § 2.2104 Ranking applicants.

A. [Unchanged]

B. Priority of classes of applicants. Applicants renewing scholarships shall be given first priority. Applicants renewing grants-in-aid shall be given second priority. Applicants for initial scholarships shall be given third priority. Applicants for initial grants-in-aid shall be given fourth priority. Awards shall be made on a funds available basis. Once an award is made it shall not be withdrawn in order to award an applicant of higher priority.

C. [Unchanged]

5 MCAR § 2.2105 Awards.

A. Monetary awards. ~~Scholarship and grant-in-aid awards range from a minimum of $100 to a maximum of $1,400 but may not exceed one-half of financial need. If a federal Pell grant and a state scholarship or grant-in-aid exceeds 75 percent of financial need, the state scholarship or grant-in-aid must be reduced so that the combination of the two awards does not exceed 75 percent of financial need. The state scholarship or grant-in-aid must be further reduced if additional gift assistance, in combination with a federal Pell grant and a state scholarship or grant-in-aid, exceeds 100 percent of financial need.~~ The amount of a scholarship or grant-in-aid financial stipend shall not exceed an applicant's cost of attendance, as defined in Minnesota Statutes, section 136.121, subdivision 6, after deducting the following:

1. a contribution by the applicant of at least 50 percent of the cost of attending the institution of the applicant's choosing;

2. a contribution by the applicant's parents, as determined by a standardized need analysis; and

3. an estimate of the amount of a federal Pell grant award for which the applicant is eligible.

The minimum financial stipend shall be $100.

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B.-C. [Unchanged]

5 MCAR § 2.2106 Method of payment.

A.-C. [Unchanged]

5 MCAR § 2.2204 Eligible students.

A. Determination of eligibility. A school shall determine if a student is eligible for a part-time student grant. To be eligible a student must be an eligible student as defined in 5 MCAR § 2.0100 D.2., 3., 5., and 6., except that the student need not be a full-time student~~, and all of the following~~. The student must be:

1. ~~is~~ pursuing a program or course of study leading to a degree, diploma, or certificate; and
2. ~~is not eligible~~ ineligible for state or federal financial aid, other than a Pell grant; and
3. ~~is not reimbursed~~ unreimbursed for tuition and fees by any source other than a Pell grant; and
4. ~~demonstrates~~ in financial need.

B.-C. [Unchanged]

Department of Labor and Industry Occupational Safety and Health Division

Proposed Adoption of Rules Implementing the Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work

Notice of Hearing

A public hearing concerning the proposed rules will be held at the Veterans' Service Building (Room D, Fifth Floor), 20 West 12th Street, St. Paul, Minnesota 55155 (Capitol Complex) on Friday, March 9, 1984 commencing at 9:00 a.m. The proposed rules may be modified as a result of the hearing process. The proposed rules will have an impact on small businesses; the quantitative and qualitative impact of the proposed rules is dependent upon whether the business utilizes hazardous substances in the workplace, the possibility that any hazardous substance utilized by the business qualifies as a trade secret, and the quantity and quality of employee training provided by the small business relative to the hazardous substances being used. Therefore, the department urges those who are potentially affected in any manner by the proposed rules to participate in the hearing process.

All interested or affected persons will have an opportunity to participate concerning the proposed rules. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to the hearing examiner: Mr. Peter Erickson, Office of Administrative Hearings, Fourth Floor Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415 (Telephone: 612/341-7606) either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a period not to exceed 20 calendar days. The rule hearing procedures are governed by Minn. Stat. § 14.05-14.36 (1982) and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedures, call or write the Hearing Examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The agency's authority to adopt the proposed rules is contained in Minn. Stat. § 182.657.

The proposed rule designated 8 MCAR § 1.7220 implements provisions of the Employee Right-to-Know Act of 1983 (Laws of Minnesota 1983, Chapter 316) governing trade secrets. This rule will allow an employer who believes that all or part of the information required under the Employee Right-to-Know Act is a trade secret as defined in Minn. Stat. § 325C.01, subdivision 5, to register that information as a trade secret with the commissioner of the Department of Labor and Industry. This rule also contains provisions governing the classification of such data and conditions of disclosure.

The proposed rules designated 8 MCAR §§ 1.7240, 1.7241, 1.7243, and 1.7245 amend the rules of the Department of Labor and Industry governing discrimination against employees and implement provisions of the Employee Right-to-Know Act of 1983 concerning employees' conditional right to refuse to work.

The proposed rules are included as part of this notice. In addition, copies of the proposed rule are now available and at least one free copy may be obtained by writing to the Occupational Safety and Health Division, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101, or by calling (612) 297-3254. Additional copies will be available at the hearing.

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

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1982) as any individual:

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

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

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.

The hearing attendance is estimated at 50 and is expected to last one day.

Steve Keefe
Commissioner of Labor and Industry

Rules as Proposed

Chapter Seventeen:
Trade Secrets

8 MCAR § 1.7220 Trade secret registration.

A. Registration. A manufacturer or employer who believes that all or part of the information required under the Employee Right to Know Act, Laws of Minnesota 1983, chapter 316, is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5, may register the information with the commissioner as trade secret information. Information so required which is certified by appropriate officials of the United States as necessarily kept secret for national defense purposes may also be registered with the commissioner.

B. Formulations and procedures. Formulations or procedures are trade secrets and need not be registered to be considered trade secrets.

C. Required information. Trade secret registration of the name of a hazardous substance must include the following information:

1. the name of the hazardous substance;

2. a brief description of why it is a trade secret; and

3. the name of a person who can be contacted for additional information.

D. Expiration of registration. A registration expires two years after its filing date unless the registration is renewed.

E. Classification of data. Trade secret information that is registered with the commissioner or other information reported to or otherwise obtained by the commissioner or a representative of the commissioner in connection with any inspection or proceeding under Minnesota Statutes, chapter 182 which contains or might reveal a trade secret is nonpublic or private data as

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.

defined in Minnesota Statutes, section 13.02, subdivisions 9 and 12. Information that is classified as nonpublic or private, except that which is secret for national defense purposes, may be disclosed to other officers or employees carrying out Minnesota Statutes, chapter 182, when relevant in any proceeding under this chapter, or when otherwise required in order to comply with federal law or regulation but only to the extent required by the federal law or regulation. The commissioner must protect nonpublic or private information by establishing security procedures to prevent its unauthorized use or disclosure.

F. Disclosure. If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger or otherwise to protect the health and safety of employees, he must notify the appropriate manufacturer or employer of his decision by certified mail and timely disclose the information to alleviate the danger.

G. Determination by commissioner. On the request of a manufacturer, employee, or employee representative, the commissioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner is a trade secret as defined in Minnesota Statutes, section 325C.01, subdivision 5. If the commissioner determines that information is not a trade secret and should be disclosed to the public, the commissioner must notify the manufacturer or employer of the decision by certified mail. The manufacturer or employer has 15 days after receipt of notification to provide the commissioner by certified mail with a complete justification and statement of the grounds on which the information is a trade secret. The commissioner must review his determination of whether information should be protected as a trade secret within 15 days after receipt of the justification and statement, or if no justification and statement is filed, within 30 days of the original notice, and must notify the appropriate manufacturer or employer and any party who has requested the information of that determination by certified mail. If the commissioner determines that the information is not a trade secret, the final notice must also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the information shall be available to the public. Prior to the date specified in the final notice, the manufacturer or employer may institute an action for a declaratory judgment as to whether the information is subject to protection as a trade secret.

8 MCAR § 1.7240 Authority and background.

~~Minn. Stat. §§~~ Minnesota Statutes, sections 182.654, ~~subd.~~ subdivisions 9 and 11, and 182.669 prohibit discrimination against an employee because the employee exercised any rights granted under the act on the employee's behalf or on behalf of others. Any employee who believes that he or she has been discharged or discriminated against by any person because the employee exercised any right authorized by the act as described in 8 MCAR § 1.7243, may file a discrimination complaint with the commissioner of the Department of Labor and Industry.

8 MCAR § 1.7242 Purpose and scope.

The rules in this chapter implement ~~Minn. Stat. §~~ Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 ~~of the act~~ and set forth general policies for enforcement of the discrimination provisions of ~~Minn. Stat. § 182.669~~ the act.

8 MCAR § 1.7243 Protected activities.

A. [Unchanged.]

B. Refusal to work under unsafe conditions.

1. [Unchanged.]

2. If an employee has a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition in the workplace, an employee acting in good faith may refuse to work if there is no reasonable alternative. The condition must be so hazardous that a reasonable person would conclude that there is a real danger of death or serious injury and that there is insufficient time to eliminate the danger through enforcement procedures. The employee must, where possible, request the employer to correct the hazardous condition. An employer may not discharge or discipline an employee who refuses to perform assigned tasks under these conditions. ~~However, an employer is not required to pay employees for tasks not performed~~ An employee who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the employer must, in addition to retaining a right to continued employment, be paid for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine the nature of the hazardous condition; and

b. the commissioner determines that the employee, by performing the assigned tasks, would have been placed in imminent danger of death or serious physical harm.

3. An employee who has been assigned to work with a hazardous substance, harmful physical agent, or infectious agent, under conditions which are inconsistent with the training or information provided by the employer under 8 MCAR §§ 1.7206 and 1.7207, and who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the

employer shall, in addition to retaining a right to continued employment, receive pay for the tasks which would have been performed if:

a. the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine if a hazardous condition exists; and

b. the commissioner determines that the employer has failed to provide the training required under 8 MCAR § 1.7206 prior to the employee's initial assignment to a workplace if the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent and the employer has failed to provide the information required under 8 MCAR §§ 1.7206 and 1.7207 after a request within a reasonable period of time, but not to exceed 24 hours, of the request.

C.-F. [Unchanged.]

8 MCAR § 1.7245 Claim procedures.

A. Who may file. A complaint alleging discrimination under ~~Minn. Stat.~~ § Minnesota Statutes, sections 182.654, subdivisions 9 and 11, and 182.669 may be filed by an employee or an authorized employee representative.

B.-D. [Unchanged.]

Department of Public Welfare
Minnesota Board on Aging

Proposed Temporary Rule Governing the Relocation of Nursing Home Residents (12 MCAR §§ 2.04601-2.04606, Temporary)

Notice of Intent to Adopt Temporary Rules

The State Department of Public Welfare proposes to adopt the above-entitled temporary rules to implement Laws of Minnesota 1983, chapter 199, section 16.

Persons interested in these rules have until February 27, 1984 to submit written comments. The proposed temporary rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Written comments should be sent to:

Sharon Zoesch
Minnesota Board on Aging
Department of Public Welfare
Suite 204, Metro Square Building
St. Paul, MN 55155
612/296-7465

Upon adoption of the temporary rules, this notice, all written comments received, and the adopted temporary rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

The adopted temporary rules will not become effective without the Attorney General's approval and the Revisor of Statute's certification of the rule's form.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these temporary rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The temporary rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

12 MCAR §§ 2.04601-2.04606 (Temporary) govern the responsibilities of local social service agencies in the relocation of nursing home residents or certified boarding care home residents as a result of the closing of a facility, loss of or change in

certification, termination of receivership, or termination of the facility's Medical Assistance provider agreement. Provisions in these rules include definition of terms, establishment of a relocation committee, identification of alternative resources, provision of relocation assistance to residents, and county status reports on relocation activities.

These temporary rules will not result in additional state or county expenditures. If a relocation becomes necessary, existing staff will carry out the activities in this rule.

Copies of this notice and the proposed temporary rules may be obtained by contacting Lois Cosgrove (612/296-2543).

Leonard W. Levine
Commissioner

Temporary Rules as Proposed (all new material)

12 MCAR § 2.04601 [Temporary] Authority and applicability.

A. Authority.

1. Laws of Minnesota 1983, chapter 199, section 5, subdivision 4, authorizes the commissioner of public welfare to implement a resident relocation plan that instructs the local social services agency for the county in which a long-term care facility is located of procedures to follow to ensure that the needs of residents are met during a relocation.

2. Laws of Minnesota 1983, chapter 199, section 16, requires that the commissioner of public welfare promulgate temporary and permanent rules to implement the provisions of Laws of Minnesota 1983, chapter 199, including a resident relocation plan.

B. Applicability. Rules 12 MCAR §§ 2.04601-2.04606 [Temporary] govern the services that local social service agencies are required to provide for the benefit of residents of long-term care facilities when there are relocations. Individuals should consult 7 MCAR § 1.801 [Temporary] for information regarding the responsibilities of long-term care facilities.

12 MCAR § 2.04602 [Temporary] Definitions.

A. Scope of definitions. As used in 12 MCAR §§ 2.04601-2.04606 [Temporary] the following terms have the meanings given them.

B. Certified boarding care home. "Certified boarding care home" means a facility licensed under Minnesota Statutes, sections 144.50 to 144.56 and certified as an intermediate care facility as defined in United States Code, title 42, section 1396d, as amended through December 31, 1982, but excluding facilities for the mentally retarded as defined in United States Code, section 1396(d), as amended through December 31, 1982.

C. County relocation committee. "County relocation committee" means those staff persons of the local social service agency designated by the county social service director to serve as the relocation committee in a county.

D. Facility. "Facility" means a long-term care facility.

E. Local social service agency. "Local social service agency" means the local agency under the authority of the human services board or board of county commissioners which is responsible for social services.

F. Long-term care facility. "Long-term care facility" means a nursing home or a certified boarding care home.

G. Nursing home. "Nursing home" means a facility defined under Minnesota Statutes, section 144A.01, subdivision 5.

H. Relocation. "Relocation" means a situation when residents are to be discharged from a nursing home or certified boarding care home as a result of the closing of the facility, loss of or change in certification, termination of receivership, or termination of the facility's medical assistance provider agreement.

I. Resident. "Resident" means a person admitted to a long-term care facility.

J. Responsible county. "Responsible county" means the county where the facility from which the residents will be discharged is located.

12 MCAR § 2.04603 [Temporary] Relocation planning.

A. Relocation committee. The director of the local social service agency in each county shall designate appropriate staff as the county relocation committee. Staff designated as the county relocation committee shall be knowledgeable about the needs of long-term care residents, and the local resources available to meet those needs including medicaid and medicare.

B. Alternative resources. The county relocation committee shall develop a procedure to identify and monitor the current availability of alternative resources which may be used if the relocation of residents of a long-term care facility is necessary. These resources shall include at least the following:

1. a list of unoccupied beds in other facilities within the county and in neighboring counties; this list shall contain the following information about each facility:

a. the name, address, and telephone number of the facility;

b. the certification level of the available beds;

c. the type of services available within the facility; and

d. the number of beds that are available;

2. a list of alternative placements which includes swing beds in hospitals and foster care placement;

3. a list of the community and in-home health and social services which may be used on a temporary basis;

4. a list of the possible transportation resources;

5. a list of possible volunteer resources; and

6. the name, address, and telephone number of the appropriate regional ombudsman from the Minnesota Board on Aging Long-Term Care Ombudsman Program.

12 MCAR § 2.04604 [Temporary] Procedure upon notification.

The local social service agency and its county relocation committee shall initiate the procedures provided in 12 MCAR §§ 2.04605-2.04606 [Temporary] immediately upon receipt of written notification of the need for relocation from the income maintenance bureau of the Department of Public Welfare.

12 MCAR § 2.04605 [Temporary] Relocation assistance.

A. Resident information. Upon receiving written notice of the needs to relocate residents, the county relocation committee shall obtain from the facility the name of each resident to be relocated, the name and addresses of either a family member or the individual legally responsible for the resident's care, and the name and telephone number of the individual in the facility to be contacted for further information. This information shall be obtained at least 60 days before the date by which relocation is to be accomplished.

B. Coordination of relocation. The county relocation committee shall designate one of its members to act as a liaison to the individual in the facility responsible for coordinating the relocation of residents. The county designee shall meet with the appropriate facility staff to coordinate the relocation assistance offered by the county relocation committee with the relocation responsibilities of the facility. This coordination shall include participating, as requested, in any group meetings of residents and families to explain the steps being taken in arranging for the relocation of residents.

C. Offer of assistance. The county relocation committee shall provide a written offer of relocation assistance to each resident to be relocated and to their family member, and if applicable, to the person legally responsible for their care. The written offer of assistance shall contain at least the following information:

1. the name and telephone number of the individual to contact to request further information or assistance; and

2. an explanation of the relocation services offered by the county relocation committee.

D. Relocation services. The county relocation committee shall arrange for or provide the following minimum services for residents to be relocated as necessary to ensure placement or other appropriate alternative care:

1. Accurate and up-to-date information about the alternative arrangements for the appropriate care of the resident including all the resources identified in 12 MCAR § 2.04603 [Temporary] B.

2. Assistance in choosing among the available alternatives.

3. Counseling to enable the resident to adjust to the relocation.

4. Assistance in preparing the resident for the actual move which includes:

a. providing written information about the new facility to the resident;

b. providing an opportunity for each resident to visit the new facility to learn the physical layout, meet other residents and staff, and learn about the program and activities; and

c. encouraging a visit by staff and residents from the new facility to the resident prior to the actual relocation, if a site visit by the resident is not possible.

5. Assistance in making arrangements for transportation as necessary.

6. Assurance that someone accompanies the resident during the actual move.

7. A follow-up visit to the resident within 30 days of the relocation. The follow-up visit includes interviewing or on-site observation of the resident or both, discussion with appropriate staff, and review of pertinent medical or social records to:

a. assess the adjustment of each resident to the new living environment; and

b. recommend appropriate services or methods to meet any special needs of each resident arising out of relocation.

12 MCAR § 2.04606 [Temporary] Reporting.

A. Initial report. The local social services agency shall submit a written report to the social services division of the Department of Public Welfare within one week from the date of receipt of the written notice of the need to relocate residents. The initial report shall contain the following information:

1. the names and phone numbers of the county relocation committee members;

2. a description of the procedure developed to identify and monitor the availability of the resources which may be used to meet the needs of the residents to be relocated; and

3. a timetable for the completion of the relocation process.

B. Status reports. During a relocation process the county relocation committee shall provide weekly status reports to the social services division of the Department of Public Welfare. The status reports shall include:

1. the number of individuals who have relocated during the week;

2. the date of each individual discharge;

3. the new placement of each individual relocated; and

4. identification of any specific problems which arise concerning the relocation process.

C. Summary report. The county relocation committee shall provide a summary report to the social services division of the Department of Public Welfare within 60 days of the completion of each facility relocation process. The report shall include:

1. the number of residents relocated;

2. the medical assistance identification number of each medical assistance recipient relocated;

3. the date of each resident's discharge;

4. the new placement of each resident;

5. the status of each resident at the time of the follow-up visit; and

6. the identification of problems encountered during the relocation process.

D. Submission of summary report. One copy of the summary report shall be submitted to the social service division of the Department of Public Welfare. A second copy of this report shall be submitted to the income maintenance bureau of the Department of Public Welfare.

ADOPTED RULES

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

Adopted Temporary Rules Governing Self-Insurance Plan Administrators

The temporary rules proposed and published at *State Register*, Volume 8, Number 20, pages 1102-1106, November 14, 1983 (8 S.R. 1102) are adopted with the following modifications:

Temporary Rules as Adopted

4 MCAR § 1.9261 [Temporary] Authority.

Rules 4 MCAR §§ 1.9260-1.9269 [Temporary] are adopted under the authority of Minnesota Statutes, section ~~60A.28~~ 60A.23, subdivision 8, clause (5).

4 MCAR § 1.9262 [Temporary] Definitions.

The following definitions apply in 4 MCAR §§ 1.9260-1.9269 unless the context clearly indicates a different meaning.

F. Services or risk management services. "Services" or "risk management services" includes~~:~~ ~~but is not limited to,~~ accounting and record retention, actuarial in conjunction with the other services, claims administration, general administration, insurance, legal, loss control and safety, rehabilitation, risk management and analysis, and other services related to the establishment and maintenance of a program of self-insurance.

Department of Health

Adopted Amendments to Rules Relating to Services for Children With Handicaps

The rules proposed and published at *State Register*, Volume 8, Number 10, pages 358-362, September 5, 1983 (8 S.R. 358) are adopted as proposed.

Department of Labor and Industry Workers' Compensation Division

Adopted Amendments to Temporary Rules of the State Department of Labor and Industry Governing Workers' Compensation Permanent Partial Disability Schedule

The rules proposed and published at *State Register*, Volume 8, Number 14, pages 562-595, October 3, 1983 (8 S.R. 562) and Volume 8, Number 23, pages 1296-1337, December 5, 1983 (8 S.R. 1296) are adopted with the following modifications:

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.

8 MCAR § 1.9017 [Temporary] Musculo-skeletal schedule; joints.

E. Knee:

2. Procedures or conditions:

~~n.~~ r. proximal tibial osteotomy, flexion to 90 degrees, extension to 0 degrees, 5 percent.

8 MCAR § 1.9025 [Temporary] Pre-existing impairments.

D. Where the pre-existing disability and the subsequent permanent partial disability affect more than one member, apportionment must be determined as follows:

2. Combine the percentages obtained in 1. in the manner set forth in Minnesota Statutes, section 176.105, subdivision 4, clause (c). Prior to the next application of the formula, the result of an application of the formula must be stated as a decimal, not as a percentage, that is rounded up or down to four decimal places.

Department of Public Welfare
Bureau of Income Maintenance

Extension of Proposed Temporary Rules Governing Reimbursement Methodology for Hospital Inpatient Care Provided Under the Medical Assistance and General Assistance Medical Care Programs 12 MCAR §§ 2.05401-2.05403 (Temporary)

Notice of Continuation of Temporary Rules

Notice is hereby given that the above-entitled temporary rules which were effective on October 1, 1983 and published in the *State Register* on October 24, 1983 are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled temporary rules will be in effect until September 24, 1984 unless they are superseded by permanent rules or legislative action.

January 18, 1984

Leonard W. Levine
Commissioner of Public Welfare

Department of Public Welfare
Bureau of Income Maintenance

Extension of Proposed Temporary Rules Governing the General Assistance Program and Notification and Referral to the Minnesota Emergency Employment Development Act Program 12 MCAR §§ 2.05501-2.05509 (Temporary) and 12 MCAR § 2.04422 (Temporary)

Notice of Continuation of Temporary Rules

Notice is hereby given that the above-entitled temporary rules which were effective on October 1, 1983 and published in the *State Register* on October 17, 1983 are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled temporary rules will be in effect until September 24, 1984 unless they are superseded by permanent rules or legislative action.

January 18, 1984

Leonard W. Levine
Commissioner of Public Welfare

Department of Public Welfare
Bureau of Social Services

Extension of Proposed Temporary Rules Governing Child Day Care Sliding Fees, 12 MCAR § 2.164 (Temporary)

Notice of Continuation of Temporary Rules

Notice is hereby given that the above-entitled temporary rules which were effective on August 31, 1983 and published in the *State Register* on October 3, 1983 are continued in effect for an additional 180 days according to Minnesota Statutes, section 14.35.

This means that the above-entitled temporary rules will be in effect until August 24, 1984 unless they are superseded by permanent rules or legislative action.

January 18, 1984

Leonard W. Levine
Commissioner of Public Welfare

Minnesota Racing Commission

In the Matter of the Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts

The rules proposed and published at *State Register*, Volume 8, Number 20, pages 1162-1185, November 14, 1983 (8 S.R. 1162) are adopted with the following modifications:

Rules as Adopted

4 MCAR § 15.002 Applicant's affidavit.

An application for a Class A license must include, on a form prepared by the commission, an affidavit of the chief executive officer ~~or~~ of a major financial participant ~~as~~ in the applicant setting forth:

4 MCAR § 15.003 Disclosure of ownership and control.

An applicant for a Class A license must disclose:

E. If a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the applicant makes its best effort to disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more in that nonindividual holder. The disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in applicant are so identified. The term "best effort," as used in this and subsequent sections of these rules, means an active and serious attempt which is made in good faith, and goes beyond due diligence, to provide the information required to be disclosed. When an applicant is unable, despite its best effort, to provide the information required, it shall explain fully and document its inability to do so;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or ~~control of the sponsorship or management of horse racing~~ operation of applicant's horse racing facility, and copies of any written agreements;

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.

4 MCAR § 15.004 Disclosure of character information.

An applicant for a Class A license must make its best effort, as defined in 4 MCAR § 15.003 E., to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR §§ 15.003 or 15.010 B. or C. has:

4 MCAR § 15.005 Disclosure of improvements and equipment.

An application for a Class A license must disclose with respect to the pari-mutuel horse racing facility it will own and operate:

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available ~~for the~~, distinguishing between public and other; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

4 MCAR § 15.006 Disclosure of development process.

An applicant for a Class A license must disclose with regard to development of its horse racing facility:

~~6.~~ G. whether the site has been acquired or leased by applicant. If so, the applicant must provide the documentation. If not, the applicant must disclose what actions the applicant must take in order to use the site.

4 MCAR § 15.008 Disclosure of financial plan.

An applicant for a Class A license must disclose with regard to its financial plan:

A. the financial projections for the development period and each of the first five racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class A licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel pools. The disclosure must include:

1. the following assumptions and support for them:

v. federal taxes;

2. the following profit and loss elements:

b. total operating expenses, including anticipated expenses for:

(17) federal and state income taxes;

4 MCAR § 15.010 Disclosure of management.

An applicant for a Class A license must disclose with regard to the development, ownership, and operation of its pari-mutuel horse racing facility:

E. description of the applicant's security plan, including:

3. specific plans to discover persons at the horse racing facility who have been convicted of a felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction or are a threat to the integrity of racing in Minnesota;

4 MCAR § 15.016 Personal information and authorization for release.

In an application for a Class A license the applicant must make its best effort, as defined in 4 MCAR § 15.003 E., to include the following with respect to each individual identified pursuant to 4 MCAR § 15.003 as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR § 15.010 B. or C.;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

3. releases authorized providers and users of the information from any liability under state or federal data privacy law.

4 MCAR § 15.017 Class A license criteria.

The commission may issue a Class A license if it determines on the basis of all the facts before it that: the applicant is financially able to operate a racetrack; issuance of a license will not create a competitive situation that will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and the issuance of the license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors and indices:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including~~,~~ ~~but not limited to~~:

8. any other indices related to integrity which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

C. the quality of physical improvements and equipment in applicant's facility, including~~,~~ ~~but not limited to~~:

14. any other indices related to quality which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

E. financial ability to develop, own, and operate a pari-mutuel horse racing facility successfully, including~~,~~ ~~but not limited to~~:

8. any other indices related to financial ability which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

F. status of governmental actions required by the applicant's facility, including~~,~~ ~~but not limited to~~:

5. any other indices related to status of governmental actions which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

G. managemnent ability of the applicant, including~~,~~ ~~but not limited to~~:

8. any other indices related to management ability which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

J. impact of facility, including~~,~~ ~~but not limited to~~:

6. any other indices related to impact which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

L. effects on competition, including~~,~~ ~~but not limited to~~:

2. minimum and optimum number of racing days sought by the applicant;

3. any other indices of the impact of competition which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants.

The commission also must consider any other information which the applicant discloses and is relevant and helpful to a proper determination by the commission.

4 MCAR § 15.019 Applicant's affidavit.

An application for a Class B license must include, on a form prepared by the commission, an affidavit of the chief executive officer of or a major financial participant ~~as~~ in the applicant setting forth:

4 MCAR § 15.020 Disclosure of ownership and control.

An applicant for a Class B license must disclose:

E. if a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the applicant must make its best effort, as defined in 4 MCAR § 15.003 E., to disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more in that nonindividual holder. The disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in the applicant are so identified;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ~~ownership or control of the~~ applicant's sponsorship or management of horse racing, and copies of any written agreements;

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.

4 MCAR § 15.021 Disclosure of character information.

An applicant for a Class B license must make its best effort, as defined in 4 MCAR § 15.003 E., to discuss whether the applicant or any individual or other entity identified pursuant to 4 MCAR § 15.020 or 15.027 B. or C. has:

4 MCAR § 15.022 Disclosure of improvements and equipment.

An application for a Class B license must disclose with respect to the facility at which it will sponsor and manage pari-mutuel horse racing:

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available ~~for the~~, distinguishing between public and other; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

4 MCAR § 15.025 Disclosure of financial plan.

An applicant for a Class B license must disclose with regard to its financial plan:

A. financial projections for any development period in each of the first or next three racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class B licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel betting pools. The disclosure must include:

1. the following assumptions and support for them:

   u. debt service~~.~~;

   v. federal taxes;

2. the following profit and loss elements:

   b. total operating expenses, including anticipated expenses for:

      (17) federal and state income taxes;

4 MCAR § 15.027 Disclosure of management.

An applicant for a Class B license must disclose with regard to its management of pari-mutuel horse racing:

E. a description of the applicant's security plan, including:

3. specific plans to discover persons at the horse racing facility who have been convicted of a felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction, or are a threat to the integrity of racing in Minnesota;

J. a description of the applicant's plan for pari-mutuel betting, including number of line divisions, windows, selling machines, and clerks; use or duties of each; and accounting procedures, including its proposed system of internal audit and supervisory controls;

4 MCAR § 15.033 Personal information and authorization for release.

In an application for a Class B license the applicant must make its best effort, as defined in 4 MCAR § 15.003 E., to include the following with respect to each individual identified pursuant to 4 MCAR § 15.020 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR § 15.027 B. or C.:

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

3. releases authorized providers and users of the information from any liability under state or federal data privacy law.

4 MCAR § 15.034 Class B license criteria.

The commission may issue a Class B license if it determines on the basis of all the facts before it that: the applicant is fit to sponsor and manage horse racing; issuance of a license will not create a competitive situation which will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and issuance of a license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors and indices:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including~~, but not limited to~~:

8. any other indices related to integrity which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

C. the quality of physical improvements and equipment applicant will use, including~~, but not limited to~~:

14. any other indices related to quality which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

D. financial ability to sponsor and manage pari-mutuel horse racing successfully, including~~, but not limited to~~:

7. any other indices related to financial ability which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

F. management ability of the applicant, including~~, but not limited to~~:

11. any other indices related to management which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

J. effects on competition, including~~, but not limited to~~:

2. minimum and optimum number of racing days sought by the applicant;

3. any other indices related to effects on competition which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants.

The commission also must consider any other information which the applicant discloses and is relevant and helpful to a proper determination by the commission.

4 MCAR § 15.035 Class A and B license application disclosures.

An applicant for a Class A or B license in its disclosures must:

B. make its best effort, as defined in 4 MCAR § 15.003 E., to provide all information required to be disclosed;

C. provide only information relevant to disclosures requested by the commission;

D. upon request of the commission or its agents, provide copies of any documents used in the preparation of its application.

4 MCAR § 15.040 Deadlines for submission of Class A and B license applications.

Deadlines for submission of a Class A or B license application are as follows:

A. applications for a Class A license to own and operate a racetrack in the seven-county metropolitan area must be received by the commission's designee before 5:00 p.m. on the 14th day, as computed pursuant to Minnesota Statutes, section 645.15, after these rules become effective or on ~~January 15~~ March 1, 1984, whichever is later. The designee must deliver investigation fees to the commission promptly upon receipt. The designee must retain and safeguard until the deadline with seals intact all applications received. Promptly after the deadline, the designee must deliver the applications to the commission for opening;

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.

OFFICIAL NOTICES

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

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

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Automobile Insurance Nonrenewals Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing automobile insurance nonrenewals. Promulgation of these rules is authorized by Minnesota Statutes, section 65B.17, subd. 2.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: William Kyle, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-6944.

All statements of information and comment shall be accepted until March 7, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Self-Insurance Plan Administrators Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing self-insurance plan administrators. Promulgation of these rules is authorized by Minnesota Statutes, section 60A.23, subd. 8.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Rose Ortiz, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-4017.

All statements of information and comment shall be accepted until March 7, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Ethical Practices Board

Request for Advisory Opinion Re: Hennepin County Disclosure Law—Administration

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its March 9, 1984 Board meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to February 24, 1984.

Ms. Mary Ann McCoy, Executive Director
State Ethical Practices Board
41 State Office Building
St. Paul, MN 55155

Dear Ms. McCoy:

I am the official responsible for administration of the election laws for Hennepin County and am requesting an advisory opinion in regards to Chapter 362, Laws of 1980.

Kroening Volunteer Committee, a State principal campaign committee, made a one-time contribution of $300.00 to Citizens for Daugherty, a Minneapolis Alderman candidate. With this contribution, according to Section 6, they became a political fund and were required to file their committee with Hennepin County.

Since they do not anticipate contributing to another Hennepin County Chapter 362 candidate, they would like to terminate their reporting responsibility to Hennepin County. However, as an on-going State campaign committee they have a cash balance of over $100.00. According to Section 7, Subd. 4, they can not terminate and must continue to report to the State and to Hennepin County.

My question is, may we do an administrative termination on request by State committees who inadvertently contribute to a candidate who falls under Hennepin County Chapter 362 regulations?

Sincerely,

Vernon T. Hoppe, Director of Property Taxation
Hennepin County

Metropolitan Council and Metropolitan Health Planning Board

Public Hearings for the Joint Consideration of:

I. 1984-85 Application for Renewal of HSA Designation

II. 1984 Annual Implementation Plan

The Metropolitan Council and Metropolitan Health Planning Board will jointly hold a public hearing on Wednesday, February 29, 1984 at 7 p.m. in the Council Chambers of the Metropolitan Council, 300 Metro Square Building, St. Paul, Minnesota 55101 for the purpose of receiving written and oral comments on the 1984-85 Application for Renewal of the Metropolitan Council/Metropolitan Health Planning Board's HSA Designation and the 1984 Annual Implementation Plan. Copies of the 1984-85 HSA Application and the Annual Implementation Plan are available for public inspection beginning January 30, 1984 at the following locations:

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

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

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

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

Carver County Library—Chaska Branch
314 Walnut St.
Chaska, MN 55318

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

Hennepin County Library—Southdale Branch
7001 York Av.
Edina, MN 55435

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

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

Washington County Library—Park Grove Branch
7420—80th St. S.
Cottage Grove, MN 55106

Metropolitan Health Planning Board
300 Metro Square Bldg.
St. Paul, MN 55101

Copies of the Annual Implementation Plan, and Work Program and Budget for the Agency are available at no cost from the Metropolitan Council Public Information Office, 300 Metro Square Bldg., St. Paul, MN 55101, Telephone (612) 291-6464.

Persons wishing to speak at this public hearing may register in advance by contacting Debbie Conley at 291-6352. Those who register first will be scheduled to speak first. If you cannot attend, you are encouraged to send written comments to the Metropolitan Health Planning Board, up to 10 working days following this hearing. For further information contact the Metropolitan Health Planning Board at 291-6352.

Gerald J. Isaacs, Chairman
Metropolitan Council

Elaine Voss, Chairperson
Metropolitan Health Planning Board

Department of Natural Resources

Notice of Sale of State Peat Lease

Notice is hereby given that a lease sale to remove peat in swamp and school fund lands located in 2632 acres, more or less, of the Arlberg Bog, St. Louis County, Minnesota will be held before the State Executive Council at their regularly scheduled meeting, at 9:00 AM on March 7, 1984. At the time of the issuance of this notice, the meeting is scheduled to be held at 500 Rice Street, St. Paul, Minnesota.

The Commissioner of Natural Resources, Box 45, Centennial Office Building, St. Paul, Minnesota 55155, will receive sealed bids and applications for a lease to remove peat under the authority of Minnesota Statutes 1982, Section 92.50 up to the time specified below.

Each application and bid must be submitted in a bid envelope obtained from the Division of Minerals and each sealed bid envelope must be enclosed in another envelope and delivered to the Commissioner of Natural Resources, Attention: Division of Minerals, Box 45, Centennial Office Building, St. Paul, Minnesota 55155. Bids must be received by 9:00 AM on March 7, 1984 and no bids received after that time will be considered.

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

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

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

January 30, 1984

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Public Welfare
Health Care Programs Division

Medicaid Demonstration Project: Notice of Provider Education Seminar

The Department of Public Welfare intends to contract with health care providers to provide health care services for Medical Assistance (MA) recipients on a prepaid basis. A demonstration project will be conducted in three counties to test the feasibility of MA prepayment. The Department is offering a provider education seminar for providers interested in participating in the project or in learning more about their possible role in the project. The metropolitan area counties which have tentatively been selected as demonstration sites are Hennepin and Anoka. Health care providers in these counties might find the seminar of particular interest.

Provider Education Seminar
February 7, 1984
8:30 a.m. to 12:00 p.m.
State Office Building
435 Park Avenue (just West of Capitol)
St. Paul, Minnesota
Room 81 (Auditorium, Ground Floor)

Providers attending the seminar will receive a packet of information describing the project, the capitation rates and the criteria for participation.

Providers who cannot attend, but would like to receive information on the project may contact:

Ms. Kathy Heuer
Health Care Programs Division
Space Center, 444 Lafayette Road
St. Paul, Minnesota 55101
Phone: (612) 297-4668

Department of Transportation

Notice of Possible Acquisition of Rail Line—Burlington Northern, Starbuck-to-Glenwood Line

The Commissioner of the Minnesota Department of Transportation is publishing this Notice to list a rail line for possible acquisition in the State Rail Bank Program. This Notice is published pursuant to Minnesota Statutes, section 222.63, subdivision 3, and in accordance with the rules governing the State Rail Bank, 14 MCAR § 1.4012. Information about the line proposed for acquisition is as follows:

1. The rail line is known as the Starbuck to Glenwood line, it is approximately 8 miles long and is owned by the Burlington Northern, Inc. (BN). The Department is proposing to acquire approximately 6 miles of this line from the grade crossing of Trunk Highway 28 and the line, to the City of Glenwood.

2. The line is located in Pope County.

3. The identified future use for the line is to relocate Trunk Highway 28.

4. The Glenwood to Starbuck line is a segment of the Starbuck to Villard line which was abandoned by BN on May 12 1981. The track structure has been removed from the property.

Written comments about the proposed acquisition of this abandoned line under the State Rail Bank Program should be sent to the Department of Transportation within 30 days of the publication of this Notice. Comments should be mailed to the following address:

Charles Sanft, Director
Rail Planning and Program Development Section
Minnesota Department of Transportation
810 Transportation Building
St. Paul, Minnesota 55155
612/296-1613

Richard P. Braun
Commissioner

State Board of Vocational-Technical Education

Notice of Intent to Prepare Lists for Future Rulemaking Proceedings

In accordance with Minnesota Law, 1980, Chapter 615, the Minnesota State Board of Vocational-Technical Education is establishing a list of persons to receive official notice of its rulemaking proceedings. The law requires each agency or department to establish and maintain such a list to replace the list currently maintained by the State Board of Education/State Board of Vocational Education.

If you wish to receive notice of rulemaking proceedings of the State Board of Vocational-Technical Education, please notify the board in writing. You will then receive notice of any rulemaking proceedings initiated after the date on which your request is received. Please note that this procedure will put you only on the list of the State Board of Vocational-Technical Education.

Please send your written request to:

Joseph P. Graba, State Director
State Board of Vocational-Technical Education
564 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-3995

Water Resources Board

Notice of Regular Meeting Date

Starting on February 10, 1984, the Minnesota Water Resources Board will hold a regular monthly meeting on the second Friday of each month beginning at 9:30 a.m. in its office at 555 Wabasha Street, Room 206, St. Paul, Minnesota 55102.

If you would like to receive meeting notices, contact Karen Schultz at (612) 296-2840.

Mel Sinn
Executive Director

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 and Economic Development Governor's Council on Rural Development

Request for Proposals for the Planning and Implementation of a Minnesota Wood Products Trade Show

The Minnesota Department of Energy and Economic Development/Governor's Council on Rural Development (Mn DEED/GCRD) is requesting proposals from qualified individuals interested in working with Mn DEED/GCRD on a project to design, plan, and implement a trade show to promote Minnesota's wood products.

The trade show will be held approximately in February, 1985. A professional trade show/conference consultant will be responsible for program planning.

Proposals are being requested to complete the following major activities.

A. Program Development

B. Coordination

C. Show Management

It is estimated that the cost of this activity need not approach but shall not exceed $11,500. Proposals should be received by Mn DEED/GCRD no later than 4:30 p.m. Friday, February 24, 1984. The formal Request for Proposals may be requested and inquiries should be directed to:

Jane Stevenson, Program Manager
Governor's Council on Rural Development
Department of Energy and Economic Development
100 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101
Phone: (612) 296-3591

Department of Energy and Economic Development Governor's Council on Rural Development

Request for Proposals to Produce the Conference Proceedings Book from the Willmar Rural Women's Conference

The Minnesota Department of Energy and Economic Development/Governor's Council on Rural Development (Mn DEED/GCRD) is requesting proposals from qualified individuals interested in working with Mn DEED/GCRD on a project to produce the conference proceedings book from the Willmar rural women's conference, "Rural Women: An Untapped Resource."

The book will be produced as the primary record of this conference, which was held in May of 1982. It will be produced in sufficient quantities to provide each attendee of the conference with a copy, as well as complimentary copies to other programs around rural Minnesota which work with rural women interested in starting their own business. Proposals are being requested to complete the following major project activities:

A. Complete Rough Editing of the Transcript

B. Do Final Editing of the Manuscript

C. Select and Work with a Typesetter

D. Select and Work with a Printer

It is estimated that the cost of this activity need not approach but shall not exceed $20,000. Proposals should be received by Mn DEED/GCRD no later than 4:30 p.m. Friday, February 24, 1984. The formal Request for Proposals may be requested and inquiries should be directed to:

Jane Stevenson, Program Manager
Governor's Council on Rural Development
Department of Energy and Economic Development
100 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101
Phone: (612) 296-3591

Minnesota Housing Finance Agency Home Improvement Division

Request for Proposals for Engineer's/Architect's Consultation Services

The Minnesota Housing Finance Agency (MHFA) is seeking proposals from engineers and architects to perform energy design evaluations on between 20 and 50 passive solar homes.

The engineer/architect firm selected by the MHFA will conduct energy design analyses on passive solar homes to assess the cost effectiveness of the energy conserving features and use of solar energy on an annual basis. The firm selected must issue a certificate of cost effectiveness for each home design evaluated.

Proposals must include: (1) an outline of the evaluation method to be employed (in case commercially available software is to be used, a sample print-out should be attached); and (2) the cost for the energy design evaluation for each home design, on a sliding scale basis (if applicable), based on an assumption of between 20 to 50 designs.

The written proposals must be received no later than 4:30 p.m. on Monday, February 27, 1984. For more detailed information on the required contents of the proposal, please call Bradley Simenson at (612) 297-3122.

General inquiries and proposals should be sent to:

Bradley Simenson
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, Minnesota 55101
(612) 297-3122

Department of Public Welfare Support Services Bureau

Request for Proposal for Services as Part of a Rulemaking Project

Notice is hereby given that the Support Services Bureau, Department of Public Welfare, is requesting proposals for services using research, writing and group process skills as an extension to its 1983 rulemaking demonstration project. This project is designed to gain approval of amendments to selected Department rules and to test the effectiveness of utilizing specialized skills on a centralized basis in the development and approval of rules.

The estimated amount of the contract is not to exceed $27,500.

The guidelines to be used in the preparation of a proposal and a detailed description of the project are available from the Manuals Section, Support Services Bureau, Department of Public Welfare. Deadline for receipt of proposals is 4:30 p.m., February 27, 1984. To obtain a copy of the detailed proposal, write or call:

Robert Hamper
Department of Public Welfare
Manuals Section
4th Floor, Centennial Bldg.
St. Paul, Minnesota 55155
(612) 296-2794

Department of Transportation Division of Technical Services

Potential Availability of Contracts for a Variety of Highway Related Technical Activities

The Minnesota Department of Transportation (Mn/DOT) is planning an expanded highway program. To assist it with the development of this program, Mn/DOT may require the services of qualified consultants for work which may include but not be limited to:

Category A: Preliminary Design (Environmental Studies, Project Development Reporting and Geometric Layouts).

Category B: Detail Design & Plan Preparation

1. Highway
2. Lighting
3. Signing
4. Traffic Signals
5. Landscaping
6. Hydraulics

Category C: Field Surveys (Control, Design)

Category D: Soils & Foundation Investigations

Category E: Special Services

1. Land Use Study
2. Chemical Disposal or Recycle
3. Endangered Species
4. Building Condition Survey
5. Traffic Forecasting
6. Water
7. Air
8. Noise
9. Hydrologic
10. Vibration (Blasting, Pile Driving)
11. Expert Witness (Litigation-Testimony)
12. Audit Evaluation (Federal Procurement Regulations)

Category F: Construction

1. Management
2. Inspection
3. Staking

Those consultants who wish to be considered for any of the potential projects, please furnish the following information:

1. Federal Forms 254/255 and/or your brochure.
2. Indicate the category of activity in which you are qualified and wish to be considered (Example: B-1-5-6, C).
3. Indicate in which fields your key personnel are registered (Engineer, Architect, etc.).
4. Indicate whether or not you are an Equal Opportunity firm and have an Affirmative Action Plan.
5. Indicate if your firm is a certified minority owned firm.
6. Indicate if your firm qualifies as a Small Business Enterprise within the definition contained in M.S. 645.445.
7. Indicate if your firm qualifies as a Minnesota Resident within the definition contained in M.S. 16.072.

It is expected that a qualified reference list will be developed from the responses that will remain in effect until June 30, 1985.

This is not a request for proposal. All expressions of interest in being considered shall be delivered to the address indicated below not later than four o'clock (4:00) PM, February 27, 1984.

B. E. McCarthy, Director
Office of Consultant Engineering Services
Transportation Building, Room 612B
St. Paul, Minnesota 55155
Telephone: (612) 296-3051

SUPREME COURT

Decisions of the Court of Appeals Filed Wednesday, January 25, 1984

Compiled by Wayne O. Tschimperle, Clerk

C5-83-1904 Donald E. Montgomery, Appellant, v. American Hoist and Derrick Company, a Delaware Corporation, Respondent. District Court, Ramsey County.

Motion Denied. Popovich, C.J.

CX-83-1588 Elroy Smith, Relator, v. American Indian Chemical, Dependency Diversion Project, Respondent, and Commissioner of Economic Security, Respondent. Department of Economic Security.

A three day unexcused absence from work caused by an employee's incarceration for failure to pay a speeding ticket is misconduct disqualifying the employee from receiving unemployment compensation benefits.

Affirmed. Popovich, C.J.

CX-83-1283 Boulevard Del, Inc., Appellant, v. Marvin Stillman, Defendant & Third Party Plaintiff, Respondent, Arthur Mack, et al., Third Party Defendants. District Court, Hennepin County.

1. The district court lacked subject matter jurisdiction in vacating summary judgment when judgment had been entered, paid in full and satisfied of record.

2. The district court erred in vacating summary judgment where there was no evidence properly submitted to the court pursuant to Minn. R. Civ. P. 56.05 opposing summary judgment, and there was no affidavit submitted to the court pursuant to the Minn. R. Civ. P. 56.06 stating why a continuance was needed.

Reversed. Foley, J. Took no part, Segwick, J.

C9-83-1209 Loren R. Ortendahl, et al., Respondents, v. Loren L. Bergmann, et al., Appellants. District Court, Douglas County.

1. The trial court may clarify by parol evidence an ambiguous legal description but may not rewrite a purchase agreement to include in the description the property interests of a third party over objections of purchaser.

2. Vendors may not have specific performance of a purchase agreement when they cannot deliver marketable title as called for in the agreement.

Reversed. Foley, J.

C9-83-1579 Dale E. Hanka, Relator, v. The Hardware, Respondent, and Commissioner of Economic Security, Respondent. Department of Economic Security.

1. Where the commissioner, rather than the employer, disputes an employee's eligibility for benefits, the commissioner must assume the initial burden of proving that the employee has voluntarily terminated employment and is thus disqualified for benefits.

2. The evidence in this case does not reasonably support the commissioner's finding that an employer-employee relationship did not exist.

Remanded. Lansing, J.

C7-83-1676 State of Minnesota, Respondent, v. Charles David Pickett, Appellant. District Court, Hennepin County.

1. The trial court did not err in denying defendant's request for a dispositional departure.

2. Although the trial court erred in calculating the duration of the consecutive sentences imposed, the existence of aggravating circumstances justified the limited sentencing departure.

Affirmed. Sedgwick, J.

C9-83-1372 David Joseph Szczech, Respondent, v. Commissioner of Public Safety, Appellant. District Court, Hennepin County.

The Municipal Court retains jurisdiction to hear implied consent cases even if the hearing is not held within the statutory time limit of 60 days.

Minn. Stat. § 169.123(6) 1982), which requires that implied consent hearings "shall be held . . . no later than 60 days following the filing of a petition for review," is directory, not mandatory.

Reversed and remanded. Wozniak, J.

Decisions of the Supreme Court Filed Friday, January 27, 1984

Compiled by Wayne O. Tschimperle, Clerk

C1-83-1057 State of Minnesota, Respondent, v. Gordon Melvin Gale Broten, Jr., Appellant. District Court, Roseau County.

Trial court correctly concluded that aggravating circumstances were present justifying an upward durational departure: although trial court erred in computing defendant's criminal history score, defendant's sentence need not be reduced because the sentence imposed was still within the permissible range of departure from the presumptive sentence obtained by using the correct criminal history score.

Affirmed. Amdahl, C.J.

C6-82-1111 State of Minnesota, Respondent, v. Tommy E. Russell, Appellant. District Court, Hennepin County.

Defendants charged with theft who claim that they were victims of racially discriminatory enforcement failed to meet their burden of establishing a *prima facie* case of racially discriminatory impact and discriminatory intent.

Affirmed. Wahl, J.

C8-82-851 In Re the Marriage of: Mary Mae O'Brien, petitioner, Appellant, v. Jerome P. O'Brien, Respondent. District Court, Wright County.

This case is remanded to provide life insurance protection for an award of permanent spousal maintenance for the wife, but otherwise the trial court's decision with respect to division of property, spousal maintenance, child support, and other matters is affirmed as within the trial court's discretion.

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

C9-83-142 Michael Hafner, et al., Plaintiffs, v. David Thomas Iverson, Defendant and Third Party Plaintiff, Burlington Northern, Inc., defendant and third party plaintiff, Appellant, v. Collins Electric, third party defendant, Respondent. District Court, Ramsey County.

1. Superseding, intervening cause was not established as a matter of law and the case is, therefore, remanded for a new trial.

2. In an action for contribution brought by a third-party tort-feasor against the employer of the injured employee claimant under *Lambertson v. Cincinnati Corp.*, 312 Minn. 114, 257 N.W.2d 679 (1977), the employer is not entitled to assert the fellow-servant doctrine as a defense.

Reversed and remanded for a new trial. Simonett, J.

CX-82-1130, C1-82-1131, CX-82-1354 Northern States Power Company, Petitioner, Respondent, v. Minnesota Public Utilities Commission, Appellant (C1-82-1131), and Minnesota Department of Public Service, Intervenor, Appellant (C1-82-1131), Minnesota Office of Consumer Services, Intervenor, Appellant (CX-82-1130), City of St. Paul, et al., Intervenors-Respondents Below, Minnesota Public Interest Research Group, Intervenor, Appellant (CX-82-1354). District Court, Ramsey County.

The acceptance by the Federal Energy Regulatory Commission of a filed amended coordinating agreement between Minnesota and Wisconsin electrical power utilities established a wholesale rate which must be considered by the Minnesota Public Utilities Commission as an expense of power purchased in setting rates for Minnesota retail electric power purchases.

Affirmed. Kelley, J.

C5-82-1584, C2-82-1607, C3-83-7 City of Moorhead, Appellant (C5-82-1584, C2-82-1607), Konrad Olson, Peter Joseph Miller and FM Apartment Association, Appellants (C3-83-7), v. Minnesota Public Utilities Commission, Respondent, Minnesota Department of Public Service, Respondent, Northern States Power Company, Respondent, City of St. Paul, Respondent, St. Paul Area Chamber of Commerce, Respondent. District Court, Ramsey County.

1. A determination by the Minnesota Public Utilities Commission that a public utility in the business of distributing natural gas to consumers operated a non-integrated gas distribution system in the state was supported by substantial evidence.

2. In reviewing an order of the Minnesota Public Utilities Commission allocating the cost of gas purchased among classes of a non-integrated natural gas distribution system, the court will uphold the decision unless it is in excess of statutory authority, unjust, unreasonable or discriminatory.

3. Appellants have failed to demonstrate by clear and convincing evidence that an order of the Minnesota Public Utilities Commission resulted in arbitrary, unjust, unreasonable or discriminatory rates.

4. Bare allegations unsubstantiated by legal proof are insufficient to successfully establish procedural irregularity by an administrative agency in arriving at its decision.

Affirmed. Kelley, J.

C6-82-900 In Re Petition for Disciplinary Action Against Roman S. Tymiak, an Attorney at Law in the State of Minnesota. Supreme Court.

Disbarred. Per Curiam.

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

Tini Mechanical Contractors, Inc., Appellant, v. Commissioner of Revenue, Appellee, Docket No. 3708

Findings of Fact, Conclusions of Law and Order for Judgement

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, at the County Courthouse in the City of Duluth on October 25, 1983.

John Trenti of Trenti, Saxhaug, Berger, Roche, Stephenson, Richards & Aluni, Ltd. appeared on behalf of Appellant.

Thomas K. Overton, Special Assistant Attorney General, appeared on behalf of Appellee.

Briefs were subsequently submitted by the parties.

SYLLABUS

A steam heat main in the streets of the City of Virginia owned by the Public Utilities Commission is construed to be personal property included in Minn. Stat. § 272.03, subd. 2, which reads in part as follows:

"*Personal Property*. For the purposes of taxation, " includes:

* * *

"(5) All gas, electric, and water mains, pipes, conduits, subways, poles, and wires of gas, electric light, water, heat, or power companies, and all tracks, roads, bridges, conduits, poles and wires of street railway, plank road, gravel road, turnpike, and bridge companies;"

* * *

FINDINGS OF FACT

1. This is an appeal from an Order of the Commissioner of Revenue dated September 17, 1982, assessing a sales tax against Tini Mechanical Contractors, Inc., Appellant, for the period January 1, 1980, through February 28, 1982, in the amount of $45,810.60, which included tax of $37,615.11 and interest of $8,195.49, for the sales tax on steam heat pipe purchased by Tini from TPCO in the amount of $939,894.15 for resale and installation to the Public Utilities Commission of Virginia.

2. Tini was the successful bidder in a contract to install steam heat pipes in the streets of the City of Virginia for the Public Utilities Commission of the City of Virginia. The total contract price was $2,795,652, which included the pipe referred to in Item 1.

3. Tini did not pay sales tax to TPCO on the basis that the pipe was purchased for resale.

4. The pipe referred to in the Order of the Commissioner was sold to the Public Utilities Commission of the City of Virginia

for transmitting steam heat and continues to be personal property after installation in the streets of the City of Virginia as specifically provided by Minn. Stat. § 272.03, subd. 2, which reads in part as follows:

"*Personal Property*. For the purposes of taxation, "personal property" includes:

* * *

"(5) All gas, electric, and water mains, pipes, conduits, subways, poles, and wires of gas, electric light, water, heat, or power companies, and all tracks, roads, bridges, conduits, poles and wires of street railway, plank road, gravel road, turnpike, and bridge companies;"

5. The Public Utilities Commission of the City of Virginia is exempt from sales tax as a government agency, and there is no sales tax due on the sale of the pipe to said agency.

6. The pipe was purchased by Tini from TPCO for the purpose of resale, and this is not a taxable event.

7. The Order of the Commissioner assessing sales tax should be rescinded.

CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

1. The sale of steam heat pipe by Tini Mechanical Contractors, Inc., the Appellant, to the Public Utilities Commission of the City of Virginia was a sale of personal property to a tax exempt agency, and no sales tax is due thereon.

2. The Commissioner's Order of September 17, 1982, assessing sales tax against the Appellant in the amount of $45,810.60 is hereby rescinded.

IT IS SO ORDERED.

January 20, 1984

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

MEMORANDUM

Appellant, Tini Mechanical Contractors, Inc., entered into a contract on May 8, 1980, with the Public Utilities Commission of the City of Virginia, hereafter referred to as Commission. The contract provided that Tini would furnish and install a heat main in certain streets in the City of Virginia. The contract provided that the Commissioner would pay to Tini the sum of $2,795,652.

The furnishing of the pipe was included in the total contract price. Tini purchased the pipe from TPCO and according to the Appellee's audit, Tini paid $939,894.15 for the pipe. No sales tax was originally paid on the pipe purchase, and the Appellee has assessed a sales tax of $37,615.11 plus interest against Tini for the sales tax on the pipe purchase.

Tini contends that it sold the pipe to the Commission and that the Commission is exempt from sales tax so no sales tax is due.

Appellee contends that the pipe constituted an improvement to real property and that under the pertinent statutes, Tini is required to pay a sales tax on its purchase of pipe from TPCO.

The issue is whether or not the installation of the pipe should be considered an improvement to real property. If it is classified as an improvement to real property, then Tini is obligated to pay a sales tax on its purchase of the pipe even though the Commission is an exempt body. This is clearly stated in *County of Hennepin v. State of Minnesota*, 263 N.W 2nd 639 (Minn. 1978).

We have not been referred nor do we find any cases considering this specific situation.

The determination of this case rests on the interpretation of various statutes. The statutes involved are as follows:

"297A.01 DEFINITIONS.

"Subdivision 1. The following words, terms and phrases when used in sections 297A.01 to 297A.44 shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning.

* * *

"Subd. 3. A "sale" and a "purchase" includes, but is not limited to, each of the following transactions:

"(a) Any transfer of title or possession, or both, of tangible personal property, whether absolutely or conditionally. . . .

* * *

"Subd. 4. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business. . . . Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the

erection of buildings or the alteration, repair or improvement of real property are "retail sales" or "sales at retail" in whatever quantity sold and whether or not for purpose of resale in the form of real property or otherwise. . . .

* * *

"Subd. 11. "Tangible personal property" means corporeal personal property of any kind whatsoever, including property which is to become a fixture or which is to lose its identity by incorporation in or attachment to real property.

"272.03. DEFINITIONS.

"Subdivision 1. *Real property.* (a) For the purposes of taxation, "real property" includes the land itself and all buildings, structures, and improvements or other fixtures on it, and all rights and privileges belonging or appertaining to it, and all mines, minerals, quarries, fossils, and trees on or under it.

"(b) A building or structure shall include the building or structure itself, together with all improvements or fixtures annexed to the building or structure, which are integrated with and of permanent benefit to the building or structure, regardless of the present use of the building, and which cannot be removed without substantial damage to itself or to the building or structure.

"(c) (i) The term real property shall not include tools, implements, machinery, and equipment attached to or installed in real property for use in the business or production activity conducted thereon, regardless of size, weight or method of attachment.

"(ii) The exclusion provided in clause (c) (i) shall not apply to machinery and equipment includable as real estate by clauses (a) and (b) even though such machinery and equipment is used in the business or production activity conducted on the real property if and to the extent such business or production activity consists of furnishing services or products to other buildings or structures which are subject to taxation under this chapter.

"Subd. 2. *Personal Property.* For the purposes of taxation, "personal property" includes:

* * *

"(5) All gas, electric, and water mains, pipes, conduits, subways, poles, and wires of gas, electric light, water, heat, or power companies, and all tracks, roads, bridges, conduits, poles and wires of street railway, plank road, gravel road, turnpike, and bridge companies;

* * *

"273.13. CLASSIFICATION OF PROPERTY.

"Subdivision 4. *Class III.* (a) Tools, implements and machinery of an electric generating, transmission or distribution system or a pipeline system transporting or distributing water, gas, or petroleum products or mains and pipes used in the distribution of steam or hot or chilled water for heating or cooling buildings, which are fixtures . . ."

In 1965 Minn. Stat. § 273.13, subd. 4, Class III, read in part as follows:

"273.13. Subdivision 4. *Class III.* All agricultural products, except as provided by class III(a) and Class III(d), stocks of merchandise of all sorts together with the furniture and fixtures used therewith, manufacturers' materials and manufactured articles, and all tools, implements and machinery, whether fixtures or otherwise. . . ."

Tini contends that under Minn. Stat. 272.03, subd. 2(5), that the pipe is always personal property and that the contract in effect was a sale of pipe by Tini to the Commission together with the installation of that pipe by Tini.

Appellee takes the position that the pipes are fixtures and that fixtures are realty. The Commissioner concluded that the pipes were an improvement to real estate and, in fact, became real property under the common law which generally indicates that anything affixed to the land is part of the realty. We hold that the old common law of fixtures does not apply in view of the statutory definitions.

There is some logic to both positions. The definition of pipe as personal property in 272.03, subd. 2(5), was the same before 1965 and after 1965.

Before 1965, 273.13, subd. 4, Class III, basically provided that all personal property was subject to assessment and tax was levied basically in the same way as the tax was levied on real estate.

After 1965, 273.13, subd. 4, Class III, was substantially changed so that most personal property was no longer subject to assessment and no longer subject to the taxes in the same manner as real estate.

However, after 1965, heat pipes of the kind involved here continued to be taxed but only if they are "fixtures". 273.13, subd. 4.

It is not exactly clear as to why it was necessary for the statute to define personal property to include such pipes as are involved here, but it may be that they were so defined to be sure that they would come within those items mentioned in 273.13, subd. 4, Class III, prior to 1967. If they had not been so defined, there might have been a question as to how they should be assessed since they are often on the public right-of-way and if they are considered part of the realty, there would have been some problems in levying the proper taxes.

We also find some problem in understanding the significance of the words "whether fixtures or otherwise" in 273.13, subd. 4, Class III, prior to 1967 and then after 1967, the comparable section indicates these items are covered "which are fixtures".

Appellee makes the point that the definition of personal property in 272.03, subd. 2(5) applies only to "power companies". Appellee states the following:

"By its own terms it does not apply to pipes of the City of Virginia."

We do not find this argument very persuasive. It appears to us that providing heat through mains is a non-governmental function and that the Public Utilities Commission must be considered to be a power company.

These statutes have been the subject of many Supreme Court and Tax Court cases. The most recent case to consider these statutes is *Zimpro, Inc. v. Commissioner of Revenue*, 339 N.W. 2d 736, November 4, 1983. That case reads in part as follows:

"Finally, if we adopt Appellant's argument, the sales tax statute and its interpretation would be transformed into an even more confusing quagmire. Appellant's assertions would require merchants to understand the common law of fixtures in order to determine whether a taxable transaction occurred for purposes of the sales and use tax. Although the sales and use tax statute does refer to fixtures, the type of property included within the statutory definition seems to be clearly and logically defined in Minn. Stat. § 272.03, subd. 1(c).

* * *

"Although the sales and use tax statute does refer to fixtures, the type of property included within the statutory definition seems to be clearly and logically defined in Minn. Stat. § 272.03, subd. 1(c). In addition, use of Chapter 272 definitions for sales and use tax purposes promotes certainty and consistency; determining whether a transaction is taxable under Chapter 297A would become more certain in contrast to a determination requiring reference to the uncertain law of fixtures."

Unfortunately, we do not find those definitions quite that clear and logical.

First, it appears that 272.03, subd. 1(c)(ii), does not apply in this case since that only applies where the equipment is "used in the business or production activity conducted on the real property". We are not here considering any activity conducted on the real property.

Minn. Stat. 272.03, subd. 1(a), states that real property includes "the land itself and all buildings, structures, and improvements or other fixtures on it". This does not provide much help since these pipes are subject to tax under 273.13, subd. 4, Class III(a), which specifically includes them if they are fixtures. This section does not classify such pipes either as real or personal property but simply as Class III property.

We then come back to the quagmire referred to by the Supreme Court in *Zimpro*, supra, as to what are fixtures and what is real estate. In addition, we are always confronted by the specific definition in 272.03, subd. 2(5), which specifically provides that such pipes are always personal property.

Another problem is that 297A.01, subd. 4, states that a retail sale occurs for the sale of supplies to contractors "for the erection of buildings or the alteration, repair or improvement of real property". These pipes are certainly not buildings and putting them in the street can hardly be considered an "improvement of real property".

The Commissioner in his brief on page 6 states the following:

"As applied to the case at hand, these principles yield the following result: if the buried heat main constructed by Tini Mechanical is personal property, the retail (taxable) sale is the sale of the completed heat main to the City of Virginia. In such case, no tax would be due because the city is exempt. Minn. Stat. § 297A.25, subd. 1(j)."

The Commissioner takes the position that Minn. Stat. § 272.03, subd. 2(5) does not include the Public Utilities Commission of the City of Virginia when it refers to

"gas, electric, electric light, water, heat, or power companies,"

The Commissioner's brief states on page 9 the following:

"Yet the statute expressly applies [to] only those owned by companies of specific types."

It appears to us that the Municipal Utilities Commission is included in the word "companies" as used in the statute. The supplying of steam heat is a non-governmental function, and it appears to us that no distinction can be drawn between the Public

Utilities Commision and private companies relative to this matter. If pipes are personal property for a private company, it appears to us that pipes are personal property for the Municipal Utilities Commission.

We conclude that the pipes are still personal property and their sale to the Public Utilities Commission of the City of Virginia is exempt from sales tax whether or not they were separated out in the contract. We construe the transaction as a sale of the pipe after it has been welded and insulated and that if a sales tax were due, it should probably be on the entire cost of the pipe including the labor necessary to connect it and insulate it but not including the excavation and refilling of the trench. We consider the excavation and refilling of the trench to be labor involved with the delivery of the pipe and this labor is not subject to sale tax.

We might also note that if the Public Utilities Commission had conducted its contract and bidding procedures in a particualr manner, the purchase of the pipe could have been made directly by the Public Utilities Commission from TPCO, and the Commissioner would undoubtedly then agree that no sales tax was due. We indicated in *Bemidji Community Hospital v. The Commissioner of Revenue*, Docket No. 3284 dated June 16, 1982, the following:

"We feel that it is unfortunate that under the statute exempt entities can be exempt from sales taxes on purchases of materials going into a building if the exempt entity makes the purchases and such material would be taxable if the purchases of the materials are made by the contractor. There is no doubt that that situation exists under the statute, and the Commissioner cannot change that by regulation. We feel that the statute should be clarified so that all exempt entities are treated in the same manner regardless of what kind of actions or paperwork are done."

There is no doubt that the Public Utilities Commission did not follow the necessary procedures in this case, but we find that it was not necessary to do so because the pipes never lost their character as personal property and the sale by Tini to the Municipal Utilities Commission was a tax exempt sale of personal property.

C.A.J.

State of Minnesota Tax Court
County of Hennepin, Regular Division

Donald P. Helgeson & Arline Helgeson, Petitioners, v. County of Hennepin. Respondent, File No. TC-2217

Findings of Fact, Conclusions of Law and Order for Judgement

The above petition came on for hearing on the 6th day of December, 1983, at the Hennepin County Government Center, before Judge Earl B. Gustafson.

Patrick Murray of Wildfang, Rude, McIntosh, Murray, Chartered, appeared on behalf of Petitioner.

Charles Sweetland, Assistant Hennepin County Attorney, appeared on behalf of Respondent.

The issue is whether Petitioners' Loring Green condominium apartment in Minneapolis should be classified for tax purposes as seasonal recreational property.

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

FINDINGS OF FACT

1. Petitioners have sufficient interest in the property to maintain their petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.

2. The subject property is located in the City of Minneapolis at 1235 Yale Place described as follows:

"Condominium Apartment #1201, Loring Green, Minneapolis, Minnesota.
Property I.D. Nos. 27-029-24 24 0818 and 27-029-24 24 0633."

3. The taxes at issue are the real estate taxes on the subject property payable in the year 1982.

4. The assessment date in question is January 2, 1981.

5. Petitioners claim the subject property was improperly classified on the assessment date as "non-homestead residential" when it should have been classified as "seasonal recreational" class 3 property under Minn. Stat. § 273.13, Subd. 4(a).

6. The Petitioners' homestead is at Sartell near St. Cloud, Minnesota.

7. The subject property is a one-bedroom condominium apartment in Minneapolis at the south end of the Central Business District near Orchestra Hall.

8. Petitioners use the apartment principally in the late fall, winter and early spring for an average of two days a week.

9. The property is used by Petitioners as lodging while they engage in recreational and cultural pursuits in the Minneapolis area.

10. The property is not leased to any third parties nor used for any business purpose but rather for personal and family recreation and leisure.

11. The attached Memorandum is made a part of these Findings of Fact.

CONCULSIONS OF LAW

1. The classification of the subject property for taxes should be changed from non-homestead residential to class 3 "seasonal recreational" under Minn. Stat. § 273.13, Subd. 4(a).

2. Real estate taxes due and payable in 1982 and 1983 should be recomputed accordingly and refunds, if any paid to Petitioners as required by such computations, together with interest from the date or original payment.

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

January 23, 1984.

By the Court,
Earl B. Gustafson, Judge
Minnesota Tax Court

MEMORANDUM

Petitioners, Donald and Arline Helgeson, claim their condominium was improperly classified as non-homestead residential real estate. They contend that it should be classified as seasonal recreational property. Non-homestead residential real estate is assessed at a rate of 28% of market value while seasonal recreational property is assessed at a rate of 21%.

Typical non-homestead residential properties are duplexes or apartment buildings leased by the owner for rental income. Typical seasonal recreational properties are summer cottages or vacation homes not used for any commercial purpose.

Petitioners' home is in the St. Cloud area and has been given homestead status. They also own a condominium in the Loring Green complex located at 1235 Yale Place in Minneapolis which they use as a vacation home. Only the classification of the condominium is at issue.

Mr. Helgeson is the principal stockholder and Chairman of the Board of Jack Frost Farms, Inc., a poultry wholesale business that markets under the name of Golden Plump Chickens. He is no longer engaged in day-to-day management and therefore has time for frequent travel and skiing in the western mountains.

Petitioners have owned the condominium for two years. They use it as a place to stay when in the Twin Cities to enjoy the area's recreational and cultural benefits. Both Mr. and Mrs. Helgeson are physically active and when in Minneapolis pursue a number of recreational activities, both indoors and out-of-doors including jogging, biking, tennis, canoeing, swimming and roller skating. They also attend plays, concerts, art exhibitions and other cultural events.

Petitioners use their condominium intermittently throughout the year but less often in the summer than other seasons. No one other than Petitioners and their adult children use the property. It is not used for business purposes.

The statute applicable to this case is Minn. Stat. § 273.13, Subd. 4(a) which provides in pertinent part as follows:

"Except as provided in subdivision 5a, all real property *devoted to temporary and seasonal residential occupancy for recreational purposes* . . . shall be class 3 property and assessed accordingly." (Emphasis Added)

We feel the Petitioners' use of this property brings it within the plain meaning of the statute. Where the words of a statute are clear and free from ambiguity there is no necessity for "interpretation."

Petitioners' property is "devoted to temporary and seasonal residential occupancy for recreational purposes." It is not devoted to permanent homestead use, commercial use or any type of business use.

If this property were located in the north woods, the local assessor would have no problem. The typical lake cabin or hunting shack receives a class 3, "seasonal recreational" classification if the owner is a non-resident of the area who may use the property frequently or infrequently during different seasons of the year. Recreational use is assumed whether occupants actually do nothing more strenuous than read a book or meditate.

In *Otis Lodge, Inc. v. Commissioner of Taxation*, 295 Minn. 80, 206 N.W. 2d 3 (1972) the court indicated that the seasonal recreational classification in Minn. Stat. § 273.13, Subd. 4(a) was originally passed by the legislature to provide tax relief to

seasonal resorts. This purpose was subsequently extended to privately used property; the apparent rationale being that an owner who lives elsewhere and uses the property only occasionally for non-commercial purposes puts no burden on the local school system, requires limited governmental services and therefore, should be allowed to pay somewhat less in taxes.

Respondent properly points out troublesome language in the case of *Lilja v. County of Wright*, 307 Minn. 276, 239 N.W. 2d 465 (1976) which held duplex property in Monticello was not seasonal recreational where Petitioner lived in the Twin Cities and used the property for weekend relaxation and gardening. In that case the court concluded that no matter what the term recreational may mean in other factual situations, the activity of gardening was not "recreational" within the meaning of Minn. Stat. § 273.13, Subd. 4(a).

Without attempting to distinguish the facts of the *Lilja* case from the instant case, we are unwilling to extend its ruling any further by finding that jogging, biking, tennis, canoeing, swimming and roller skating are not recreational activities.

E.B.G.

State of Minnesota Tax Court
County of Itasca, Ninth Judicial District

In the Matter of Real Estate Taxes Payable in the Year 1982 and 1983, Steve Hecomovich, Petitioner, v. Itasca County, Respondent, File No. C-83-50

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

The above matter came on for trial at the Itasca County Courthouse at Grand Rapids, Minnesota, on August 11, 1983, beginning at 10 A.M. before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court.

Appellant appeared Pro Se.

John P. Dimich, Itasca County Attorney, appeared for Respondent.

After having reviewed the evidence adduced at the trial and the files and records herein, the Court now makes the following:

FINDINGS OF FACT

1. The petition herein involves real property located in the City of Marble, Itasca County, Minnesota, described as follows:

"Lot 6, Block 5 of the City of Marble, Minnesota (Assessor's ID No. 165-010-505060)"

2. The property includes a fourplex frame apartment building in the City of Marble, Minnesota.

3. The petition was filed on January 11, 1983, and indicates that Petitioner intended to contest the taxes payable in calendar year 1983. At trial, however, the parties stipulated that the Court was to decide the estimated market value as of January 2, 1981, for taxes payable in 1982 as well as the estimated market value as of January 2, 1982, for taxes payable in 1983.

4. The Petitioner has sufficient interest in the property to maintain his petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.

5. As of January 2, 1981, the assessor's estimated market value of the subject property was $28,000 and as of January 2, 1982, the assessor's estimated market value of the subject property was $28,150.

CONCLUSIONS OF LAW

1. The Petitioner has failed to sustain the burden of proof to show that the property has been unfairly and unequally assessed in comparison to other properties in the assessment district.

2. The assessor's estimated market value of $28,000 for January 2, 1981, and $28,150 as of January 2, 1982, is hereby affirmed.

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

January 23, 1984.

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

MEMORANDUM

The Petitioner's chief contention is that the economic conditions on the Iron Range for the past years have not been reflected in the assessor's estimated market values based on the income approach. At trial he presented actual income and expense figures for 1982 and projected income and expense figures for 1983. The statement for 1982 showed a small profit and the projected statement for 1983 showed a loss due to vacancies which the Petitioner attributes to the economic situation on the Iron Range.

During trial, the Petitioner presented to the Court a list of properties which the Petitioner testified were sold during calendar years 1982 and 1983 at less than their estimated market value, but he presented no verification of the sales prices of the various properties and admitted that most of his information was hearsay. He admitted that he had not compared the alleged sales prices with the Certificates of Real Estate Value in the assessor's office.

During the trial, Mr. Alan Hovi, the Itasca County Assessor, testified on behalf of the Respondent. He testified that he was able to find only two Certificates of Real Estate Value for the nine alleged sales on the Petitioner's list. One of the certificates indicated that a warranty deed was given for a property sold on a contract for deed in 1978, and the second certificate indicated that it was a sale by a personal representative of an estate so neither one of them was considered to be an arms-length sale in 1982. It is entirely possible that real estate values in the City of Marble have dropped since the assessment date, but the evidence presented by the Petitioner was not sufficient to give the Court a basis for finding that the estimated market values as of the respective assessment dates was excessive.

The valuation determined by the assessor is presumed to be correct until the Petitioner presents substantial proof to the effect that the value is excessive. In this case the proof of value was not sufficient.

J.K.

State of Minnesota Tax Court
County of Lyon, Fifth Judicial District

Thomas R. & Josephine E. Halbach, Petitioners, v. County of Lyon, Respondent, File No. CV-83-976

Findings of Fact, Conclusions of Law, Order for Judgement and Memorandum

The above entitled matter came on for trial before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, at the Lyon County Courthouse at Marshall, Minnesota, on October 25, 1983, beginning at 10 A.M. Subsequent to trial both parties have submitted briefs in support of their positions.

Thomas R. Halbach, appeared Pro Se. Kathleen A. Kusz, Assistant Lyon County Attorney, appeared for Respondent.

The value of the subject property is not in issue herein. The only issue is whether or not the Petitioners are entitled to a homestead classification of the subject property for taxes payable in calendar year 1983.

Upon the Stipulation of Facts, the evidence adduced at the trial, and the files and records herein, the Court now makes the following:

FINDINGS OF FACT

1. Petitioners owned the property at 705 South 4th Street, Marshall, Minnesota until July 6, 1982. The contract for deed requires the Petitioners to pay any nonhomestead taxes for 1982.

2. Petitioner, Thomas Halbach, went to Chicago, Illinois on a temporary job assignment on December 31, 1980. The assignment was duly authorized under the Federal Interpersonnel Act of 1970, and the assignment was agreed to by the Agricultural Extension Service of the University of Minnesota and US-EPA. This assignment was for a temporary, limited, specific term. His family moved to a temporary apartment in Des Plaines, Illinois on January 4, 1981.

3. Prior to the temporary job assignment, the Petitioners had resided in the subject property for more than five years as their homestead. As of January 2, 1981, the subject property was classified as the homestead of the Petitioners.

4. On January 2, 1982, the City Assessor of the City of Marshall mailed to the Petitioners at Des Plaines, Illinois, a homestead declaration card covering the subject property. The card was signed by the Petitioners and returned to the assessor from Des Plaines, Illinois.

5. The city assessor denied homestead classification without giving a specific reason.

6. The Petitioners appealed to the City Board of Review, and were denied homestead classification, without being given a specific reason.

7. The Petitioners appealed the decision to the Lyon County Board of Equalization where they presented evidence indicating ownership, residence, specifics of the temporary employment and intent to return. The County Board denied the homestead classification.

8. The appeal herein was filed on May 23, 1983.

9. At the expiration of the temporary assignment in Chicago, Petitioner Thomas Halbach was unable to return to his previous job in Marshall because it was terminated on August 5, 1982, due to state budget cuts. He was then transferred to another city.

10. The Petitioners occupied the house at 705 South 4th Street a few days during 1982. They ate, slept, bathed, cleaned house, maintained the yard and visited with neighbors and friends.

11. In their absence, friends and neighbors cared for the property at the direction of the Petitioners.

12. The house was not rented, nor was any income derived from it, nor did Petitioners allow anyone else to occupy it during the time in issue.

13. The subject property was advertised for sale beginning in November of 1980.

14. The Petitioners filed Minnesota Income Tax Returns and paid taxes to the State of Minnesota in 1981 and 1982, in spite of the fact that Illinois income taxes would have been substantially lower.

15. The Petitioners insured their property as a home.

16. The Petitioners maintained their Minnesota car registration and their Minnesota drivers licenses at 705 South 4th Street, Marshall, Minnesota.

17. Most household goods and furniture were taken by the Petitioners to the temporary apartment in Des Plaines, Illinois, but a substantial number of items were left in the subject property.

18. The Petitioners were registered voters in Marshall, Minnesota, at all times relevant herein.

19. The Petitioners received most of their mail in Des Plaines, Illinois, but also had mail addressed to them at Marshall forwarded to them.

20. Petitioners maintained contacts with friends in Marshall. They also kept their insurance with an agent who was stationed at Marshall, Minnesota.

21. The Petitioner intended to return to the subject property at the end of the temporary assignment and continued to claim a homestead classification for the subject property throughout the period in issue herein.

22. As of January 2, 1982, the Petitioner, Thomas R. Halbach, had been on temporary assignment, out of the state for more than one year.

23. The Memorandum attached hereto is made a part of these findings.

CONCLUSIONS OF LAW

1. The Petitioners are entitled to a homestead classification of the subject property for calendar year 1983.

2. Real estate taxes due and payable in 1983 shall be recomputed accordingly and refunds, if any, paid to the Petitioners as required by such computations, together with interest and costs and disbursements herein.

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

January 23, 1984.

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

MEMORANDUM

Respondent contend that the Petitioners have presumptively abandoned their homestead rights pursuant to Minn. Stat. § 510.07. The Court rejects that argument. The Court is of the opinion that Chapter 510 relates only to the exemption of a house owned and occupied by a debtor from seizure or sale under legal process on account of any debt not lawfully charged to them in writing. Chapter 520 was never intended to be a guide for homestead classification for tax purposes.

In the case of *In Re Petition of Wolf Lake Camp, Inc. vs. County of Itasca*, 312 Minn. 424, 252 N.W. 2d. 261, the Minnesota Supreme Court held that the use to which land is put, not the inherent nature of the land itself, determines how real estate is to be classified. In that case the court said:

". . . First, the use to which the land is put, not the inherent nature of the land itself is controlling; that is, the test is what the land is devoted to, not what it can be devoted to . . ."

In the instant case the only use to which the subject property was put was the homestead of the Petitioners. The property was not rented to others nor was it occupied by others. Even though the use was not extensive it was the exclusive use to which the property was put.

Respondent cites *Donaldson v. Lamprey*, 29 Minn. 18, 11 N.W. 119, in support of its argument to the effect that the Petitioners abandoned their right to a homestead classification. That case, however, did not involve the issue of a homestead classification for tax purposes. It involved the issue of whether or not the owner had lost his exemption from seizure or sale under what is now known as Chapter 510. In that case, the owner was held to have abandoned his homestead because he had acquired a new homestead elsewhere. In the instant case, the Petitioners did not acquire another homestead. The evidence clearly establishes that the Petitioners intended only a temporary stay in Illinois. They rented an apartment in Des Plaines for the duration of their stay in order that the family could be together.

In *Stone vs. County of Anoka*, District Ct. File No. 42752-1030 this Court held that Petitioners did not lose their right to homestead classification due to forced confinement in a nursing home.

It is very significant that the Petitioners paid income taxes to the State of Minnesota in 1981 and 1982 in spite of the fact that the income taxes in Illinois would have been significantly lower.

Minn. Stat. § 273.13, subd. 11, allows the assessor to require proof "by affidavit or otherwise of the facts upon which classification as a homestead may be determined. . . ." The fact that the card was mailed to Petitioners at Des Plaines, Illinois and returned to the assessor from that address is of no significance herein.

The only fact which appears to be in contradiction of their stated intention to occupy the premises as their homestead is the fact that they advertised the property for sale beginning in November of 1980. That fact alone, however, is not a sufficient basis to deny the homestead classification.

The Petitioners have asked this Court to assess punitive damages against the Respondent under the Civil Rights Act. That is a separate issue over which this Court has no jurisdiction. Such an action must be brought in a civil suit in state or federal district court. The only issue before this Court is the validity of the non-homestead classification.

J.K.

ERRATA

At *State Register*, Volume 8, Number 23, December 5, 1983, page 1347, under the Minnesota Housing Finance Agency's Adopted Temporary Rules Governing Energy Improvement Loan Insurance Program, MCAR §§ 3.180 to 3.184, correct the following:

"12 MCAR § ~~3.183~~ 3.184 [Temporary] Eligible improvements."

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