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STATE REGISTER

STATE OF MINNESOTA

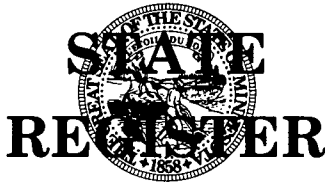


VOLUME 9, NUMBER 14

October 1, 1984

Pages 685-716

2



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 9 | | | |
| 15 | Monday Sept 24 | Monday Oct 1 | Monday Oct 8 |
| 16 | Monday Oct 1 | Monday Oct 8 | Monday Oct 15 |
| 17 | Monday Oct 8 | Monday Oct 15 | Monday Oct 22 |
| 18 | Monday Oct 15 | Monday Oct 22 | Monday Oct 29 |

*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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Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

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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CONTENTS

MINNESOTA RULES AMENDMENTS AND ADDITIONS

Issue 14, inclusive 688

EXECUTIVE ORDERS

Order No. 84-12 Providing for the Issuance of Overweight Transportation Permits to Sugar Beet and Potato Haulers 689

PROPOSED RULES

Optometry Board
Proposed Rules Governing Continuing Education and Licensure 690

ADOPTED RULES

Accountancy Board
Adopted Rules Governing Annual License Fees 693

Agriculture Department
Agronomy Services Division
Adopted Rules Amending Agricultural Seed Labeling and Inspection Requirements 693

Agriculture Department
Food Inspection Division
Adopted Rules Governing Dyeing of Fish and Fish Products 693

Energy and Economic Development Department
Energy Division
Adopted Rules Governing Community Energy Council Grants 694

Housing Finance Agency
Adopted Rules Governing the Energy Improvement Loan Insurance Program 694

Natural Resources Department
Adopted Rules Governing State Recreation Trails 694

OFFICIAL NOTICES

Energy and Economic Development Department
MN Energy and Economic Development Authority
Notice of Public Hearing on Proposed Project and the Issuance of Bonds to Undertake Big Stone, Incorporated Project 695

Finance Department

Notice of Maximum Interest Rate for Municipal Obligations, October, 1984 696

Labor and Industry Department

Outside Opinion Sought Concerning Proposed Rules of Practice for the Workers' Compensation Division 696

Metropolitan Council

Revision Schedule, Metropolitan Development Framework Housing Guide/Policy Plan 697
Notice of Review Schedule, Water Quality Management Development Guide/Policy Plan, Part 1 Sewage Treatment and Handling Policy Plan 697

Pollution Control Agency

Solid and Hazardous Waste Division
Outside Opinions Sought Concerning Proposed Rules Relating to the Permitting of Waste Tire Collectors and Waste Tire Processors by the Minnesota Pollution Control Agency 698

Secretary of State Office

Notice of Vacancies in Multi-Member State Agencies 698

STATE CONTRACTS

Administration Department

Procurement Division
Commodities Contracts and Requisitions Currently Open for Bidding 699

Corrections Department

Health Care Unit
Request for Proposals for Professional/Technical Services—Primary Care Physicians 700

Energy and Economic Development Department

Requests for Proposals for Technical Assistance Services, Small Cities Development and Community Development 700

State Designer Selection Board

Request for Proposals for State Projects 701

SUPREME COURT

Decisions of the Supreme Court Filed Friday, September 21, 1984 702
Decisions of the Court of Appeals Filed Tuesday, September 18, 1984 703

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 also.

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 Rules.
• Proposed emergency rules.
• Withdrawal of proposed rules (option; not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the State Register unless an agency requests this.)
• Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
• Notice of adoption of emergency rules.
• Adopted amendments to emergency rules (changes made since the proposed version was published).
• Extensions of emergency rules beyond their original effective date.

The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
• Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register and filed with the Secretary of State before July 31, 1983 are published in the Minnesota Rules 1983. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after July 31, 1983 will be included in a supplement scheduled for publication in mid-1984. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules 1983 due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The State Register publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue/Range and Page Number. Includes: Issues 1-13, inclusive (693); Issues 14-25, inclusive (693); Issue 26, cumulative for 1-26 (693); Issues 27-38, inclusive (693); Issue 39, cumulative for 1-39 (694); Issues 40-51, inclusive (694); Issue 52, cumulative for 1-52 (694).

The listings are arranged in the same order as the table of contents of the Minnesota Rules 1983.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

BOARD OF ACCOUNTANCY

1130.3600 (adopted) 693

DEPARTMENT OF AGRICULTURE

1511.0111; .0161; .0171; .0231; .0241; .0251; .0261; .0271; .0281; 0320; .0340; .0350; .0360 [Amend] (adopted) 693
1545.2050 (adopted) 693

ENERGY, PLANNING AND DEVELOPMENT

Energy Division
4160.5100-.5900 (adopted) 694

MN HOUSING FINANCE AGENCY

4900.0601-.0605 (adopted) 694

DEPARTMENT OF NATURAL RESOURCES

6100.3100 (adopted) 694

BOARD OF OPTOMETRY

6500.0900-.1100; .1500; .1600; .2000; .2100; .2300; .2400 (proposed) 690

EXECUTIVE ORDERS

Executive Order No. 84-12

Providing for the Issuance of Overweight Transportation Permits to Sugar Beet and Potato Haulers

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, it is desirable to provide for a level of uniformity between border states as it relates to transportation of the fall sugar beet and potato harvests; and

WHEREAS, the economic vitality of the potato and sugar beet industry is extremely dependent on good weather conditions in the fall;

NOW, THEREFORE, I hereby direct the Commissioner of Transportation to issue overweight transportation permits to sugar beet and potato haulers subject to the following restrictions:

1. Permits are subject to conditions that no single axle, no group of axles, and no vehicle may exceed statutory weights by more than ten percent.
2. Permits shall apply to the first haul from farm fields to the first storage point. Shipments beyond that point must comply with the normal vehicle weight laws.
3. The duration of the permit period shall be September 24, 1984, to completion of the 1984 sugar beet and potato harvest.
4. Vehicles that wish to take advantage of this overweight permit must be licensed for the increased weights which they will carry under this order.
5. Permits shall apply to travel on state trunk highways only and do not apply on interstate highways.
6. A permit fee of sixty dollars (\$60.00) shall be paid for each vehicle which is permitted to haul commodities under this executive order.
7. No tolerance in excess of the permit weight will be considered when enforcing the truck weight laws of this State.

Pursuant to Minnesota Statutes, Section 4.035, this Order shall be effective fifteen (15) days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Minnesota Statutes, Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF I have set my hand this 13th day of September, 1984.



PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Board of Optometry

Proposed Rules Governing Continuing Education and Licensure

Notice of Intent to Adopt Rules and to Amend Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Board of Optometry (hereinafter "Board") proposes to adopt the following rules: parts 6500.2300 and 6500.2400.

NOTICE IS ALSO GIVEN that the Board proposes to amend the following rules: parts 6500.0900, 6500.1000, 6500.1100, 6500.1500, 6500.1600, 6500.2000, and 6500.2100. A copy of the proposed new rules and amendments are attached to this Notice.

The Board has determined that the proposed new rules and amendments will be noncontroversial in nature and has elected to follow the provisions of Minn. Stat. §§ 14.21-14.28 (1982). Sections 14.21-14.28 provide for an expedited process for the adoption of noncontroverted administrative rule changes without the holding of a public hearing.

THE PUBLIC IS HEREBY ADVISED that:

1. There is a 30-day period in which to submit comment in support of or in opposition to the proposed rules and amendments and comment is encouraged;
2. Each comment should identify the portion of the proposed rule or amendments addressed, the reason for the comment, and any change proposed;
3. If twenty-five or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held;
4. All comments and any written requests for a public hearing shall be submitted to Burton H. Skuza, OD, Executive Secretary, Minnesota Board of Optometry, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414.
5. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule or amendment addressed, the reason for the request, and any change proposed;
6. The proposed rules and amendments may be modified if modifications are supported by the data and views submitted and do not result in a substantial change in the proposed language;
7. Under this expedited procedure, the Board must submit any action on its rules to the attorney general for review of the form and legality of the rule change. If a hearing is not required, notice of the date of submission of the proposed rules to the attorney general for review will be mailed to any person who requests to receive the notice. Requests to receive notice must be submitted to Burton H. Skuza, OD, at the above address;
8. Authority for the adoption and amendment of these rules is contained in Minnesota Statutes, sections 148.53, 148.57, 148.59, 214.06, and 214.12 (1982). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and amendments has been prepared and is now available. Anyone wishing to receive a copy of this document may contact Burton H. Skuza, OD, at the above address;
9. If twenty-five or more persons request a public hearing on this matter, notice of any such hearing will be published in the *State Register*;

10. Any rule change made pursuant to this proceeding shall be effective five days after publication in the *State Register* of notice of the adoption of the change.

August 8, 1984

Burton H. Skuza, O.D.
Executive Secretary

Rules as Proposed

6500.0900 REQUIRED CONTINUING EDUCATION.

All optometrists now or hereafter licensed in this state are and shall be required, as a prerequisite to license renewal, to attend ~~annually~~ within a three-year period courses totaling at least ~~42~~ 45 clock hours of study of educational optometric programs ~~as may be approved by the board under the provisions of parts 6500.0900 to 6500.1700.~~ In the event If an optometrist becomes ineligible for license renewal for failure to comply with continuing education requirements, he shall be suspended from further practice. The board shall reinstate any such suspended license upon receipt of satisfactory proof that ~~such~~ the suspended licensee has made up the deficient hours of study.

6500.1000 STUDY COMPLIANCE YEAR.

The optometric study compliance year ~~shall extend from January 1 through December 31.~~ Courses attended during that period will be credited to the current license renewal year. ~~Credit for approved courses attended between January 1 and March 31 may be applied to either the current or subsequent license renewal year but not both.~~ period must begin on January 1 and encompass three calendar years, concluding on December 31 of the third year. No credit for ~~such~~ attendance shall be given; ~~however,~~ unless the board determines that ~~such~~ an educational program complied with the criteria as ~~set forth~~ in part 6500.1200.

6500.1100 APPROVED CONTINUING EDUCATION PROGRAMS.

~~Educational programs which are approved as meeting the required standards are indicated below. This approval is and shall be based on continued maintenance of high standards. Courses not eligible for credit shall be so identified by the program sponsor.~~

- ~~A. Courses on subjects relative to optometry at any board approved school or college of optometry.~~
- ~~B. Educational meetings of the North Central States Optometric Conference.~~
- ~~C. Educational meetings of the Minnesota Optometric Association.~~
- ~~D. Educational meetings of the American Optometric Association.~~
- ~~E. Educational meetings of the American Academy of Optometry.~~

~~F. Other educational programs approved by the board as meeting the criteria as set forth in part 6500.1200, after submission of A program sponsor requesting approval by the board must submit a program, schedule, and outline course description to the board executive secretary not less than 45 days prior to the date of the program. The board shall respond to all applications within a reasonable time. The board may, upon application of any licensee and for good cause shown, waive the requirement for the submission of advance information and request for prior approval. Nothing herein shall permit the board to approve of an educational program which has not complied with the criteria as set forth in part 6500.1200. Courses not eligible for credit shall be so identified by the program sponsor.~~

6500.1500 CREDIT HOURS.

The board reserves the right to determine the number of hours credit for any course or program under part 6500.1100.

~~Credit shall not be given for more than two~~ six hours' attendance in courses of office management or administration, or more than nine hours of home study courses, in the three-year compliance period.

6500.1600 EXEMPTIONS FROM REQUIRED ATTENDANCE.

The following licensees shall be exempt from the requirements of this part:

- A. any licensee serving in the regular armed forces of the United States during any part of the 12 months immediately preceding the annual license renewal date; and
- B. those licensees as the board, in its discretion, determines were unable to attend sufficient hours of continuing education courses because of illness, incapacity, or other unavoidable circumstances; and
- C. Any licensee first licensed by examination or reciprocity within the 12 months immediately preceding the annual license renewal date is exempt for the calendar year in which the license is issued, but is responsible proportionately for the remainder of the compliance period as follows: one year, 15 hours; two years, 30 hours.

PROPOSED RULES

6500.2000 INDIVIDUAL ANNUAL LICENSE RENEWAL.

Subpart 1. Fee. On or before ~~March 31~~ January 1 of each year, the board shall receive a license renewal fee of \$65 from every licensed optometrist who desires to continue to be entitled to practice in this state. ~~The amount of said fee to be received by the board not later than March 31, 1978, for licensure between April 1, 1978, and March 31, 1979, shall be \$65. Thereafter, subject to the approval of the state commissioner of finance under Minnesota Statutes, sections 16A.128 and 214.06, subdivision 1, the amount of said fee shall be as determined by the board at open meetings for which not less than 30 days advance notice is published in the State Register and at which meetings any affected persons shall be given an opportunity to present pertinent oral or written statements. No renewal fee determined by the board pursuant to this subpart for licensure subsequent to March 31, 1979, shall exceed 115 percent of the renewal fee of the immediately preceding licensure year nor, in conjunction with all other authorized board fees, result in the collection of amounts not approximately equal to anticipated board expenditures. Such anticipated expenditures may include only reasonable or required costs associated with the board's necessary purchase of or payment for those services and staff required by Minnesota Statutes, section 214.04, authorized board member compensation, and the economical administration of the act.~~

Subparts 2 to 5. [Unchanged.]

6500.2100 RECIPROCIITY.

Subpart 1. Good cause defined. To determine whether an applicant for licensure by reciprocity is required to take a practical examination, the term "good cause" under Minnesota Statutes, section 148.57, subdivision 2, means that the applicant:

- A. has not regularly practiced for the three-year period immediately preceding the application;
- B. has not attended at least 45 hours of continuing education during the same period;
- C. suffers from a physical or mental condition which could affect the applicant's fitness to practice;
- D. has previously been denied or has failed to maintain licensure in Minnesota;
- E. is not in good standing in any state in which the applicant is licensed; or
- F. convicted of a crime reasonably related to the practice of optometry during the three-year period immediately preceding the application.

The applicant must show by sworn statement that none of the circumstances listed exists.

Subp. 2. Equivalency of state requirements. In accordance with Minnesota Statutes, section 148.57, subdivision 2, another state's licensure requirements shall be deemed to be equivalent to Minnesota's if the state requires that each applicant:

- A. be of good moral character;
- B. be a graduate of an optometry school which requires at least two academic years of preprofessional training for admittance and which is approved by the board;
- C. pass a practical clinical demonstration which thoroughly tests the applicant's fitness to practice; and
- D. written competence examination required of new licensees under Minnesota Statutes, section 148.57, subdivision 1. This item applies only to licensure granted in the other state after July 31, 1973.

Applicants granted licensure by reciprocity are not authorized to purchase, possess, or administer topical ocular drugs in this state. Requirements for these practices are set forth in Minnesota Statutes, section 148.573.

A fee of ~~\$100~~ \$50 shall accompany every application for licensure by reciprocity.

6500.2300 CLINICAL PRACTICAL DEMONSTRATION.

A clinical practical demonstration must be given in sections covering pathology, contact lenses, refraction, and any other sections the board deems necessary. The board shall give written notice to the applicant of the sections on which he or she will be examined. No applicant will be required to be examined on a subject on which other applicants are not examined. All sections must be equally weighted in value. A score of less than 75 percent of the total number of section points constitutes failure of the entire clinical demonstration. A single score of less than 65 percent of any single section constitutes failure of the entire demonstration.

6500.2400 JURISPRUDENCE TEST.

A test on Minnesota optometric jurisprudence shall be given and must be passed with a grade of 65 percent or better. An applicant who fails the Minnesota jurisprudence test and passes the clinical practical demonstration sections may repeat the jurisprudence test only. If the clinical practical demonstration portion is failed, the entire demonstration must be retaken, including the Minnesota jurisprudence test.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after 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 emergency rule will be published in the manner provided for adopted rules under § 14.18.

Board of Accountancy**Adopted Rules Governing Annual License Fees**

The rule proposed and published at *State Register*, Volume 8, Number 52, page 2764, June 25, 1984 (8 S.R. 2764) is adopted as proposed.

**Department of Agriculture
Agronomy Services Division****Adopted Rules Amending Agricultural Seed Labeling and Inspection Requirements**

The rules proposed and published at *State Register*, Volume 9, Number 3, pages 133-150, July 16, 1984 (9 S.R. 133) are adopted as proposed.

**Department of Agriculture
Food Inspection Division****Adopted Rules Governing Dyeing of Fish and Fish Products**

The rule proposed and published at *State Register*, Volume 9, Number 3, pages 150-151, July 16, 1984 (9 S.R. 150) is adopted as proposed.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

ADOPTED RULES

Department of Energy and Economic Development Energy Division

Adopted Rules Governing Community Energy Council Grants

The rules proposed and published at *State Register*, Volume 8, Number 52, pages 2769-2773, June 25, 1984 (8 S.R. 2769) are adopted with the following modifications:

Rules as Adopted

4160.5300 GRANT PROGRAM.

Subp. 3. Maximum award amount. The maximum amount of a community energy council grant to an individual applicant is \$15,000 and requires at least a ten percent local match. The maximum amount of a community energy council grant to a joint application is \$15,000 for the first applicant and \$12,000 for each additional applicant up to a maximum of \$50,000, and requires at least a ten percent local match.

4160.5500 EVALUATION OF GRANT APPLICATION.

Subpart 1. Criteria. The review committee shall evaluate grant applications according to the following criteria:

B. A work plan will be evaluated to determine its potential to reduce energy use and energy costs in the applicant community. Positive indicators of this potential are:

(2) a work plan that demonstrates how the applicant will coordinate activities undertaken with community energy council grant funds with activities of other energy service providers, including cities and counties; or

4160.5800 GRANT AGREEMENT.

Subpart 1. Contents. An agreement must specify the grant amount and the duration of the grant. The agreement must include assurance that the local share will be provided and that the work program agreed upon will be carried out. A grant agreement based upon a joint application must be executed by the applicant city or county that will be directly responsible for financial management of the grant, and that will be responsible for the required reports in part 4160.5800, subpart 5 4, and the records required in part 4160.5800, subpart 6 5. Amendments and extensions may only be made in writing and must be signed by all parties.

Subp. 6. Grant agreement deviations. Unless the department agrees in writing grantee demonstrates to the department that the grantee's circumstances have changed since execution of the grant agreement to such an extent that a deviation is necessary to complete the agreed upon work program, no grant funds may be used to finance activities by consultants or local staff if the activities are not included in the grant agreement. Unless the department agrees in writing, A grantee may not contract out all its energy-related activities to consultants unless the grantee demonstrates to the department that such contracting is necessary to complete the work program.

4160.5900 GRANT CLOSE-OUT.

Subpart 1. Evaluation. The department shall conduct an evaluation of the final report and all the required reports and financial documents within 60 days of their submission by the grantee to the department. The evaluation shall assess:

A. whether the local share contributed was equal to or greater than ten percent of the total cost of the preliminary planning project agreed upon work program;

Housing Finance Agency

Adopted Rules Governing the Energy Improvement Loan Insurance Program

The rules proposed and published at *State Register*, Volume 9, Number 3, pages 173-174, July 16, 1984 (9 S.R. 173) are adopted as proposed.

Department of Natural Resources

Adopted Rules Governing State Recreational Trails

The rule proposed and published at *State Register*, Volume 8, Number 47, pages 2464-2465, May 21, 1984 (8 S.R. 2464) is adopted as proposed.

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 Energy and Economic Development MN Energy and Economic Development Authority

Notice of Public Hearing on Proposed Project and the Issuance of Bonds to Undertake Big Stone, Incorporated Project

NOTICE IS HEREBY GIVEN that the Minnesota Energy and Economic Development Authority (the "Authority"), shall meet on October 24, 1984, at 3:00 p.m. o'clock, at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issue of bonds (the "Bonds") under *Minnesota Statutes*, Section 116M.01 to Section 116M.13, inclusive, as amended and supplemented (the "Act"), to undertake and finance a project on behalf of Big Stone, Incorporated (the "Company"), a Delaware corporation. Such persons as desire to be heard with reference to said issue of Bonds will be heard at this meeting.

The project shall consist of two separate projects as follows: (1) the acquisition and installation of equipment to be used to freeze vegetables in bulk for further processing into canned goods for use in the Company's canning facilities located in Ortonville, Big Stone County, Minnesota (street address: Old Highway 12, Ortonville, Minnesota) (the "Business Project"); and (2) the acquisition, installation and construction of eight-inch forcemain, a pump station, a well and related equipment, all in connection with a waste water pollution control system to be constructed with respect to the Company's cannery facility located in Arlington, Sibley County, Minnesota (street address: 300 3rd Avenue, Arlington, Minnesota) to provide for the treatment and disposal of cannery waste by means of land irrigation and, thereby, to abate the present discharge of cannery waste water into certain waters in the State (the "Pollution Control Project", the "Business Project" and the "Pollution Control Project" being collectively referred to herein as the "Project"). The initial owner, operator and manager of the Project will be the Company. The estimated maximum amount of the proposed bond issue is an amount equal to \$755,000. The Bonds shall be limited obligations of the Authority, and the Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, except that such Bonds may be secured by a mortgage or security interest to be created by the Company if subsequently required by the Authority. In addition, the Bonds and the Project may subsequently be considered by the Authority for financial assistance to be provided by the Economic Development Fund, created and established pursuant to the Act or other applicable financial assistance of the Authority. Notwithstanding the foregoing, no holders of any such Bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the application to the Authority for approval of the Project, together with all attachments and exhibits thereto and a copy of the Authority's resolution accepting the application and accepting the Project is available for public inspection at these offices of the Authority at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

September 13, 1984.

By Order of the Members of the
Minnesota Energy and Economic
Development Authority,
Mark B. Dayton
Commissioner, Department of Energy
and Economic Development; and
Chairman, Minnesota Energy and
Economic Development Authority

Department of Finance

Notice of Maximum Interest Rate for Municipal Obligations, October, 1984

Pursuant to Minnesota Statutes, Section 475.55, Subdivision 4, Commissioner of Finance, Gordon M. Donhowe, announced today that the maximum interest rate for municipal obligations in the month of October will be eleven (11) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to twelve (12) percent per annum.

For further information contact,

Peter Sausen, Director
Debt Management
State of Minnesota
Department of Finance
(612) 296-8372

Department of Labor and Industry

Outside Opinion Sought Concerning Proposed Rules of Practice for the Workers' Compensation Division

Notice is hereby given that the Minnesota Department of Labor and Industry, Workers' Compensation Division, is seeking information from sources outside the agency in preparing to promulgate new Rules of Practice for the Workers' Compensation Division. The promulgation of these rules is authorized by the following statutes:

- 1) Minn. Stat. § 176.83, subd. 1, which permits the commissioner to adopt rules to implement Chapter 176;
- 2) Minn. Stat. § 176.83, subd. 7, which permits the commissioner to adopt rules to implement and administer Minn. Stat. §§ 176.242, 176.243, and 176.251;
- 3) Minn. Stat. § 176.83, subd. 9, which permits the commissioner to adopt rules to govern intervention;
- 4) Minn. Stat. § 175.101, subd. 1, which requires the commissioner to administer the workers' compensation division;
- 5) Minn. Stat. § 175.17 (2), which permits the commissioner to adopt rules of practice before the workers' compensation division; and
- 6) Minn. Stat. § 176.171 (2), which permits the Department of Labor and Industry to adopt rules governing its proceedings, investigations and hearings.

The Minnesota Department of Labor and Industry, Workers' Compensation Division, requests information concerning the subject matter of these rules. Interested or affected persons or groups may submit oral or written information. Written information should be addressed to:

Steve Keefe, Commissioner
Department of Labor & Industry
5th Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minnesota 55101

Any written material received by the Minnesota Department of Labor and Industry, Workers' Compensation Division, shall become part of the record in the event that the rules are promulgated.

Oral statements will be received during regular business hours over the telephone at (612) 297-4792 and in person at the above address.

Information will be accepted until November 1, 1984.

September 21, 1984

Steve Keefe, Commissioner
Department of Labor and Industry

Metropolitan Council

Revision Schedule, Metropolitan Development Framework Housing Guide/Policy Plan

The Metropolitan Council is revising the Housing Chapter of the Metropolitan Development Guide.

This revision process includes not only the adoption of new housing policies, but also housing review guidelines used in the review of new housing proposals, local plans and housing bond plans.

The following is the proposed schedule for revising the Housing Guide Chapter.

SCHEDULE OF MEETINGS

1984

| | |
|----------|--|
| Sept. 6 | MCD Committee discussion—Needs Assessment |
| Sept. 12 | Metropolitan HRA Advisory Committee discussion—Housing Policy |
| Sept. 13 | MCD Committee discussion—Housing Policy |
| Sept. 26 | Metropolitan HRA Advisory Committee discussion—Housing Policy |
| Sept. 27 | MCD Committee discussion—Housing Policy |
| Oct. 10 | Metropolitan HRA Advisory Committee discussion—Legislative Recommendations |
| Oct. 11 | MCD Committee discussion—Housing Policy |
| Oct. 18 | MCD Committee discussion—Housing Policy |
| Oct. 25 | MCD Committee discussion—set hearing date—Final Hearing Document available |
| Nov. 29 | Public Hearing (record open until 12-7-84) |
| Dec. 27 | MCD Committee discussion of public hearing comments |

1985

Jan. 10 Metropolitan Council adoption

This schedule is tentative and subject to change. A subsequent notice of public hearing will be published. If you have any questions regarding the schedule or the proposed revisions, call Guy Peterson of the Council's Housing Department at 291-6527.

Metropolitan Council

Notice of Review Schedule, Water Quality Management Development Guide/Policy Plan, Part 1 Sewage Treatment and Handling Policy Plan

The Metropolitan Council will begin review of proposed amendments to Part 1 of its Metropolitan Development Guide chapter on water resources management. The proposed changes would: 1) phase out the Savage wastewater treatment plant; 2) authorize the Metropolitan Waste Control Commission to include the Middle Belt Line project in its development program; and 3) incorporate into the Development Guide numerous system improvement studies already approved as part of the Metropolitan Waste Control Commission's 1985 capital improvements budget.

The following is a tentative schedule for reviewing the proposed amendment:

| | |
|-------------------------|---|
| July 24, 1984 (Tuesday) | Mayors' Task Force review of proposal |
| October 1 (Monday) | Systems Committee reviews public hearing draft |
| October 11 (Thursday) | The Metropolitan Council adopts the amendment for public hearing |
| November 15 (Thursday) | Public hearing on the proposed amendment before the Metropolitan Council |
| December 3 (Monday) | Hearing record closes |
| December 10 (Monday) | Hearing report and final document available |
| December 17 (Monday) | Systems Committee reviews final hearing report and approves final amendment |
| December 27 (Thursday) | Metropolitan Council adopts final amendment |

This schedule is tentative and subject to change. A subsequent notice of public hearing will be published. If you have any questions regarding the schedule or amendment, call Ray Leek of the Council's Planning Assistance staff at 291-6567, or Barb Senness, Environmental Planning, at 291-6419.

OFFICIAL NOTICES

Pollution Control Agency Solid and Hazardous Waste Division

Outside Opinions Sought Concerning Proposed Rules Relating to the Permitting of Waste Tire Collectors and Waste Tire Processors by the Minnesota Pollution Control Agency

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information or opinions from sources outside the MPCA in preparing rules pursuant to Minnesota Laws 1984, Chapter 654, Article II, Section 93 which requires a tire collector or tire processor with a determined amount of waste tires to obtain a permit from the MPCA unless exempted.

The permitting rules will address waste tire collectors and processors who will be required to obtain permits, permit application requirements and procedures, standards or guidelines for operation of waste tire collection and processing facilities, permit fees, public participation, and permit issuance or denial procedures.

The MPCA requests information and comments concerning the subject of these rules.

Written or oral information or comments may be submitted to Karen Ryss at the address listed below or at 612/297-1793 during regular business hours.

Karen Ryss
Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
1935 West County Road B2
Roseville, Minnesota 55113

Information or comments will be accepted until October 31, 1984. Any written material received by the MPCA shall become part of the background record regarding these permitting rules.

September 21, 1984

Thomas J. Kalitowski
Executive Director

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is October 23, 1984.

BOARD ON AGING has 2 vacancies open for members. The board develops, coordinates, evaluates, and administers federal and state funds for programs for the aging of approximately 15 million; makes grants to 13 area agencies on aging and non-profit agencies; serves as an advocate for older persons, programs and legislation for older persons in Minnesota. Members are appointed by the Governor. Monthly meetings, Metro Square Bldg., St. Paul; members receive \$35 per diem plus expenses. For specific information contact the Board on Aging, Suite 240, Metro Square Bldg., St. Paul 55101; (612) 296-2770.

ADVISORY TASK FORCE ON AMERICAN INDIAN LANGUAGE AND CULTURE EDUCATION PROGRAMS has 1 vacancy open for an urban representative. Members include representatives of community groups, parents of children eligible to be served by the programs, American Indian Administrators and teachers, and persons knowledgeable in the field of American Indian language and culture education. The task force advises the Board of Education on the administration of the American Indian Language and Culture Education Act; reviews proposals and makes recommendations to the board on approval and funding of bicultural programs in Minnesota schools. Between 3 and 5 meetings per year at various sites statewide; members are reimbursed for expenses. Members are appointed by the Board of Education. For specific information contact the Advisory Task Force on American Indian Language and Culture Education Programs, 303 Capitol Square Bldg., St. Paul 55101; (612) 296-6458.

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.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-2513. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

| Requisition # | Item | Ordering Division | Delivery Point | Estimated Dollar Amount |
|---------------------|---|---|------------------------------|-------------------------|
| 43-000-05719 | Office Furniture | Iron Range Resources & Rehabilitation— | Biwabik | Contact buyer |
| 77-000-44323 | Replace Aircraft Engines | Giant's Ridge Transportation— | St. Paul | Contact buyer |
| 27-152-42916, 2106 | Salmagundi | Aeronautics Anoka Ramsey Community College | Downtown Airport Coon Rapids | Contact buyer |
| 32-300-12039 | Remedial Investigation for Gasoline Contamination | Pollution Control | Roseville | Contact buyer |
| 79-200-02397 | Rental of Photocopy Machine | Transportation | St. Paul | Contact buyer |
| 79-300-03002 | Rental of Photocopy Machine | Transportation | St. Paul | Contact buyer |
| 55-303-10438 | Air Compressor | Faribault State Hospital | Faribault | Contact buyer |
| 29-002-10255 | Brown's Road Extension Near International Falls | Natural Resources Department Region II | International Falls | Contact buyer |
| 27-144-41587 | Misc. Welding Equipment—Rebid | Itasca Community College | Grand Rapids | Contact buyer |
| 07-700-31891, 31891 | Printing: Title Application | Public Safety | St. Paul | Contact buyer |
| Contract | Fine Papers | Printing & Mailing Central Stores | St. Paul | Contact buyer |
| 29-008-32932 | Snowmobile Suits | Natural Resources | St. Paul | Contact buyer |
| 55-000-89713, 2030 | Printed Snap Out Forms | Human Services | St. Paul | Contact buyer |
| 21-200-08791 | Office Chairs | Economic Security | St. Paul | Contact buyer |
| 29-000-36488 | Drill Observation Wells | Natural Resources—Waters Division | Various | Contact buyer |
| 79-000-44097 | Sign Lites | Transportation—Electrical | Roseville | Contact buyer |
| 43-000-05578 | Reshape & Vegetate at Embarrass Mine near Biwabik | Iron Range Resources & Rehabilitation Board | Calumet | Contact buyer |
| 29-000-36640 | Power Supply | Natural Resources | Forest Lake | Contact buyer |
| 79-000-44454 | Oscilloscope | Transportation | St. Paul | Contact buyer |
| 79-990-00248 | Testing Steel Boom Parts | Transportation | St. Paul | Contact buyer |
| 26-137-03035 | Purchase of Terminals | St. Cloud State University | St. Cloud | Contact buyer |
| 02-307-44908, etc. | Floor Maintenance Equipment | Various | Various | Contact buyer |

STATE CONTRACTS

| <u>Requisition #</u> | <u>Item</u> | <u>Ordering Division</u> | <u>Delivery Point</u> | <u>Estimated Dollar Amount</u> |
|----------------------|-----------------------------------|-------------------------------------|-----------------------|--------------------------------|
| 78-550-04690 | Homosote Board #440 | MN Correctional Facility—Lino Lakes | Lino Lakes | Contact buyer |
| 21-200-08476 | Dictating & Transcribing Machines | Economic Security | St. Peter | Contact buyer |
| 29-000-36353 | Used Tractor | Natural Resources | New Ulm | Contact buyer |
| 07-700-32077 | Printed Envelopes | Public Safety | Will pick up | Contact buyer |
| Contract | Picture Frame Moulding | Admin/Plant Management | St. Paul | Contact buyer |
| 04-361-25333 | GC/MS System | Agriculture | St. Paul | Contact buyer |
| 07-300-32081 | Blood Alcohol Kits | Crime Bureau | St. Paul | Contact buyer |

Contact the receptionist at 296-2513 for referral to specific buyers.

Department of Corrections Health Care Unit

Request for Proposals for Professional Technical Services Contracts—Primary Care Physicians

Notice is hereby given that the Minnesota Department of Corrections is seeking primary care physician (part-time) to assume overall responsibilities for medical services for the period January 1, 1985 through June 30, 1986. This service is to be performed at the Minnesota Correctional Facility in Shakopee.

Direct all inquiries for the contract listed above to Howard L. Johnson, 430 Metro Square Building, St. Paul, Minnesota 55101, telephone (612) 296-2157.

Proposals must be submitted no later than 3:00 p.m., November 5, 1984.

Department of Energy and Economic Development

Request for Proposals for Technical Assistance Services, Small Cities Development and Community Development

The Department of Energy and Economic Development is seeking proposals from qualified individuals or organizations to provide technical assistance services to local units of local government in Regions 4, 7W and 10 on the State Small Cities Development Grant Program and related economic and community development programs.

The technical assistance services provided must be designed to improve the capacity of local units of government in Regions 4, 7W and 10 to plan, develop and administer a Small Cities and related projects. The estimated amount of the contract will not exceed \$30,000. Responses must be in writing and received no later than 4:00 p.m., October 26, 1984 by the Community Development Division, Department of Energy and Economic Development.

To obtain a copy of the guidelines for this proposal, call or write:

Leland Newman
Department of Energy and Economic Development
Community Development Division
8th Floor, American Center Bldg.
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 297-3172

State Designer Selection Board

Request for Proposals for State Projects

TO ARCHITECTS AND ENGINEERS REGISTERED IN MINNESOTA:

The State Designer Selection Board has been requested to select designer for two projects for the Department of Transportation. Design firms who wish to be considered for this project should submit proposals on or before 4:00 p.m., October 24, 1984, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

The proposal must conform to the following:

1. Six copies of the proposal will be required.
2. All data must be on 8½" × 11" sheets, soft bound.
3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 7 below, together with the designer's firm name, address, telephone number and the name of the contact person.
4. The proposal should consist of the following information in the order indicated below:
 - a) Number and name of project.
 - b) Identity of firm and an indication of its legal status, i.e. corporation, partnership, etc.
 - c) Names of the persons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If the applicant chooses to list projects which are relevant in type, scale, or character to the project at hand, the person's role in the project must be identified.
 - d) A commitment to enter the work promptly and to assign the people listed in "C" above and to supply other necessary staff.
 - e) A list of design projects in process or completed in the three (3) years prior to the date of this request for agencies or institutions of the State of Minnesota, including the University of Minnesota, by the firm(s) listed in "b" together with the approximate fees associated with each project.
 - f) A section of not more than fourteen (14) faces containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have had significant participation and their roles must be clearly described.

The proposal shall consist of no more than twenty (20) faces. Proposals not conforming to the parameters set forth in this request will be disqualified and discarded without further examination.

5. In accordance with the provisions of Minnesota Statutes, 1981 Supplement, Section 363.073; for all contracts estimated to be in excess of \$50,000, all responders having more than 20 full-time employees at any time during the previous 12 months must have an affirmative action plan approved by the Commissioner of Human Rights before a proposal may be accepted. Your proposal will not be accepted unless it includes one of the following:

- a) A copy of your firm's current certificate of compliance issued by the Commissioner of Human Rights; or
- b) A statement certifying that your firm has a current certificate of compliance issued by the Commissioner of Human Rights; or
- c) A statement certifying that your firm has not had more than 20 full-time employees in Minnesota at any time during the previous 12 months.

6. Design firms wishing to have their proposals returned after the Board's review must follow one of the following procedures:

- a) Enclose a self-addressed stamped postal card with the proposals. Design firms will be notified when material is ready to be picked up. Design firms will have two (2) weeks to pick up their proposals, after which time the proposals will be discarded.
- b) Enclose a self-addressed stamped mailing envelope with the proposals. When the Board has completed its review, proposals will be returned using this envelope.

In accordance with existing statute, the Board will retain one copy of each proposal submitted.

Any questions concerning the Board's procedures or their schedule for the project herein described may be referred to George Iwan at (612) 296-4656.

STATE CONTRACTS

7a) PROJECT—39-84

**Grand Rapids Truck Station
Department of Transportation
Grand Rapids, Minnesota
Total Project Budget: \$670,000.00**

General Description:

This project consists of a building of approximately 13,300 sq. ft. for equipment storage and resident engineer construction office. Also included is total site development on a 7.6 acre site in the suburb of La Prairie including site plan, grading, surfacing, fencing and landscaping.

Design Contract:

This project has had no prior consultant architect involvement. The fee offered is 7% of construction cost. The Minnesota Department of Transportation contact person is Paul M. Jensen, Building Engineer at 297-3591 for more information regarding this project. It is desired that the architect be located reasonably close to the site for construction observation and coordination.

7b) PROJECT—40-84

**Chaska Truck Station
Department of Transportation
Chaska, Minnesota
Total Project Budget: \$550,000.00**

General Description:

This project consists of a building of approximately 11,000 sq. ft. for equipment storage on a 6 acre site north of Chaska just east of Trunk Highway 41. Also included is total site development including a master site plan, grading, surfacing, fencing, and landscaping.

Designer Contract:

This project has had no prior consultant architect involvement. The fee offered is 7% of construction cost. The Minnesota Department of Transportation contact person is Paul M. Jensen, Building Engineer at 297-3591 for more information regarding this project.

John D. Nagel, Chairman
State Designer Selection Board

SUPREME COURT

Decisions of the Supreme Court Filed Friday, September 21, 1984

Compiled by Wayne O. Tschimperle, Clerk

C9-83-609 State of Minnesota v. Nicholas Cerceo, Appellant. Koochiching County.

Evidence was sufficient to sustain defendant's conviction of assault with a dangerous weapon, and trial court did not err in refusing to sentence defendant without regard to mandatory minimum term law.

Affirmed. Amdahl, C.J.

C9-83-559 State of Minnesota v. James Phillip Berkelman, Appellant. St. Louis County.

Trial court, in prosecution of defendant for aggravated DWI, erred in refusing to accept stipulation and let defendant remove from the jury the issue of whether defendant had a prior DWI conviction, but the error was not so prejudicial as to require a new trial.

Affirmed. Amdahl, C.J.

Concurring specially, Kelley, J.

C0-83-1728 Essie B. Johnson, Relator, v. Angelus Convalescent Home, et al., Minnesota Department of Public Welfare. Workers' Compensation Court of Appeals.

When a provision in an award on stipulation relieves the employer-insurer of all liability for medical expenses to the date of the award, and the record as a whole tends to support the employee's claim that the provision was the consequence of mistake, an order denying her petition to vacate the medical expense provision of the award is set aside and the matter is remanded for an evidentiary hearing.

Order set aside and matter remanded. Peterson, J.

C7-83-1872 Michael Murphy, Relator, v. Dulaney Investments and Hartford Insurance Company, Intervenor. Workers' Compensation Court of Appeals.

An out-of-state employee injured in Minnesota is within the coverage of the Minnesota Workers' Compensation Act when, by dismissing with prejudice a compensation proceeding he had commenced in the state where he was hired, he chooses to forego any compensation claim he could have otherwise pursued there.

Reversed and remanded. Todd, J.

CX-82-1502 State of Minnesota v. James Leon Stephanie, Appellant. Benton County.

Defendant received a fair trial, was properly convicted of criminal sexual conduct and false imprisonment, and was properly sentenced to a minimum term as a second sex offender.

Affirmed. Todd, J.

C8-83-1072 John Schulte, Relator, v. Transportation Unlimited, Inc., and Commissioner of Economic Security. Department of Economic Security.

A notice to a discharged worker informing him that his new employer had appealed a determination of the worker's eligibility for unemployment compensation violated due process protections when it failed to apprise the employee that he could be liable for benefits previously paid and any repayment required would be charged against future unemployment compensation claims.

Reversed. Todd, J.

Took no part, Kelley, J.

C3-82-1034 State of Minnesota v. John D. Kumpula, Appellant. Anoka County.

Evidence that defendant robbed a drug store and assaulted a person during his getaway was sufficient to sustain his convictions.

Police officer properly accompanied caretaker into defendant's girlfriend's apartment 2 days before robbery to see if apartment was still occupied, but was not justified in rummaging through box of personal papers which defendant kept in closet of apartment; any error in admitting testimony as to observation of officer was nonprejudicial.

Trial court did not err in admitting other-crime evidence.

Trial court did not err in admitting photograph of defendant taken in prison yard, when it is highly unlikely the jury could tell the photograph was taken in a prison setting or otherwise infer from it that defendant had a prior criminal record.

Affirmed. Todd, J.

C6-83-549 State of Minnesota v. Steven B. Hyvare, Appellant, Hennepin County.

Defendant received a fair trial and was properly found guilty of aggravated robbery.

Affirmed. Coyne, J.

C3-83-962 Mark Wills, Appellant, v. K-Mart Corporation, Dennis Wills. Dakota County.

Doctrine of parent-child tort immunity was not applicable where allegation was that father engaged in affirmative act of negligence by furnishing a defective tool without providing protective eyewear to 15-year-old son.

Reversed and remanded. Coyne, J.

Dissenting, Simonett, J. & Kelley, J.

Decisions of the Court of Appeals Filed Tuesday, September 18, 1984

Compiled by Wayne O. Tschimperle, Clerk

C8-84-479 David James, Relator, v. Commissioner of Economic Security. Department of Economic Security.

The Commissioner's determination relator's job search was inadequate is supported by the record and properly reflects

SUPREME COURT

consideration of the general criteria in Minn. Rules 3305.0600 (1983) measured against relator's particular circumstances as required by *James v. Commissioner of Economic Security*, 339 N.W. 2d 891 (Minn. 1983).

Affirmed. Popovich, C.J.

Dissenting, Crippen, J.

CX-84-466 Russell Bartlett, et al., Appellants, Walter T. Miller, v. Miller and Schroeder Municipals, Inc., et al., Edward C. Lemke, et al., Paul W. Price, Warren J. Peterson and International Organics, Inc. St. Louis County.

The filing of a class action suit tolls the running of the statute of limitations as to all asserted members of the class who would have been parties had the action been certified as a class action.

The class action tolling rule of *American Pipe* is based on an accommodation of the policies served by class action litigation with those served by statutes of limitation.

The burden is on the plaintiff seeking relief from the running of the statute of limitations to show the statute should be tolled.

The policies served by class action litigation do not require the tolling of the statute of limitations following the filing of a second class action suit where the asserted class members have received notice of the earlier denial of class certification and the necessity of individual action in order to preserve their claims.

Affirmed. Popovich, C.J.

C6-84-349 Sharon and Myron Christopherson, Appellants, v. Independent School District No. 284, Medicine Lake Bus Company and Bernard Lyon Doherty. Hennepin County.

The trial court erred by forbidding counsel to comment upon the effect of the jury's answers to the percentage of negligence question in a comparative fault matter.

Reversed and remanded. Popovich, C.J.

C0-83-2039 Paul Marlow Miller, Appellant, v. Commissioner of Public Safety. Dakota County.

Appellant was properly administered a preliminary breath test under the implied consent statute.

Affirmed. Popovich, C.J.

C6-83-1961 Tennant Company, Appellant, v. Advance Machine Company, Inc. Hennepin County.

Punitive damages may be imputed to the principal for illegal acts of its employee when the employee has managerial capacity and when the principal ratifies the acts.

For purposes of conversion, an owner retains a property interest in sales leads disposed of in its dumpster.

Confidential sales leads are trade secrets within the meaning of the California Unfair Practices Act.

Use of the word "unlawful" twice in separate contexts of a jury instruction was not confusing.

Affirmed in part, reversed in part. Parker, J.

C8-84-398 Security State Bank of Aitkin v. Carl A. Morlock, Home Mutual Insurance Company, Appellant. Crow Wing County.

The assignor did not retain control or power of revocation over an assigned claim by having the insurance company draft issued to him as payee.

The payee has no right to stop payment on a draft.

The evidence was sufficient to support the trial court's finding of constructive notice of assignment where obligor is informed of assignment of a claim by letter, marks its file that the funds are to be sent to the assignee, and admits receiving several calls of inquiry from the assignee regarding the status of the assigned funds.

The obligor/insurance company violated the assignment by stopping payment on the draft issued in favor of the assignor/insured, issuing a second draft without inquiry to the assignee/bank, and delivering the second draft to the assignor/insured.

Affirmed. Parker, J.

C8-84-692 Jostens, Inc., v. Mission Insurance Company, Appellant, Employers Insurance of Wausau. Ramsey County.

An insured is not the real party in interest in an action to recover attorneys' fees from one of its insurers if, by prior settlement, another insurer is entitled to the proceeds from that action.

Reversed. Foley, J.

C9-84-23 State of Minnesota v. Ronald B. Petrin, Appellant. Mille Lacs County.

Appellant is entitled to have his stayed sentence on burglary executed and served concurrent with his sentence on first degree criminal sexual conduct.

Affirmed as modified. Foley, J.

C7-84-652 Kathryn Margaret Giddings, Petitioner, v. Commissioner of Public Safety. Hennepin County.

Reasonable and probable grounds existed to invoke the implied consent law where the officer had numerous indications of possible intoxication.

Reversed. Wozniak, J.

C2-84-798, C0-84-802, C2-84-803, C4-84-804, C6-84-805 State of Minnesota v. Donald Richard Burdick, Appellant. Renville County, McLeod County, Kandiyohi County, Redwood County, Sibley County.

A request for execution of a sentence must be granted when the conditions of probation are more onerous than the executed prison sentence.

A restitution obligation not agreed to by the defendant must be vacated if the defendant receives an executed sentence.

A trial court may not order a defendant to participate in a chemical dependency program as a condition of an executed sentence.

Reversed. Wozniak, J.

C5-84-455, C7-84-456, C9-84-457, C0-84-458, C2-84-459 C9-84-460 State of Minnesota v. Randy M. Sargent, Appellant. Blue Earth County, Nicollet County.

A defendant sentenced to four concurrent executed prison sentences has a right to execution of three prior probationary sentences.

A defendant who agrees to make restitution as part of a negotiated plea in which several charges are dropped is under an obligation to make restitution even if the trial court has imposed an executed prison sentence.

Affirmed as modified. Wozniak, J.

C7-84-540 In the Matter of the Estate of: Martha E. Hoffman, a/k/a Martha Hoffman, Decedent. Rice County.

The trial court did not err in ruling that the decedent lost her homestead exemption under Minn. Stat. § 510.07 (1982).

Affirmed. Sedgwick, J.

C2-84-171 State of Minnesota v. Vincent Duane Folkert, Appellant. Olmsted County.

Appellant was not denied a fair trial when the State was permitted to comment on appellant's prearrest silence.

When appellant failed to object to the admissibility of allegedly improper testimony he may not object to its admissibility for the first time in a motion for a new trial, or on appeal.

Affirmed. Sedgwick, J.

C1-84-940 Maiers Lumber & Supply, Inc., and Maiers Transport & Warehousing, Inc., Appellants, v. Chancey Trailers and /or Trail-O-Matic, Inc. Stearns County.

Minnesota courts have no personal jurisdiction over a Florida corporation whose only contact with the state was the sale and delivery of six trailers to a Minnesota resident.

Affirmed. Lansing, J.

C7-84-98 Lenora Ann Kleinhuizen, Appellant, v. Larry James Kleinhuizen. Kandiyohi County.

The trial court correctly denied appellant's motion to compel respondent to continue paying child support past the child's eighteenth birthday and until graduation from high school because the divorce decree made no provision for continuation and the law in effect at the time of the dissolution terminated child support at age 18.

The trial court did not abuse its discretion in denying appellant's motion for an increase in child support because the record shows no clear and substantial change in circumstances.

Affirmed. Lansing, J.

SUPREME COURT

C5-84-584 James G. Watters, et al., Appellant, v. Buckbee Mears Co., Tousley Development Corp., City of White Bear Lake, Jean T. Goins. Ramsey County.

A possessor of land has no duty to warn adult trespassers who are already aware of obviously dangerous artificial conditions on the property.

An action by trespassers against a possessor of land is not barred by Minn. Stat. § 87.025-.03 (1982), the recreational use statute, because the land was not offered for public use.

Affirmed in part, reversed in part. Lansing, J.

C3-84-244 Larry D. Sohns, v. Theodore Pederson, Jr., Appellant. Hennepin County.

Defendant is estopped from asserting the statute of limitations when plaintiff reasonably relied on defendant's representations.

Plaintiff is not entitled to pre-judgment interest when the damages are not readily ascertainable.

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

C2-84-395 In Re: the Marriage of: Irene A. Helland, Petitioner, v. Robert L. Helland, Appellant. Hennepin County.

It is not error for a trial court to refuse to consider tax consequences of a retirement fund distribution which may not occur for at least ten years.

The trial court did not err in treating appellant's loan from his pension fund as a withdrawal of marital assets.

The child support award, set at the recommended guidelines amount, was proper.

There were no other material errors in the property distribution.

Affirmed. Huspeni, J.

C0-84-234 Clarence Birk v. Pyong Lane, Appellant. Hennepin County.

A lease providing for a tenancy until litigation between the tenant and landlord is resolved describes a tenancy for a fixed term, which is subject to the redemption provisions of Minn. Stat. § 504.02 (1982).

Reversed. Huspeni, J.

C8-84-28 Dale Neilan v. Craig G. Braun, Appellant. Dakota County.

In determining damages the trial court need not adopt an amount specifically offered in evidence. If the damages found fall within the mathematical limits established by the evidence and the evidence otherwise supports the determination, then the reviewing court must sustain the trial court's finding.

Where a cattle owner knows his cattle have entered and are likely to reenter land leased from him and he fails to prevent reentry, although he has the ability to do so, he becomes liable to the lessee for both actual damages and, under Minn. Stat. § 561.09, treble damages.

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

C5-84-97 In Re: the Marriage of: Joel F. Hegerle, Petitioner, v. Roberta K. Hegerle, etc., Appellant. Otter Tail County.

An order to amend a dissolution decree is not an appealable order. An appeal should be taken from the judgment as amended.

Modifications of custody provisions must be supported by findings of fact.

Although the trial court's order was unsupported by findings of fact, the record would reasonably sustain findings that the modification was in the best interests of the child.

An evidentiary hearing was not required in this situation involving joint physical custody where one parent's motion to remove the child was denied.

Affirmed. Leslie, J.

C3-84-423 Brinks, Inc., Relator, v. Minnesota Public Utilities Commission. Minnesota Public Utilities Commission.

The Minnesota Public Utilities Commission had jurisdiction to render a final agency decision in a motor carrier authority contested case submitted to the Commission before July 1, 1983.

The Commission's decision granting Rochester Armored Car Company's petition for irregular route common carrier authority is supported by substantial evidence.

The Commission's deviation from the hearing examiner's findings and rejection of his recommendations was not arbitrary and capricious.

Affirmed. Leslie, J.

C7-83-1760 State of Minnesota, Appellant, v. Ricky Joseph Galarneault. Mille Lacs County.

Police detention of a driver arrested for DWI is proper even though the arresting officer failed to check off a reason for detention on the detention report form.

Police do not have a duty to assist a driver charged with DWI in obtaining an additional chemical test under Minn. Stat. § 169.123 subd. 3 (1982).

When a driver is properly detained following arrest for DWI, Minn. Stat. § 169.123 subd. 3 does not require police to release defendant to obtain an additional chemical test.

Reversed and remanded. Leslie, J.

C0-83-1938 In Re: Guardianship of Francis Sadie Huesman, Ward. Clay County.

In an action by a guardian to sell a ward's real estate, where the ward's sons requested the probate court to award specific performance of an alleged oral contract to convey the land to them, the court erroneously conveyed a portion of the land to the sons and ordered the remainder to be sold.

Reversed and remanded. Leslie, J.

C5-84-181 R. M. Parranto Company, Inc., v. Herbert Bernick, Appellant. Ramsey County.

A real estate broker substantially complied with the requirement that real property be listed in writing for sale or lease before an action for a commission is brought.

A real estate broker's failure to plead and prove its real estate agent's license is a defense which defendant waives unless asserted at trial.

Affirmed. Leslie, J.

C2-84-588 Oliver Dahle, Petitioner, v. Red Lake Watershed District, Appellant. Pennington County.

The Red Lake Watershed District is a political subdivision within the meaning of Minn. Stat. § 197.46 (1982) of the Veterans Preference Act, thereby entitling Dahle to the protection of the procedural requirements afforded by the Act.

The issue of whether or not a discharged employee of a watershed district is exempt from the Veterans Preference Act cannot be raised for the first time on appeal but is a matter that can be determined by the hearing authority established under the provisions of Minn. Stat. § 197.46 (1982).

Affirmed. Nierengarten, J.

C8-84-627 City of Lamberton, Appellant, v. Randal James Mickelson. Redwood County.

The record establishes the trial court granted a new trial upon the court's own motion within 15 days after verdict or finding of guilty.

Affirmed. Nierengarten, J.

C3-84-468 David J. Vadnais, Appellant, v. State Farm Mutual Automobile Insurance Company, Illinois Farmers Insurance Company, Home Mutual Insurance Company. Washington County.

An automobile which was not a named vehicle in any liability insurance policy was not an "uninsured motor vehicle" for purposes of Minn. Stat. § 65B.49, subd. 4(3) (1982) where its operator at the time of the accident was covered by a liability policy which provided coverage to the injured party.

Affirmed. Randall, J.

C2-83-2024 Lawrence F. Kleis, et al., Appellants, v. Gordon G. Johnson. Washington County.

An easement over a driveway on respondent's property was impliedly reserved when, at the time appellants deeded away the property now owned by respondent, that driveway was the only means of access to appellants' home. The deed to respondent from a third party may be reformed to reflect that easement.

Reversed and remanded. Randall, J.

SUPREME COURT

C7-84-36 Debra Ann Johnson (Pesta), v. Charles Evert Moberg, Defendant and Third-Party Plaintiff, Appellant, v. Jerry Betsinger and Russell Betsinger, et al., Third-Party Defendants, Todd County.

A plaintiff is not entitled to interest on a verdict for damages when liability issues must be retried.

Reversed. Crippen, J.

C0-84-203 Metropolitan Medical Center, Relator, Debra A. Richardville, et al., Commissioner of Economic Security. Department of Economic Security.

For purposes of unemployment compensation, the lay-off of employees without taking any steps to avoid or delay work force reductions once a ten-day notice of intent to strike is given, will be viewed as a lockout.

Under the facts in this case, the lay-offs of registered nurses constituted a lockout and therefore they are entitled to unemployment compensation benefits.

Affirmed. Crippen, J.

C9-84-278 In the Matter of the Estate of Gust Langlie, Deceased. Clay County.

Probate court findings on a contested Will and Codicil must be sustained unless clearly erroneous.

A contestant has the burden to show a Will was revoked, but evidence of loss of a Will possessed by the testator puts upon the proponent the burden to go forward with proofs on nonrevocation. The contestant has the ultimate burden of persuasion on a revocation issue.

Evidence here sustains a finding that a Will and Codicil of decedent were misplaced but not revoked.

Affirmed. Crippen, J.

CX-84-273 In Re: the Marriage of: Hazel M. Schack, Petitioner, Appellant, v. Russell A. Schack. Carver County.

The trial court properly admitted expert appraisal testimony from a witness who had not seen the valuated property.

The trial court's modification of spousal maintenance and property distribution was proper.

The trial judge could rescind an order disqualifying himself for prejudice.

Affirmed. Crippen, J.

MEMORANDUM OPINION AND ORDER

C7-84-1106 State of Minnesota v. Vivian L. Wright, Appellant. Hennepin County.

Appellant is entitled to credit for time spent in the workhouse as a condition of probation when the stay of execution of sentence is later revoked.

Reversed. Foley, J.

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