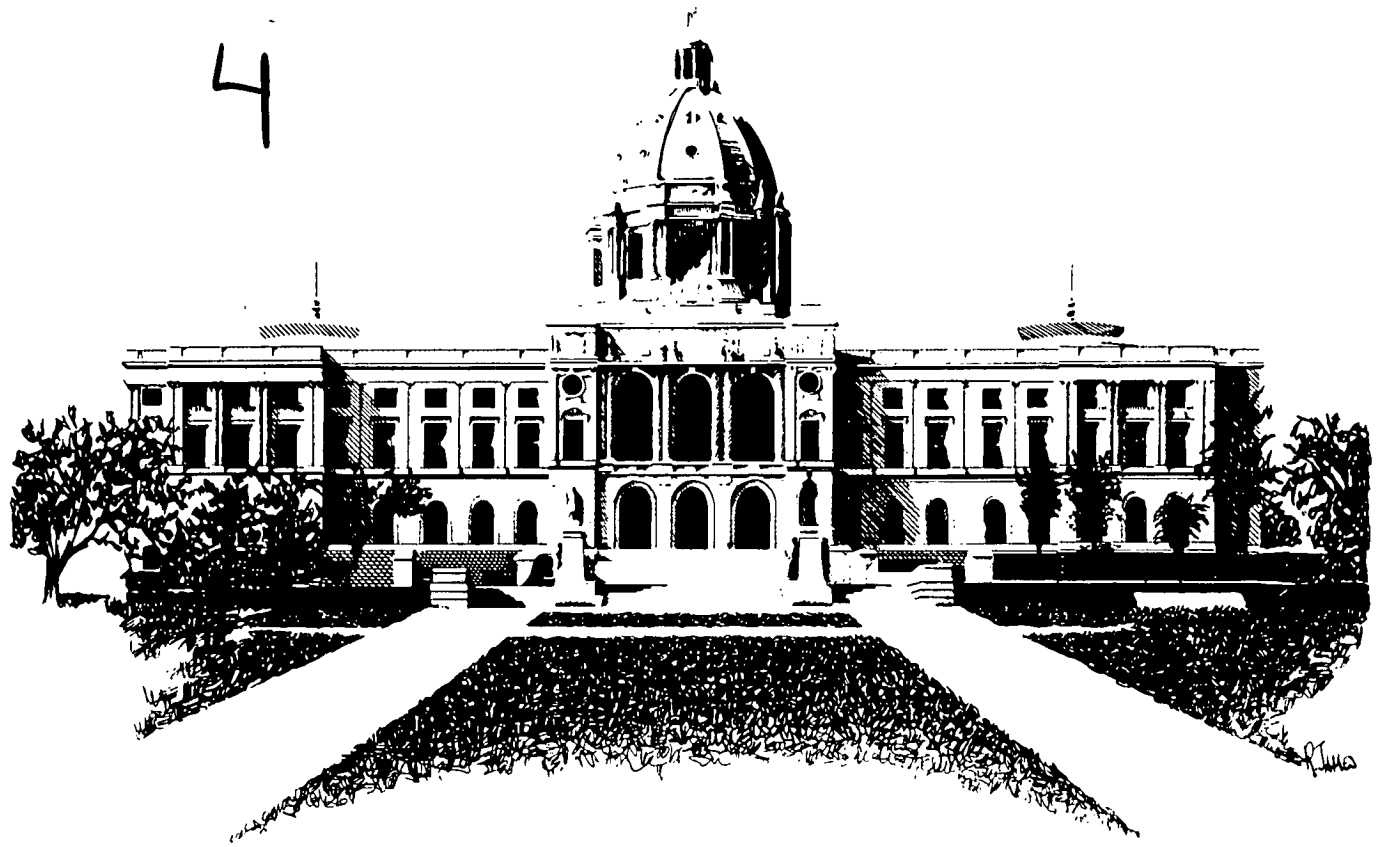


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STATE REGISTER

STATE OF MINNESOTA

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VOLUME 10, NUMBER 28

January 6, 1986

Pages 1489-1520



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 10			
29	Friday December 27	Monday January 6	Monday January 13
30	Monday January 6	Monday January 13	Monday January 20
31	Monday January 13	Monday January 20	Monday January 27
32	Monday January 20	Monday January 27	Monday February 3

*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 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 April 8, 1985 are published in the Minnesota Rules 1985. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 will be included in a supplement scheduled for publication in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules 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 Issue number. Includes: Issues 1-13, inclusive (Issue 39, cumulative for 1-39); Issues 14-25, inclusive (Issues 40-51, inclusive); Issue 26, cumulative for 1-26 (Issue 52, cumulative for 1-52); Issues 27-38, inclusive.

The listings are arranged in the same order as the table of contents of the Minnesota Rules 1985.

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EXECUTIVE ORDERS

Executive Order No. 85-17

Providing for the Renaming of Minnesota's State Hospitals

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, Minnesota Statutes, Section 245.0312 authorizes the Department of Human Services, upon approval of the Governor, to rename Minnesota's State Hospitals as Regional Centers; and

Whereas, Minnesota Statutes, Section 252.025 and Section 254.05 (as amended, Minnesota Laws 1985, First Special Session, Chapter 9, Articles 2, 27 and 29) authorize the Commissioner of the Department of Human Services to use the terms "human services" or "treatment" in the designation of the State Hospitals; and

Whereas, the Commissioner of the Department of Human Services has determined that it is appropriate and desirable to rename Minnesota's State Hospitals;

NOW, THEREFORE, I hereby order that:

1. Minnesota's Anoka State Hospital shall henceforth be designated as follows:
Anoka-Metro Regional Treatment Center.
2. Minnesota's Brainerd State Hospital shall henceforth be designated as follows:
Brainerd Regional Human Services Center.
3. Minnesota's Cambridge State Hospital shall henceforth be designated as follows:
Cambridge Regional Human Services Center.
4. Minnesota's Faribault State Hospital shall henceforth be designated as follows:
Faribault Regional Center.
5. Minnesota's Fergus Falls State Hospital shall henceforth be designated as follows:
Fergus Falls Regional Treatment Center.
6. Minnesota's Moose Lake State Hospital shall henceforth be designated as follows:
Moose Lake Regional Treatment Center.
7. Minnesota's St. Peter State Hospital shall henceforth be designated as follows:
St. Peter Regional Treatment Center.
8. Minnesota's Willmar State Hospital shall henceforth be designated as follows:
Willmar Regional Treatment Center.

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, 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 December, 1985.



EXECUTIVE ORDERS

Executive Order No. 85-18

Directing State Departments and Agencies to Recognize the Importance of Mineral Exploration and Mining to Minnesota

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, Minnesota ranks first among all states in the value of iron ore produced and ranks in the top four states in total nonfuel mineral production; and

Whereas, the iron ore and taconite industry has been an important industry to Minnesota throughout this century; and

Whereas, there is tremendous potential for other mineral industries in Minnesota, especially base and precious metal and precious minerals mining; and

Whereas, Minnesota has developed a large and comprehensive body of laws relating to the development of minerals in the state; and

Whereas, the laws of Minnesota encourage the development of mining, with due consideration and concern about the effects of mining on the environment; and

Whereas, the United States Congress has restated in similar terms in the National Materials and Minerals Policy, Research and Development Act of 1980, that the opening mineral policy of the United States is to "promote an adequate and stable supply of materials necessary to maintain national security, economic well-being and industrial production with appropriate attention to a long-term balance between resource production, energy use, a healthy environment, natural resources conservation and social needs;" and

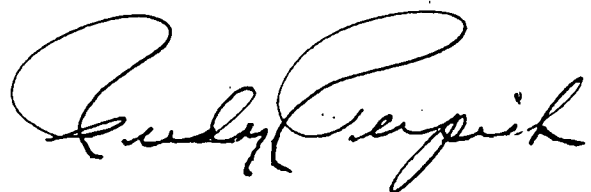
Whereas, it is desirable at this point in Minnesota's history to reaffirm the importance of past, present and future mining to the State and the significance of the body of law which authorizes and guides mineral development in the state;

NOW, THEREFORE, I hereby order that:

The responsible Departments and Agencies of the State of Minnesota are directed to recognize the importance of mining to Minnesota, the tremendous potential for future mineral development, and the impact of their programs on mineral exploration and mining; and further, these responsible Departments and Agencies are directed to encourage the development of mineral exploration and mining in this state, with due concern for the effects of mining on the environment.

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 16th day of December, 1985.



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.

Housing Finance Agency

Proposed Rules Relating to Elderly Home Sharing Program

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. Sec. 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules within the 30-day comment period. Such comments are encouraged, and should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule may be modified as the result of comments received 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 twenty-five or more persons submit written requests for a public hearing on the proposed rule 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 Minn. Stat. Sec. 14.14 *et. seq.* 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 addressed, the reason for the request, and any change proposed.

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

Kathleen J. Johnson
Legal Division
Minnesota Housing Finance Agency
Suite 300
400 Sibley Street
St. Paul, Minnesota 55101
Telephone: 612/296-9793

Authority for the adoption of these rules is contained in Minn. Stat. Sec. 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson 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 a designee of the Attorney General for review as to form and legality, including the issue of substantial change, and to determine whether the agency has the authority to adopt the rules and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to receive notice of the date of submission of these rules to the Attorney General for review, or who wish to receive a free copy of the final rules as adopted, should make such requests to Kathleen J. Johnson.

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

PROPOSED RULES

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen.J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. Sec. 10A.01, Subd. 11 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 \$250.00, 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 \$250.00, 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 (612) 296-5615.

January 3, 1986

James J. Solem
Executive Director

Rules as Proposed (all new material)

4900.1800 SCOPE.

Parts 4900.1800 to 4900.1803 govern the implementation of the elderly home sharing program.

4900.1801 DEFINITIONS.

Subpart 1. **Agency.** "Agency" means the Minnesota Housing Finance Agency.

Subp. 2. **Applicant.** "Applicant" means one or more entities which submit an application to the agency for an elderly home sharing program grant or loan.

Subp. 3. **Application.** "Application" means a submittal requesting a grant or loan of funds to pay the cost of either one or both of the following:

- A. developing; or
- B. administering

an elderly home sharing program.

Subp. 4. **Elderly home sharing program or program.** "Elderly home sharing program" or "program" means the agency's plan and procedures designed to provide grants or loans to eligible applicants for the development and administration of home sharing programs which match existing low and moderate income elderly homeowners with prospective tenants who will contribute either rent or services to the homeowner.

Subp. 5. **Low and moderate income elderly or elderly.** "Low and moderate income elderly" or "elderly" means persons 55 years of age or older with incomes that do not exceed the greater of 80 percent of the statewide or area median household income as estimated by the United States Department of Housing and Urban Development, and who reside and have an ownership interest in a single family house located in Minnesota.

Subp. 6. **Tenant.** "Tenant" means a person of any age who will pay rent and provide services in exchange for being able to share an elderly homeowner's residence.

4900.1802 ELIGIBILITY.

To be eligible for selection as a recipient of a grant or loan under the program, an applicant must satisfy the following requirements:

A. The applicant must be a nonprofit entity as defined in part 4900.0010, subpart 21.

B. The applicant must provide a comprehensive plan for providing an elderly home sharing program and document his or her ability to establish and maintain that program for a period of time specified by the agency. At a minimum this plan must include:

- (1) documentation of a need for this type of service in the proposed geographical area;
- (2) a description of the applicant's goals and objectives in meeting the area's need for elderly home sharing;
- (3) a detailed description of how the proposed program would be administered, including qualifications of staff;
- (4) a detailed budget for the specified period showing all costs and sources of funds to pay them; and
- (5) documentation of fiscal responsibility and the ability to establish and maintain a home sharing program.

4900.1803 SELECTION CRITERIA.

The agency will take the following criteria into consideration when determining whether an applicant will receive a grant or loan under the program:

- A. The prior experience of the applicant in establishing and maintaining a home sharing or similar program.
- B. The extent to which grant or loan funds are combined with other funds from private or public sources to make the program economically feasible.
- C. The ability of the applicant to proceed expeditiously with the program.
- D. The documented need for the home sharing program in the proposed location.
- E. The geographic area to be served, to the end that a reasonable distribution of programs throughout the state can be achieved.
- F. The extent of community support for the project.

Housing Finance Agency

Proposed Rules Relating to Shared Housing Program

Rules as Proposed (all new material)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. Sec. 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules within the 30-day comment period. Such comments are encouraged, and should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule may be modified as the result of comments received 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 twenty-five or more persons submit written requests for a public hearing on the proposed rule 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 Minn. Stat. Sec. 14.14 *et. seq.* 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 addressed, the reason for the request, and any change proposed.

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

Kathleen J. Johnson
Legal Division
Minnesota Housing Finance Agency
Suite 300
400 Sibley Street
St. Paul, Minnesota 55101
Telephone: 612/296-9793

Authority for the adoption of these rules is contained in Minn. Stat. Sec. 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson 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 a designee of the Attorney General for review as to form and legality, including the issue of substantial change, and to determine whether the agency has the authority to adopt the rules and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules.

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

PROPOSED RULES

Persons who wish to receive notice of the date of submission of these rules to the Attorney General for review, or who wish to receive a free copy of the final rules as adopted, should make such requests to Kathleen J. Johnson.

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. Sec. 10A.01, Subd. 11 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 \$250.00, 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 \$250.00, 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 (612) 296-5615.

January 3, 1986

James J. Solem
Executive Director

Rules as Proposed (all new material)

4900.1804 SCOPE.

Parts 4900.1804 to 4900.1808 govern the implementation of the shared housing program.

4900.1805 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 4900.1804 to 4900.1808 have the meanings given them in this part.

Subp. 2. **Agency.** "Agency" means the Minnesota Housing Finance Agency.

Subp. 3. **Applicant.** "Applicant" means one or more persons or entities who submit an application to the agency for a shared housing grant or loan.

Subp. 4. **Application.** "Application" means a submittal requesting a grant or loan to pay the cost of acquisition, construction, or rehabilitation of a structure into a shared housing facility for occupancy by low and moderate income elderly.

Subp. 5. **Low and moderate income elderly or elderly.** "Low and moderate income elderly" or "elderly" means persons 55 years of age and older with incomes which do not exceed the greater of 80 percent of the statewide or area median household income as estimated by the United States Department of Housing and Urban Development.

Subp. 6. **Shared housing program or program.** "Shared housing program" or "program" means the agency's plan and procedures designed to provide grants or loans to housing sponsors for the acquisition, construction, or conversion of existing structures into shared housing facilities that contain from three to 12 private sleeping rooms, with shared cooking facilities and common space, for occupancy by low and moderate income elderly.

Subp. 7. **Structure.** "Structure" means a building to be acquired, constructed, or rehabilitated for use as shared housing.

Subp. 8. **Shared housing.** "Shared housing" means a structure for occupancy by the elderly that contains from three to 12 private sleeping rooms, shared cooking facilities, and common space.

4900.1806 APPLICANT ELIGIBILITY.

To be eligible for selection as a recipient of a grant or loan, an applicant must satisfy the following requirements:

A. The applicant must be a housing sponsor as defined in part 4900.0010, subpart 13.

B. The applicant must provide a comprehensive plan for providing a shared housing structure, and document the ability to successfully maintain the structure in accordance with its intended use for a period of time specified by the agency. At a minimum this plan must include:

(1) documentation of the need and desirability of the proposed shared housing;

(2) a description of the applicant's goals and objectives for meeting the special needs of the population to be served;

(3) a detailed budget for the acquisition, construction, or rehabilitation of the proposed structure;

(4) documentation of an ability to successfully match potential tenants in the shared housing facility;

(5) documentation of an ability to provide any required support and services for the tenants in the shared housing facility; and

(6) documentation of fiscal responsibility and the ability to complete the acquisition, construction, or rehabilitation of the structure and to maintain the structure in accordance with its intended use for a period of time specified by the agency.

4900.1807 STRUCTURE ELIGIBILITY.

To be eligible for selection for a grant or loan, a proposed shared housing facility must satisfy the following requirements:

- A. The structure must contain from three to 12 private sleeping rooms, shared cooking facilities, and shared common space.
- B. The structure must provide shared housing for low and moderate income elderly.
- C. The structure must provide a physical environment that is responsive to the needs of the population to be served.
- D. The structure must comply with applicable state and local codes, zoning ordinances, land use provisions and laws.
- E. The structure must be located in Minnesota.

4900.1808 SELECTION CRITERIA.

The agency will take the following criteria into consideration when determining which applications will be funded:

- A. The amount of experience of the applicant in establishing and maintaining shared housing facilities.
- B. The extent to which the grant or loan funds are combined with other funds from private or public sources.
- C. The ability of the applicant to proceed promptly with the acquisition, construction, or rehabilitation of the structure.
- D. The suitability of the proposed structure for its intended use, including its location within the community, its homelike qualities, and its image and attractiveness.
- E. The documented need for shared housing in the proposed location.
- F. The ability of the applicant to maintain the facility for its intended use for a period of time specified by the agency.
- G. The reasonableness of the cost of acquisition, construction, or rehabilitation of the structure.
- H. The location of the proposed facility, so as to allow for a reasonable distribution of facilities throughout the state.
- I. The extent of community support documented for the proposed facility.
- J. The extent to which the applicant uses innovative, cost effective techniques in providing the shared housing structure and in maintaining it as a desirable place for the elderly to reside.

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.

Department of Commerce

Adopted Rules Governing Discrimination Because of Blindness

The rules proposed and published at *State Register*, Volume 10, Number 13, pages 674-675, September 23, 1985 (10 S.R. 674) are 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

Adopted Rules Governing Design and Construction Loans; District Heating; Authority

The rules proposed and published at *State Register*, Volume 10, Number 1, pages 5-8, July 1, 1985 (10 S.R. 5) are adopted with the following modifications:

Rules as Adopted

DISTRICT HEATING LOAN RULES

~~4200.4500~~ 8300.4500 DEFINITIONS.

Subpart 1. **Applicability.** The definitions in Minnesota Statutes, section 116J.36 and part 8300.0100 and the definitions in this part apply to parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5100.

~~4200.4600~~ 8300.4600 PURPOSE.

Parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5100 are adopted for the purpose of allowing prompt and proper applications for design and construction loans after comprehensive preliminary engineering, economic, and, when applying for a construction loan, design studies have been completed. Applications to the authority must be submitted to the commissioner on behalf of the authority. The commissioner shall review applications to determine the eligibility of the municipality, eligibility of the district heating project, and application completeness. If the commissioner determines that an application is incomplete, the procedures in parts ~~4200.2750~~ 8300.2750 and ~~4200.4300~~ 8300.4300 apply.

~~4200.4700~~ 8300.4700 CONTENTS OF APPLICATION FOR NEW SYSTEM.

A completed application for a loan for a new system shall contain:

E. A complete economic analysis ~~which must include,~~ including:

(1) a preliminary financing and development plan for the district heating system prepared by a financial consultant; ~~and~~ also;

(2) cash flow, income, and balance sheets for the time period of the loan; ~~This analysis must also contain;~~

(3) a cost estimate and expenditure schedule for all transmission and distribution piping, heat source conversion, purchase or rental, operating and maintenance costs excluding fuel costs, and building heating conversion costs; and

(4) a statement showing the source of all of the funds to be used by the applicant for the design or construction of the system, and the amount of funds from each of those sources.

~~4200.4800~~ 8300.4800 CONTENTS OF APPLICATION FOR EXISTING SYSTEM.

~~4200.4900~~ 8300.4900 APPLICATION PROCEDURE.

Subp. 2. **Acceptance of applications.** Applications will be accepted beginning on the date parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5100 become effective.

~~4200.5000~~ 8300.5000 AUTHORITY EVALUATION PROCEDURE.

Applications approved for processing by the commissioner and those applications rejected by the commissioner but appealed to the authority under parts ~~4200.2750~~ 8300.2750, subpart 7 and ~~4200.4300~~ 8300.4300, subpart 7 must be presented to the authority for approval or disapproval under the criteria contained in this part. The authority shall review each application presented to it as it is received according to the eligibility and priority criteria of Minnesota Statutes, section 116J.36; the sophistication and reasonableness of the technical approach as detailed in the application; the experience and qualifications of the applicant as they relate to the district heating project; the district heating project organization and personnel assignment; and the estimated cost of the district heating project. If the authority approves the application the commissioner shall forward the application to the commissioner of finance who may make loans to the municipality. If the authority disapproves the application, the commissioner shall notify the applicant in writing.

8300.5100 REPORTS AND MONITORING.

Subpart 1. Quarterly project status report. The municipality shall submit to the authority, on forms provided by the authority, a quarterly project status report. This report is due within 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active. The project status report must indicate the progress of the implementation of the district heating project funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If, at any time, the municipality fails to substantially comply with the start and end dates given in the loan application as approved, and

if the municipality cannot reasonably justify to the authority its lack of progress, the entire loan amount may become due and payable at the discretion of the authority.

Subp. 2. Quarterly financial report. The municipality shall submit to the authority, on forms provided by the authority, a quarterly financial status report that indicates expenditures of loan funds through the last date of each quarter. This report is due within 30 days of the end of each calendar quarter until the design or construction of the district heating project is completed and all expenses applicable to the loan are paid. Projects begun part way through a quarter must submit a quarterly report for the portion of the quarter during which the project was active.

Subp. 3. Final report. Within 60 days of the completion of the project, the municipality shall submit to the authority, on forms provided by the authority, a final financial status report that gives expenditures of the district heating project. The final financial report shall give actual expenditures for the costs incurred.

Subp. 4. Failure to comply with provisions of part. If the municipality fails to comply with any of the provisions of this part, the municipality may, with the advice and consent of the authority, be declared ineligible for further contracts with the state under the district heating loan program.

Department of Energy and Economic Development

Adopted Rules Governing Design and Construction Loans; District Heating; Commissioner

The rules proposed and published at *State Register*, Volume 10, Number 1, pages 8-12, July 1, 1985 (10 S.R. 8) are adopted with the following modifications:

Rules as Adopted

4200.2300 APPLICATION PROCEDURE.

Applications for design loans under Minnesota Statutes, section 116J.36 and parts 4200.2100 to 4200.2750 shall be submitted to the commissioner in the form required under parts ~~4300.4700~~ 8300.4700 and ~~4300.4800~~ 8300.4800. Ten complete copies shall be submitted. Applications will be accepted beginning on the date parts 4200.2100 to 4200.2750 become effective.

4200.2350 DISTRICT HEATING ADVISORY TASK FORCE.

Subp. 2. **Task force duties.** The task force shall review each application for a loan under Minnesota Statutes, section 116J.36 and parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000, and shall advise and assist the commissioner in carrying out his or her responsibilities. The commissioner shall retain final responsibility for all statutory and rule requirements.

4200.2750 PROCEDURES FOR APPLICATION PROCESSING.

Subp. 2. **Completed applications.** An application is complete when the commissioner receives all documentation and exhibits required under parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000.

Subp. 8. **Authority evaluation procedure.** Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval under Minnesota Statutes, section 116J.36 and parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000. If the authority approves the application the commissioner shall forward the application to the commissioner of finance who may make loans to the municipality. If the authority disapproves an application, the commissioner shall so notify the applicant in writing.

4200.3900 APPLICATION PROCEDURES.

Subpart 1. **Submitting.** Applications for construction loans under Minnesota Statutes, section 116J.36 and parts 4200.3000 to 4200.4300 must be submitted to the commissioner in the form prescribed under parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000.

4200.4000 DISTRICT HEATING ADVISORY TASK FORCE.

Subp. 2. **Task force duties.** The task force shall review each application for a loan under Minnesota Statutes, section 116J.36

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ADOPTED RULES

and parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000, and shall advise and assist the commissioner in carrying out his or her responsibilities. The commissioner shall retain final responsibility for all statutory and rule requirements.

4200.4050 FEASIBILITY ASSESSMENT.

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

- A. [Unchanged.]
- B. the debt service coverage represented by parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000;
- C. to G. [Unchanged.]

4200.4300 PROCEDURES FOR APPLICATION PROCESSING.

Subp. 2. **Completed applications.** An application is complete when the commissioner receives all documentation and exhibits required under Minnesota Statutes, section 116J.36, and parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000.

Subp. 8. **Authority evaluation procedure.** Applications approved for processing by the commissioner must be presented to the authority for approval or disapproval under Minnesota Statutes, section 116J.36 and parts ~~4200.4500~~ 8300.4500 to ~~4200.5000~~ 8300.5000. If the authority approves the application the commissioner shall forward the application to the commissioner of finance who may make loans to the municipality. If the authority disapproves an application, the commissioner shall so notify the applicant in writing.

Department of Health

Adopted Rules Relating to Merit System

The rules proposed and published at *State Register*, Volume 10, Number 14, pages 727-734, September 30, 1985 (10 S.R. 727) are adopted as proposed.

Department of Human Services

Adopted Rules Relating to Administration of Community Social Services

The rules proposed and published at *State Register*, Volume 9, Number 42, pages 2566-2576, May 27, 1985 (9 S.R. 2566) and Volume 10, Number 4, page 155, July 22, 1985 (10 S.R. 155) are adopted with the following modifications:

Rules as Adopted

9550.0010 DEFINITIONS.

Subp. 2. **Approved vendors.** "Approved vendors" means providers of community social services that have met the standards established by state licensing laws, department rules, or, in the absence of state law or rule, local agency criteria established in accordance with part 9550.0040, subpart 4.

Subp. 4. **Community social services.** "Community social services" means the services included in a county's community social services plan in order to fulfill the county responsibility, as prescribed in Minnesota Statutes, section 256E.08, subdivision 1, to target populations specified in Minnesota Statutes, section 256E.03, subdivision 2. These services are administered by county boards and provided or arranged for the target populations according to the county board's community social services plan.

Subp. 10. **Developmental achievement services.** "Developmental achievement services" means those community social services provided to a client with mental retardation or a related condition on a scheduled basis for periods of less than 24 hours each day away from the client's place of residence in order to assist the client in developing and maintaining life skills and community integration.

Subp. 11. **Emergency social services.** "Emergency social services" means immediate intervention on behalf of an individual to stop or prevent abuse, neglect, harm, or exploitation by others, or to prevent an individual from harming himself or herself or others when there is reason to believe the individual may do so. Social services that are initiated as emergency social services shall cease to be considered emergency social services if extended beyond 30 consecutive days.

Subp. 18. **Placement agreement.** "Placement agreement" means a written document specifying the terms for provision of services to a client that is signed by the approved vendor, the county board where the vendor is located, and, where applicable, the county of financial responsibility or its designee.

Subp. 20. **Residential social support services.** "~~Residential social support services~~" means the ~~community social services provided to a client within a 24-hour per day therapeutic or supportive care live-in setting.~~

~~Subp. 21. State facility.~~ "State facility" means the state hospitals located at Anoka, Brainerd, Cambridge, Faribault, Fergus Falls, Moose Lake, St. Peter, and Wilmar; Ah-Gwah-Ching and Oak Terrace Nursing Homes; and the state school schools for the deaf and blind located at Faribault; and the state Braille and Sight-Saving School.

Subp. ~~22.~~ 21. **Target populations.** "Target populations" means the groups of persons, identified by Minnesota Statutes, section 256E.03, subdivision 2, ~~who~~ whose members are potential recipients of community social services provided or arranged for by county boards.

9550.0020 COUNTY RESPONSIBILITY FOR COMMUNITY SOCIAL SERVICES

Subp. 4. **Eligibility policy and criteria.** The county board shall ~~set~~ establish eligibility policies and criteria for community social services. The eligibility policies and criteria established by the county board must be described in the county's biennial community social services plan. The inclusion of the county board's eligibility policies and criteria shall be one condition of the department's approval of the county's community social services plan as provided under part 9550.0030, subpart 4, item C.

9550.0030 COMMUNITY SOCIAL SERVICES PLAN.

Subp. 4. **Minimum standards.** The county board shall comply with the following minimum standards in order to obtain certification from the commissioner that the community social services plan fulfills the purposes and requirements of Minnesota Statutes, section 256E.09, state and federal law, and the rules of the department.

A. The proposed community social services plan must provide the following documentation of citizen participation in the development of the plan:

(4) documentation of the effect which public comments had on needs assessment, on selection of ~~target populations to be served~~ priorities within and services to be offered for each target population, and on the allocation of money for those services.

B. The plan must specify each target population group or subgroup identified in Minnesota Statutes, section 256E.03, subdivision 2, ~~which the county proposes to serve.~~ Target populations included under Minnesota Statutes, section 256E.03, subdivision 2, clause (i), must be consistent with the overall purpose of Minnesota Statutes, chapter 256E.

C. The plan must include eligibility policies and criteria and client fee policies and schedules.

D. The plan must include the methods used to assess the needs of each target population group or subgroup for community social services, and the information obtained through the needs assessment process. The plan must contain information which indicates:

- (1) total county population for each target population;
- (2) ~~the segment of each target population which the county board anticipates serving;~~
- (3) availability and capacity of community resources, both public and private, including associations of volunteers;
- (4) (3) needed but unavailable resources;
- (5) (4) new resources to be developed during the biennium;
- (6) (5) for persons from each target population:
- (7) (6) the priorities for meeting the needs of each target population;
- (8) (7) the methods used for setting these priorities; and
- (9) (8) the unmet needs of each target population.

G. The plan must specify how the county board plans to make the following services available for persons identified by the county as in need of these services:

- (1) developmental achievement services;
- (2) subacute detoxification services; ~~and~~
- (3) residential services; and
- (4) nonresidential social support services.

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H. The plan must identify for each target population all services the county board proposes to provide, who the service providers shall be, and the planned expenditures for each service. The plan must specify how the county board plans to facilitate access of physically handicapped or impaired persons to the services the county board proposes to provide.

Subp. 7. **Amendment to plan.** The county board shall amend its community social services plan pursuant to Minnesota Statutes, section 256E.09, subdivision 6, and this subpart when the county proposes to:

C. change fee policies or schedules.

The county board shall ~~provide~~ publish notice of the proposed amendment and make it available to county residents upon request. The county board shall permit the public to review and comment on the proposed amendment for a minimum of ~~44~~ 30 calendar days following notice of the proposed amendment following the period for public comment, it shall submit the amendment to the commissioner.

Subp. 8. **Exception to amendment process.** A county board need not go through the amendment process to implement the following changes:

B. a contingency plan, already specified in the approved community social services plan, for prioritizing and delivering ~~nonmandated~~ services not required by federal or state law or regulation when funds are insufficient to provide services to all applicants.

Subp. 9. County board right to appeal. Before the commissioner certifies any reductions in aid under Minnesota Statutes, section 256E.05, subdivision 2, the commissioner shall give 30 days written notice to the county board. The written notice shall inform the county board of the reasons its community social services plan is not approved, the commissioner's intent to certify a reduction in the county board's next quarterly payment, and the county board's right to a hearing under the contested case procedures of Minnesota Statutes, chapter 14. If the commissioner receives a written appeal from the county board within 30 days of the date the written notice is sent, the commissioner shall initiate a contested case proceeding. The commissioner shall not certify any reduction in aid until the hearing is conducted and a decision rendered in accordance with Minnesota Statutes, chapter 14.

9550.0040 GRANTS AND PURCHASE OF SERVICE CONTRACTS.

Subp. 2. **Grant and contract requirements.** Grants and contracts for the purchase of community social services must contain the following:

A. the beginning and ending dates of the grant or contract;

C. the total dollar amount of the grant or contract;

M. local agency procedures for monitoring and evaluation of the grant or contract, including monitoring and evaluating clients' achievement of goals and objectives identified on individual service plans;

P. grounds for termination of the grant or contract; and

Q. provisions, consistent with Minnesota Statutes, chapter 13, permitting the local agency, the department, and the Department of Health and Human Services access to and authority to copy program and fiscal records.

In addition, if proof of applicable licensure or certification and an exposition of staffing, including job descriptions and professional qualifications of personnel, are not contained in the body of the grant or contract, the grant or contract must have them attached to it.

Subp. 3. **Duties of local agency.** The local agency shall:

A. Use a written grant or contract containing all provisions specified in subpart 2 when purchasing community social services. Every grant and purchase of service contract shall be completed, signed, and approved by all parties to the agreement, including the county board. Grants and contracts with individual approved vendors for an amount not to exceed \$10,000 in a calendar year need not be signed by the county board if the county board has designated the local agency to sign on its behalf. No service shall be provided before the effective date of the grant or contract.

B. Determine client's eligibility for purchased services, or delegate the responsibility for making the preliminary determination to the approved vendor under the terms of the grant or contract;

C. Develop an individual social service plan based on the needs of the individual;

D. Provide services required in accordance with individual service plans;

E. Monitor purchased services and evaluate grants and contracts on the basis of outcomes; and

~~E.~~ F. purchase only from approved vendors.

Subp. 5. **Case records and reporting requirements.** Case records and data reporting requirements for grants and purchased services are the same as case record and data reporting requirements for direct services.

Subp. 6. **Files.** The local agency shall keep an administrative file for each grant and contract. The file must contain:

- A. a copy of the signed and completed grant or contract;
- D. copies of correspondence between the local agency and the department relating to the grant or contract;
- E. copies of hearing transcripts, complaints, grievances, and inquiries relating to grant or contract performance; and
- F. financial, statistical, social services, and any other reports specified in the grant or contract.

Subp. 8. **Exceptions to host county contracts.** Host county contracting is not required where the following exceptions apply:

A. The local agency of the county where an approved vendor is located ~~need~~ shall not negotiate a host county contract unless asked to do so by another local agency wishing to purchase from that approved vendor.

C. A local agency within the geographic area served by a community mental health board authorized by Minnesota Statutes, sections 245.61 to 245.69, may contract directly with that community mental health board. However, if a local agency outside of the geographic area served by a community mental health board wishes to purchase services from the board, the local agency shall follow the requirements in subpart § 7.

Subp. 9. **Placement agreements.** A placement agreement must be used for residential services. Placement agreements are valid when signed by authorized representatives of the facility; ~~the county where the approved vendor is located;~~ and the county of financial responsibility; ~~if.~~ If the county of financial responsibility is other than the county where the approved vendor is located, the county of financial responsibility must mail a copy of the placement agreement to the county of service within ten calendar days of the date the placement agreement is signed. The placement agreement must specify ~~the provisions of the client's placement, including that the service provided shall be in accordance with the individual service plan as required under part 9550.0090, subpart 2, and must specify~~ the unit cost, the date of placement, and the date for the review of the placement. A placement agreement may also be used for nonresidential services.

9550.0050 AGREEMENTS BETWEEN COUNTY OF SERVICE AND COUNTY OF FINANCIAL RESPONSIBILITY.

Subp. 3. **Disapproval of an individual service plan by county of financial responsibility.** The county of financial responsibility may disapprove an individual service plan for one or more of the following reasons:

- B. the client's need for service is not established to the satisfaction of the county of financial responsibility; or
- C. ~~the client's need for the service is established but the plan for meeting the need is inappropriate; or~~
- ~~D.~~ the county of financial responsibility makes an alternative offer of service within its own county that meets the needs of the client.

When the county of financial responsibility disapproves an individual service plan, the county shall document the reasons for the decision and shall send this information to be received by the client and the county of service no later than 25 calendar days after receiving the client's application, eligibility documents, and the individual service plan.

9550.0070 APPLICATION FOR SOCIAL SERVICES.

Subpart 1. **Right to apply.** The local agency shall post a notice in a prominent place within the local agency advising individuals of their right to apply for social services and shall advise all individuals who request social services of their right to sign an application for social services without delay during normal business hours and that the application will be processed after it is signed and completed.

Subp. 3. **Application requirement.** Except for information and referral services, an individual must make written application prior to receiving community social services. Emergency social services may be provided to an individual who has not signed an application by following the procedure in subpart 5.

Subp. 4. **Statement of applicant rights and responsibilities.** Before the applicant signs the application, the local agency shall provide to the applicant, on a form prescribed or approved by the department, a written statement containing information on the applicant's rights, the applicant's responsibilities, and how data collected about the applicant will be used. If for any reason an applicant does not understand the written statement, an agency representative shall read the written statement aloud and explain the written statement to the applicant or the applicant's representative. The local agency shall provide interpreters for hearing impaired persons, and foreign ~~and sign~~ language interpretive services if necessary. The agency's representative shall answer any questions the applicant or applicant's representative asks regarding the application process.

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ADOPTED RULES

Subp. 7. **Local agency decision about eligibility and notification to applicant.** The county of financial responsibility shall determine the applicant's eligibility within 30 calendar days after the date on which the application and eligibility forms are completed and signed. Within 15 calendar days after determining eligibility, the local agency shall notify the applicant in writing that the application has been approved or denied unless the community social services are ~~provided~~ initiated prior to the end of the 15 calendar day notice period.

Subp. 8. **Denial of application.** If the application is denied, the local agency shall record the notification date and the reason for denial. The local agency shall also notify the applicant in writing within 15 calendar days after denying eligibility. The notice shall contain the following information:

- A. the reason for denial;
- B. a reference to the specific rule or approved community social services plan provision which is the basis for denial;
- C. an explanation of the applicant's right to appeal the decision to the department; and
- ~~E. D.~~ a description of the appeal procedure.

9550.0090 INDIVIDUAL SERVICE PLAN.

Subpart 1. **Agreement upon plan.** The local agency and the recipient or recipient's representative shall agree upon a plan for the provision of community social services other than emergency social services.

Subp. 2. **Requirements.** The individual service plan must:

- A. be developed with the recipient of the service or the recipient's representative;
- B. be based upon an assessment of the recipient's individual needs;
- C. identify state the need for service; reasons for local agency involvement; the specific services to be provided; the amount, frequency, and duration of service; the service provider; how the services will assist the individual in attaining the highest level of independent functioning appropriate to the individual; and the goals and objectives to be achieved;
- ~~E. D.~~ specify the purpose of contacts between the ~~social worker~~ local agency and the client and the frequency of the contacts;
- ~~D. E.~~ state the anticipated time necessary to accomplish the identified goals and objectives; and
- ~~E. F.~~ specify agreed upon times to review the plan, to address the client's progress toward achieving goals and objectives, and to revise the plan as necessary. The plan must be reviewed at least annually. The review and assessment requirements of this part do not negate the requirements of other laws or department rules.

9550.0091 CLIENT'S RIGHT TO ACCEPT OR REJECT SERVICES.

An applicant or client may accept or reject a local agency assessment of a need for community social services or an offer of community social services. When a social service is rejected by a client the local agency shall give a clear explanation of the possible consequences of that choice to the applicant or client, or his or her caretaker or guardian. A refusal to accept community social services shall not affect payment of grants under public assistance grants maintenance programs except in the Work Incentive Program.

~~When a mandatory social service is rejected by a client the local agency shall give a clear explanation of the possible consequences of that choice to the applicant or client, or his or her caretaker or guardian.~~ Local agencies are required to offer and provide protective services under Minnesota Statutes, sections 626.556 and 626.557. When an individual who needs protective services or a person acting on the individual's behalf rejects those services, the local agency shall follow the procedures established under parts 9555.7600 and 9560.0280.

9550.0092 RIGHT TO A FAIR HEARING.

Subpart 1. **Right to a fair hearing.** An applicant for or recipient of community social services has the right to a fair hearing under Minnesota Statutes, section ~~256E.045~~ 256.045.

Subp. 2. **Notice of adverse action.** The local agency shall notify the recipient of community social services ten calendar days before taking ~~any~~ action which may adversely affect to deny, reduce, suspend, or terminate services to the recipient. The notice must be in writing, must be mailed or given to the recipient, and must inform the recipient of the right to appeal the action, the right to be represented by an attorney or other interested party at the hearing, and ~~the conditions under which that~~ community social services may shall be continued if the appeal is filed prior to the reduction, suspension, or termination date specified in the notice. The notice must also cite the specific rule or approved community social services plan amendment upon which the reduction or termination of services is based.

Subp. 3. **Appealable actions.** The applicant or recipient may appeal if:

- A. the local agency fails to act upon the application within the time limits prescribed in parts 9550.0050 and 9550.0070;
- B. the local agency fails to develop or to implement an individual service plan in accordance with part 9550.0090, subpart 2;
- C. the local agency reduces the quantity of social services from that agreed on in the individual service plan;
- ~~C. D.~~ the local agency denies a request for a specific social service ~~that is part of the approved community social services plan;~~
- ~~D. E.~~ the local agency suspends or terminates social services; or
- ~~E. F.~~ the applicant or recipient fails to agree with the individual service plan developed between the applicant or recipient and the local agency.

Subp. 4. **Submittal of appeals.** All appeals must be submitted in writing to the local agency or to the department within 30 days after receiving written notice of the appealable action, or within 90 days of such written notice if a justified reason for delay can be shown.

Department of Human Services

Adopted Rules Relating to Merit System

The rule(s) proposed and published at *State Register*, Volume 10, Number 14, pages 735-749, September 30, 1985 (10 S.R. 735) are adopted as proposed.

Department of Labor and Industry Occupational Safety and Health Division

Adopted Revisions to the Occupational Safety and Health Standards

Pursuant to Minn. Stat. § 182.655 (1984) notice was duly published in the *State Register*, Volume 10, Number 21, dated November 18, 1985 [10 S.R. 1150] specifying the modification of certain Occupational Safety and Health Standards; specifically, the deletion of portions of the Coke Oven Emissions standard (29 CFR 1910.1029) and the amendments to the labeling requirements of the Occupational Exposure to Ethylene Oxide (EtO) standard (29 CFR 1910.1047).

No objections, comments or written requests for public hearing have been received; therefore, these Occupational Safety and Health Standards are adopted and are identical in every respect to their proposed form.

Steve Keefe
Commissioner of Labor and Industry

Department of Public Safety

Adopted Rules Relating to Merit System

The rules proposed and published at *State Register*, Volume 10, Number 14, pages 753-759, September 30, 1985 (10 S.R. 753) are adopted with the following modifications:

Rules as Adopted

7520.0500 CLASSIFICATION PLAN: PREPARATION AND ADOPTION.

Subpart 1. **Procedure.** The governor, through the commissioner of public safety, shall formally adopt a comprehensive classification plan for all positions covered by parts 7520.0100 to 7520.1200 which shall be published as part of the public safety merit system manual. The plan shall be based on investigation and analysis of the duties and responsibilities of positions and shall be so developed and maintained that all positions that are substantially similar in the kind, difficulty, and responsibility of work are

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included in the same class. The plan must be developed after consultation with supervisory officials, classification specialists, and persons technically familiar with the character of the work. All classifications must be evaluated by use of a formal job evaluation system. Class titles established by the classification plan shall be used in all personnel and financial records of the Department of Public Safety and the local ~~civil defense~~ emergency management agency, as well as in all examination procedures.

7520.0700 SALARY COMPUTATION.

Subp. 8. **Overtime compensation.** Except for the provisions of the Federal Fair Labor Standards Act, no additional compensation shall be paid for overtime, whether in the discharge of duties of the position or for the duties of another position, except in:

- A. an emergency in which the local ~~civil defense~~ emergency management authority orders overtime;
- B. when overtime is approved in advance by the local ~~civil defense~~ emergency management authority or its designee; or

7520.1000 COMPENSATION PLAN (EMERGENCY SERVICES), 1986; PROFESSIONAL.

Subpart 1. Plan A.

	Minimum	Maximum
Administrative Officer	1581	2164
Assistant Civil Defense <u>Emergency Management</u> Director	1383	1972
Communications Officer	1383	1886
Operations Officer	1581	2164
Public Information Officer	1581	2164
Radiological Defense Officer	1383	1886
Safety Services Coordinator	1581	2164

Subp. 2. Plan B.

Minimum	Maximum	
Administrative Officer	1654	2257
Assistant Civil Defense <u>Emergency Management</u> Director	1446	2064
Communications Officer	1446	1972
Operations Officer	1654	2257
Public Information Officer	1654	2257
Radiological Defense Officer	1446	1972
Safety Services Coordinator	1654	2257

Subp. 3. Plan C.

Minimum	Maximum	
Administrative Officer	1728	2361
Assistant Civil Defense <u>Emergency Management</u> Director	1511	2164
Communications Officer	1511	2064
Operations Officer	1728	2361
Public Information Officer	1728	2361
Radiological Defense Officer	1511	2064
Safety Services Coordinator	1728	2361

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 Health Hazardous Substance Injury Compensation Board

Outside Opinion Sought Regarding Proposed Rules Governing Board Practices and Procedures for All Claims and Proposed Rules on Compensable Death Benefits

Minnesota Statutes Sections 115B.25-115B.37 (1985 Supp.) establish a Hazardous Substance Injury Compensation Fund ("Fund") to be administered by the Hazardous Substance Injury Compensation Board ("Board"). The Fund will provide compensation for certain personal injuries and damage to property which may result from the release of hazardous substances into the environment.

Notice is hereby given that the Board is seeking information or opinions from sources outside the agency in preparing to propose the adoption of the rules governing (a) practice and procedure before the Board, the form and procedure for applications for compensation, and procedures for claims investigations, and (b) death benefits to dependents which are compensable by the Fund. The adoption of the rules is authorized by Minnesota Statutes section 115B.28 and 115B.34, which require the Board to promulgate rules on its operating procedures and on death benefits.

The State Hazardous Substance Injury Compensation Board requests information concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing. Written statements should be addressed to:

Dr. Valentine O'Malley
Deputy Commissioner
Minnesota Department of Health
717 S.E. Delaware Street
Minneapolis, Minnesota 55440

All statements of information and opinions shall be accepted until 30 days after the day this notice appears in the *State Register*. Any written material received by the State Hazardous Substance Injury Compensation Board shall become part of the rulemaking record to be submitted to the Attorney General's Office or Administrative Law Judge in the event that the rules are adopted.

December 20, 1985

Byron E. Starns, Chairperson
Hazardous Substance Injury
Compensation Board

Department of Human Services Income Maintenance Bureau Health Care Programs Division

Outside Opinion Sought Concerning Third-Party Liability for Health Services to Medical Assistance Recipients

Notice is hereby given that the Minnesota Department of Human Services is seeking information or opinions from sources outside the agency in preparing an emergency rule to replace Minnesota Rules, Part 9500.0940, Third-Party Liability.

This rule is authorized by Minnesota Statutes, section 256B.04, Subd. 2 in regard to the Medical Assistance Program and by Minnesota Statutes, section 14.29, Subd. 1 in regard to the amendment of a rule to comply with a federal law, 42 CFR 433.139. The emergency rule governs liability for collection of benefits available to medical assistance recipients, for reimbursement of medical expenses. The proposed changes under the emergency rule will require health service providers to bill third-party payers before submitting claims to the Medical Assistance Program. Third-party coverage shall be primary and shall be exhausted before payment is made by medical assistance.

OFFICIAL NOTICES

Public comment was solicited earlier for a proposed amendment to Part 9500.0940 (See *State Register*, Volume 10, Page 1214). Comments received by the Department in response to that notice will be considered as the Department drafts the proposed emergency rule. Persons or groups who commented in response to the earlier solicitation need not repeat those comments unless they wish to amend or elaborate on their original comments. All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements and comments may be submitted to:

Jan Taylor
Benefit Recovery Section
Health Care Programs Division
Box 64170
St. Paul, MN 55164

Oral statements of information and comments will be received over the telephone at (612) 296-6964 during regular business hours.

Statements of information and comment will be accepted until 4:30 p.m. on February 7, 1986.

Department of Jobs and Training State Job Training Office

Deadline for Submittal of Petitions for Re-Designation of Service Delivery Areas to Operate Under the Job Training Partnership Act

Notice is hereby given that the State Job Training Office will accept petitions for re-designation of service delivery areas (SDAs) to operate under the Job Training Partnership Act (JTPA) (PL 97-300).

Pursuant to JTPA Sec. 101(c), the Governor may re-designate service delivery areas no more frequently than every two years and such re-designation shall be made not later than 4 months before the beginning of a program year.

Therefore, any unit of general local government or consortium of contiguous units of general local governments seeking service delivery area re-designation under JTPA Sec. 101 must submit formal petitions, signed by the chief-elected official(s), to the State Job Training Office by Monday, February 3, 1986.

To receive a copy of the formal petition package, contact:

Gary S. Denault, Director
State Job Training Office
690 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-8008

Completed petitions should be mailed to the above address no later than Monday, February 3, 1986.

Department of Public Safety Driver and Vehicle Services Division

Outside Opinion Sought Regarding Proposed Rules Governing Physical and Mental Qualifications on Driver's License—Loss of Consciousness or Voluntary Control

Notice is hereby given that the State Department of Public Safety is seeking information or opinions from sources outside the agency in preparing to amend rules governing the requirements for physician's statement report for persons who have experienced an episode of loss of consciousness or voluntary control. The amendment is limited to Minnesota Rules 7410.2500, Subp. 5, B.

The promulgation of these rules is authorized by Minnesota Statutes sections 171.04; 171.13; 171.14, which permits the agency to require a driver to submit to a physical examination to determine the physical or mental disability of a driver or any other condition that might affect the driver in exercising reasonable and ordinary control over a motor vehicle.

The State Department of Public Safety requests information and comments concerning the subject matter of these rules. The department had previously published a Notice of Intent to Adopt an amendment without public hearing. Those persons who wrote or called the department need not respond again. The requests for public hearing and comments received pursuant to the prior

notice are valid and will become part of the rulemaking record. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Neil Werdal
Room 108 Transportation Building
John Ireland Boulevard
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at (612) 296-9497 and in person at the above address.

All statements of information and comment shall be accepted until Tuesday, February 11, 1986. Any written material received by the State Department of Public Safety shall become part of the rulemaking record in the event that the rules are promulgated.

Paul J. Tschida
Commissioner of Public Safety

Teachers Retirement Association

Board of Trustees Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, January 29, 1986, at 9 a.m. in Room 302, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota to consider matters which may properly come before the Board.

Department of Transportation

Amended Uniform Traffic Control Device Manual Order No. 70797

WHEREAS, the Commissioner of Transportation has adopted a manual (Minnesota Manual on Uniform Traffic Control Devices dated December 20, 1973) establishing a uniform system of traffic control devices for streets and highways of the State of Minnesota as required by Minnesota Statutes, Section 169.06, Subdivision 1; and

WHEREAS, said manual is being revised, to be adopted and distributed during calendar year 1986, and

WHEREAS, said manual includes Appendix B, "Traffic Controls for Temporary Lane Closures" dated January 1, 1974, hereinafter referenced as Appendix B dated January 1, 1974; and

WHEREAS, a new and revised Appendix B, "Traffic Control for Short-term Street and Highway Work Zones" dated September 1985, hereinafter referenced as Appendix B dated September 1985, has been prepared for inclusion in the proposed 1986 manual; and

WHEREAS, Appendix B dated September 1985 is designed to improve traffic control plans and enhance traffic safety in short-term work zones on Minnesota streets and highways; and

WHEREAS, governing road authorities need time to train their employees in the provisions of Appendix B dated September 1985; and

WHEREAS, the Commissioner may authorize and adopt amendments and addenda to the Minnesota Manual on Uniform Traffic Control Devices.

NOW, THEREFORE, pursuant to the authority vested in my office, and as provided for in Minnesota Statutes Section 169.06, Subdivision 1, I do hereby adopt and prescribe Appendix B dated September 1985 as an amendment to the Manual on Uniform Traffic Control Devices for Streets and Highways of the State of Minnesota, dated December 20, 1973. All governing road authorities in implementing the provisions of the new Appendix B dated September 1985 shall do so by developing a plan of implementation and executing said plan by January 1, 1987. Until the time that the provisions contained in the Appendix B dated September 1985 can be adhered to by a governing road authority, or January 1, 1987, whichever date occurs first, the provisions of Appendix B dated January 1, 1984 shall remain in effect.

This order supplements Order No. 54014 dated December 20, 1973 and will remain in effect until the 1986 Minnesota Manual on Uniform Traffic Control Devices, which will include Appendix B dated September 1985, is adopted by subsequent Commissioner's Order.

December 20, 1985

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of Minneapolis for a Variance from State Aid Standards for Roadway Widths

Notice is hereby given that the City Council of the City of Minneapolis has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a construction project on Cedar Avenue (T.H. 77) between Lake Nokomis Parkway and County State Aid Highway 62.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162 so as to permit a transitional north bound roadway width of 36 feet (two lanes with no parking) to a roadway width of 16 feet (one lane with no parking) instead of the required 26 foot width (two lanes with no parking); north bound traffic only. The variance is necessary to allow Minneapolis to participate with Municipal State Aid Funds in the construction costs of the project.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, MN 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

December 27, 1985

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of West St. Paul for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the City Council of the City of West St. Paul has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a construction project on Emerson Avenue (MSAS 120) between Bidwell Street and Imperial Drive.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162 so as to permit design speed of 25 miles per hour instead of the required 30 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, MN 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

December 27, 1985

Richard P. Braun
Commissioner of Transportation

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 completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

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 296-6152. 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
26-073-18539	Purchase of Computers	St. Cloud State University	St. Cloud	Contact buyer
78-770-02238	Draperies & Installation	MN Correctional Facility	Sauk Centre	Contact buyer
02-515-46377	Modular Office System	Administration—State Register and Public Documents Center	St. Paul	Contact buyer
Contract—Rebid	Ambulance Service	Veterans Affairs—Veterans Home	Minneapolis	\$7,000-8,000
Contract	Presorting Mail by Zip Code	Public Safety; & Human Services	St. Paul	Contact buyer
65-300-02984	Purchase of Disk Packs	District Court—7th Judicial District	St. Cloud	Contact buyer
29-001-09715, 29-004-07058	Riding Mower	Natural Resources	Various	Contact buyer
78-630-04453	Ring Binder Mechanism		Oak Park Heights	Contact buyer
01-000-04516	Air Compressor	Military Affairs	Little Falls	Contact buyer
Contract	Overload Composition Contract	Administration—Printing & Mailing Services	St. Paul	Contact buyer
Contract	Negatives Image Assembly, Proofing & Platemaking	Administration—Printing & Mailing Services	St. Paul	Contact buyer
37-001-10436	Pump, Vacuum	Human Services—Academy for the Blind	Faribault	Contact buyer
34-000-04830	Panasonic electronic typewriters	Housing Finance Agency	St. Paul	Contact buyer
55-510-02621	Drapery Fabric	Human Services—Ah-Gwah-Ching Nursing Home	Ah-Gwah-Ching	Contact buyer
01-000-04499 Rebid	Construct Concrete Block Buildings	Military Affairs		Contact buyer
26-074-10628	Purchase of Portable Computer	Winona State University	Winona	Contact buyer
Contract	Xerox Memorywriter Maintenance Contract	Various	Various	Contact buyer
02-310-14371	Drapery Material	Human Services—Faribault Regional Center	Faribault	Contact buyer

STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
Contract	Tools-Pliers, Snips, Adj. Wrenches, etc.	Various	Various	\$5,000-8,000
79-000-51704	Purchase of Drive Boards & Monitors	Transportation—Systems St. Paul & Support Services		Contact buyer
26-071-16356	Purchase of Uni-VAX Linker Emulation Program	Mankato State University	Mankato	Contact buyer
79-100-03497, etc.	Traffic Marking Paint	Transportation—Various	Various	Contact buyer
79-000-49694	Dump Trucks	Transportation	Various	Contact buyer
Sch. 66-WRC	Arc Welding Electrodes & Gas Welding Rods	Various	Various	Contact buyer
26-072-09594	Tables to Zone Refiners	Moorhead State University	Moorhead	Contact buyer
26-072-09592	Tables to Zone Refiners	Moorhead State University	Moorhead	Contact buyer
26-072-09593	Tables to Zone Refiners	Moorhead State University	Moorhead	Contact buyer
78-630-06375	Electrical Dimming Controller	MN Correctional Facility	Oak Park Heights	Contact buyer
26-074-10666	Library Shelving	Winona State University	Winona	Contact buyer
29-001-09568	All Terrain Vehicles	Various	Various	Contact buyer

Contact 296-6152 for referral to specific buyers.

SUPREME COURT DECISIONS

Decisions Filed Friday, December 27, 1985

Compiled by Wayne O. Tschimperle, Clerk

C9-85-601 State of Minnesota v. Daniel Lee Edmison, Petitioner, Appellant. Court of Appeals.

A sentencing court may not use a criminal defendant's prior misdemeanor conviction in determining the presumptive sentence under the Sentencing Guidelines for the current offense if the state fails to disprove the defendant's contention that the prior conviction was obtained in violation of his right to counsel.

Remanded to the trial court for resentencing. Amdahl, C. J.

Took no part, Peterson, J.

CX-84-550 In Re: Estate of: Sarah Edith Beecham, a.k.a. Edith Beecham, Deceased. Court of Appeals.

Under the facts and circumstances existing, the trial court's holding that the presumption of gratuity for personal services, rendered by a daughter-in-law to an aged and infirm mother-in-law, was inapplicable, was not clearly erroneous.

The trial court's finding of an implied contract to pay for personal services where daughter-in-law rendered in-home care for 6½ years to elderly, chronically incontinent and disabled mother-in-law was not clearly erroneous.

Reversed and remanded. Kelley, J.

Orders

C6-85-2211 In the Matter of the Application for the Discipline of Stuart E. Gale, an Attorney at Law of the State of Minnesota. Supreme Court.

Publicly reprimanded. Amdahl, C. J.

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
Regular Division**

**Gerald J. Morrissey, Jr., Appellant, v. Commissioner of Revenue, Appellee, Docket
No. 4275**

Findings of Fact, Conclusions of Law and Order for Judgment Dated December 17, 1985

The above-entitled matter came on for trial on August 23, 1985, before the Honorable M. Jean Stepan, Judge of the Minnesota Tax Court, at the Tax Court hearing room in St. Paul, Minnesota.

Bruce C. Eckholm, Attorney at Law, appeared on behalf of appellant.

Michele M. Owen, Special Assistant Attorney General, appeared on behalf of appellee.

Post trial briefs were filed by the parties.

The Court, having heard and considered the evidence adduced at trial, having reviewed the files and records herein and being fully advised, now makes the following:

Findings of Fact

1. Appellant Gerard J. Morrissey is a cash basis taxpayer. The issue in this case is appellant's domicile and residence for Minnesota income tax purposes for the calendar year 1981.

2. Appellant has been employed by International Mill Service since 1972 at various locations. The appellant was employed in and was a resident and domiciliary of the State of Minnesota between June 12, 1975 and August 1, 1981.

3. Appellant Gerard J. Morrissey and his wife, Mary J. Morrissey, purchased a home located at 7719 Ingle Avenue Court, Cottage Grove, Minnesota 55016, in June, 1975 and have continuously owned the residence in joint tenancy through the present time.

4. Appellant Gerard J. Morrissey, Jr., his wife Mary J. Morrissey, their son and their two daughters lived together continuously at the Cottage Grove residence from June, 1975 until August 1, 1981. The children attended Minnesota schools. Mrs. Morrissey was employed as a teacher by the Washington County School District.

5. Appellant and his wife applied for and did receive a homestead credit for real property tax purposes from Washington County, Minnesota for the calendar years 1978 through 1985. Appellant Gerard J. Morrissey, Jr. and his wife both signed the homestead application cards submitted to Washington County, Minnesota in January, 1981, 1982, 1983 and 1984. Mary J. Morrissey signed the homestead application card submitted in January, 1985.

6. Between June, 1975 and August 1, 1981, the location of appellant's job with International Milling Service was in Minnesota. Effective August 1, 1981, appellant accepted a promotion which required a transfer of job location to the company's district office in Whiting, Indiana.

7. Beginning August 1, 1981 and extending approximately six months thereafter, appellant Gerard J. Morrissey, Jr. rented a room at a Howard Johnson's motel in Indianapolis, Indiana.

8. Between February, 1982 and September, 1983, appellant Gerard J. Morrissey, Jr. rented a furnished room at a rooming house in Hammond, Indiana. Appellant brought with him his own television set, fan, chairs, radio and clothes.

9. Between September, 1983 and January, 1985, the appellant rented an apartment in Crown Point, Indiana which he furnished with some furniture from the Cottage Grove, Minnesota residence plus some new furniture he had bought.

10. Between January 28, 1985 and the present time, appellant Gerard J. Morrissey, Jr. has been the owner and occupant of a condominium located in Highland, Indiana.

11. When the appellant began work in Indiana in August, 1981, his wife and children did not go to Indiana with him. Appellant's family continued residing at the Cottage Grove, Minnesota home. Mary J. Morrissey continued her employment in the Washington County, Minnesota school district. The Morrissey children attended Minnesota high schools until their respective graduation dates in 1981, 1982 and 1983. Appellant's wife and children did not go to Indiana with him for two reasons: his wife was concerned about her job security because appellant might become disabled due to a degenerative skeletal and muscular disease; and he and his wife were concerned that a change of schools might aggravate some behavioral problems of their daughters. In 1981 Mary J. Morrissey would not even consider a possible relocation to Indiana until at least June, 1983 when all their children had graduated from high school, if at all.

12. At the time of his August 1, 1981 job transfer, appellant expected that the transfer would be either permanent or indefinite, and that he would not be transferred back to Minnesota.

13. During the period between August 1, 1981 and August, 1983, appellant's employment required that he travel to several states including Minnesota. Appellant made weekly trips to Minnesota during 1981, paid for by his employer, and spent weekends at the Cottage Grove, Minnesota residence. During 1982 appellant usually spent three weekends a month with his family in Minnesota.

14. Beginning in August, 1983, appellant's trips to Minnesota became less frequent when he obtained a new employment assignment in Gary, Indiana which required very little travel.

15. Mary J. Morrissey visited appellant Gerard J. Morrissey, Jr. in Indiana for four days in October, 1981. The entire Morrissey family went to Pennsylvania for Christmas in 1981. The appellant spent Thanksgiving of 1981 in Minnesota with his family.

16. In 1982 Mary J. Morrissey visited appellant in Indiana approximately one weekend a month. She spent one week in Indiana during that summer and the remainder of the summer traveling in Europe with Mr. Morrissey. The appellant spent Christmas of 1982 in Minnesota.

17. Mary J. Morrissey visited appellant Gerard J. Morrissey, Jr. in Indiana in 1983. She spent almost the entire summer and other school vacations there. The Morrissey family spent Christmas of 1983 in Pennsylvania.

18. Mary J. Morrissey visited appellant Gerard J. Morrissey, Jr. in Indiana in 1984 and 1985.

19. The Morrissey children have visited appellant Gerard J. Morrissey, Jr. in Indiana on only one occasion: in December, 1983.

20. Mary J. Morrissey made several applications for employment in Indiana and Illinois in 1981 and 1982, which were not successful. After that time she has not made any further effort to find a job in that area. The only time Mary J. Morrissey really considered moving to Indiana was when she was laid off from her teaching job in 1982. She was rehired by the Washington County school system in 1983, and thought she would stay until at least 1985 when she would have met the ten year requirement for vesting of her retirement pension.

21. Appellant Gerard J. Morrissey, Jr. and Mary J. Morrissey did not attempt to sell the Cottage Grove, Minnesota residence during 1981, 1982 or 1983. The Cottage Grove residence was placed for sale with a realtor in May, 1984. The realtor himself offered to buy the home at the listed price, but the sale was cancelled after the Morrisseys invoked a clause in the purchase agreement requiring full payment of the purchase price within 72 hours. Appellant and his wife were just "testing the market" and did not intend for the house to be sold. When the realtor offered to pay the asking price, they were surprised and invoked the 72-hour clause to keep the house. Mary J. Morrissey did not agree that she would move to Indiana when the Cottage Grove residence was listed for sale.

22. Appellant Gerard J. Morrissey, Jr. had signed a purchase agreement for a house in Crown Point, Indiana in August, 1984 which had a contingency for closing which required sale of the Cottage Grove, Minnesota residence. When Mary J. Morrissey decided not to move to Indiana in 1984, the purchase agreement was cancelled.

23. Appellant Gerard J. Morrissey, Jr. voted in Minnesota during the 1980 elections and has not voted in Minnesota since that time.

24. Appellant Gerard J. Morrissey, Jr. had a valid Minnesota driver's license from 1975 until November, 1984. Appellant obtained an Indiana driver's license in November, 1984 after having a traffic accident when an Indiana policeman told him he had sixty days to get an Indiana license.

25. Appellant Gerard J. Morrissey, Jr. has been a member of St. Rita's Church in Cottage Grove, Minnesota since 1975. Appellant has attended church at St. Rita's every Sunday since August 1, 1981 when he has been present in Minnesota. When in Indiana he has attended St. Michael's Church, but is not a member of that church.

26. Appellant Gerard J. Morrissey, Jr. held a joint checking account with Mary J. Morrissey at Town and Country Bank, Newport, Minnesota from March 18, 1980 to July 24, 1984. The Morrisseys also had Certificates of Deposit at that bank. Appellant opened a checking account in his own name on September 1, 1981 at the First Bank of Whiting in Whiting, Indiana. Both checking accounts were used to pay joint expenses. Generally, however, the appellant paid his expenses using the First Bank of Whiting, Whiting, Indiana bank account and his wife, Mary J. Morrissey, used the joint checking account at Town and Country Bank, Newport, Minnesota to pay the household and her expenses.

27. Appellant Gerard J. Morrissey, Jr. and Mary J. Morrissey have jointly registered their ownership of a Ford station wagon in Minnesota since June, 1977. Mary J. Morrissey has had another vehicle registered in her name alone in Minnesota since June, 1982. Appellant purchased a car in Indiana subsequent to his 1981 promotion which is registered in Indiana.

28. Appellant Gerard J. Morrissey, Jr. had American Express, Dayton's and J. C. Penney Co. charge accounts during 1981. Mary J. Morrissey had Sears, Montgomery Wards, Donaldson's and Visa charge accounts in her own name.

29. Appellant Gerard J. Morrissey, Jr. and Mary J. Morrissey filed a joint 1981 Minnesota individual income tax return on which the "Resident Part Year" box was checked. The income earned by appellant from August 1, 1981 through December 31, 1981 in Indiana was subtracted on line 5 of the Minnesota return.

30. Appellant Gerard J. Morrissey, Jr. and Mary J. Morrissey filed a joint Indiana individual income tax return which reported appellant's income earned in Indiana from August 1, 1981 through December 31, 1981. On the Indiana return two boxes were checked, one for part-year nonresident and one for full-year nonresident. Appellant believed that Indiana law required that a joint state income tax return be filed if a joint federal return had been filed.

31. On May 11, 1984, the Commissioner of Revenue issued an Order assessing \$2,200.00 additional income tax plus interest against appellant Gerard J. Morrissey, Jr. and Mary J. Morrissey for the 1981 tax year on the basis that appellant was a resident and domiciliary of Minnesota for the entire 1981 tax year, and that the income he received from Indiana sources was taxable in Minnesota.

Conclusions of Law

1. Appellant Gerard J. Morrissey, Jr. was a Minnesota domiciliary and resident for state income tax purposes for the entire 1981 tax year.

2. The Commissioner of Revenue's Orders dated May 11, 1984 and December 28, 1984, assessing additional income tax against appellant for the tax year 1981, are correct in all respects and are affirmed.

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

December 17, 1985

By the Court,
M. Jean Stepan, Judge
Minnesota Tax Court

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

(612) 297-3000
(toll-free # for MN:
1-800-652-9747)

ORDER FORM

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Perspectives—Publication about the Senate.

Contact: Senate Public Information Office
B29 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Contact: House Information Office
Room 8 State Capitol, St. Paul, MN 55155
(612) 296-2146

Legislative Reference Library
Attn: Zona DeWitt
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