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STATE OF MINNESOTA

# STATE REGISTER

DEPARTMENT OF ADMINISTRATION—DOCUMENTS DIVISION

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# STATE REGISTER

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, official notices to the public, state and non-state public contracts, grants, and supreme court and tax court decisions. Judicial notice shall be taken of material published in the *State Register*.

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8	Monday 11 August	Monday 18 August	Monday 25 August
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10	Monday 25 August	Friday 29 August	Monday 8 September
11	Friday 29 August	Monday 8 September	Monday 15 September

\*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.

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**The PROPOSED RULES section contains:**

- 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 requested by an agency.)
- 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 are included in a supplement published 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:

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Issues 14-25, inclusive	Issues 40-51, inclusive
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# MINNESOTA RULES AMENDMENTS AND ADDITIONS

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# EXECUTIVE ORDERS

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## Executive Order No. 86-5

### Providing for Protection and Advocacy for People with Mental Illness and Assigning Responsibilities to the Legal Aid Society of Minneapolis, Inc.

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, provision of protection and advocacy to people with mental illness is of concern and importance to the state; and

WHEREAS, Public Law 99-319 provides for allotments to states for the purposes of:

1. Ensuring the rights of individuals with mental illness are protected and advocated in conformance with constitutional, federal, and state mandates including the Bill of Rights for mental health patients (Section 201 of Public Law 99-319) concerning provision of appropriate treatment and services; and

2. Assisting states to establish and operate a protection and advocacy system for individuals with mental illness which shall be independent of any agency which provides treatment or services (other than advocacy services) to this population; and

WHEREAS, Public Law 99-319 specifies that the eligible agency is the designated state system which has been established to protect and advocate the rights of people with developmental disabilities under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 USC 6041); and

WHEREAS, The Legal Aid Society of Minneapolis, Inc. is designated as the protection and advocacy system for people with developmental disabilities, and, therefore, Legal Aid Society of Minnesota, Inc. is the designated protection and advocacy agency for mental health under Public Law 99-319;

NOW, THEREFORE, I hereby order that, in accordance with Public Law 99-319, a mental health protection and advocacy system be established and that:

1. The Legal Aid Society of Minneapolis, Inc. shall appoint an advisory board for the mental health protection and advocacy system. The committee shall have at least nine members and will conform with the membership requirements of Public Law 99-319. The committee shall meet at least quarterly.

2. The Legal Aid Society of Minneapolis, Inc. shall submit to the Governor's Office, State Planning Agency, and the Department of Human Services, an annual plan and an annual report that contains all information specified by Public Law 99-319. The plan shall be submitted 30 days prior to the beginning of the federal fiscal year and the annual report shall be submitted 30 days after the close of the federal fiscal year.

3. The Legal Aid Society of Minnesota, Inc. shall pursue all types of administrative, legal, and other appropriate remedies to ensure the protection of rights of individuals with mental illness.

4. The Legal Aid Society of Minneapolis, Inc. shall follow all applicable laws and rules of the State of Minnesota including the Data Practices Act.

FURTHER, the State of Minnesota assures that amounts paid to the Legal Aid Society of Minneapolis, Inc., from an allotment under Public Law 99-319 to carry out the purpose of that Act, will be used to supplement and not supplant the level of non-federal funds available in the State of Minnesota to protect and advocate the rights of individuals with mental illness.

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 fourth day of August, 1986.



RUDY PERPICH  
Governor

## **Executive Order No. 86-6**

### **Providing for Protection and Advocacy for People with Developmental Disabilities and Assigning Responsibilities to the Legal Aid Society of Minneapolis, Inc.**

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, provision of protection and advocacy to people with developmental disabilities is of concern and importance to the state; and

WHEREAS, Public Law 98-527 provides for allotments to states for the purposes of protecting the legal and human rights of persons with developmental disabilities. The protection and advocacy system has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the state and to provide information on and referral to programs and services addressing the needs of persons with developmental disabilities;

NOW, THEREFORE, I hereby order that:

1. The Legal Aid Society of Minneapolis, Inc. be designated the protection and advocacy system for people with developmental disabilities.
2. The Legal Aid Society of Minneapolis, Inc. shall appoint an advisory committee for the developmental disabilities protection and advocacy system. The committee shall meet at least quarterly and shall have at least nine members, at least one-half of whom will be consumers.
3. The Legal Aid Society of Minneapolis, Inc. shall submit to the Governor's Office and the State Planning Agency an annual plan and an annual report that contains information about the number of people to be served, a description of the type of activities to be undertaken and a description of the accomplishments. The plan shall be submitted 30 days prior to the beginning of the federal fiscal year and the annual report shall be submitted 30 days after the close of the federal fiscal year.
4. The Legal Aid Society of Minneapolis, Inc. shall pursue all types of administrative, legal, and other appropriate remedies in order to carry out the requirements of Public Law 98-527.

FURTHER, the State of Minnesota assures that:

1. The protection and advocacy system has access to the records of people with developmental disabilities who reside in a facility for people with developmental disabilities if a complaint has

## EXECUTIVE ORDERS

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been received by the system from or on behalf of such person and such person does not have a legal guardian or the State or the designee of the State is the legal guardian of such person.

2. Amounts paid to the Legal Aid Society of Minneapolis, Inc., from an allotment under Public Law 98-527 to carry out the purpose of that Act, will be used to supplement and not supplant the level of non-federal funds available in the State of Minnesota to protect and advocate the rights of individuals with developmental disabilities.

3. The Legal Aid Society of Minneapolis, Inc. will be provided with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to Section 1902(a) (31) (B) of the Social Security Act with respect to any intermediate care facility for people with mental retardation or related conditions in the State within 30 days after the completion of each such report or plan.

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 fourth day of August, 1986.



RUDY PERPICH  
Governor

### **Executive Order No. 86-7**

#### **Providing for a Client Assistance Program for Individuals Receiving or Seeking Services under the Rehabilitation Act and Assigning Responsibilities to the Legal Aid Society of Minneapolis, Inc.**

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, Section 112 of the Rehabilitation Act of 1973 (Public Law 93-112), as amended by Public Law 98-221, provides for allotments to states for the purposes of:

1. Ensuring support and assistance to clients and client applicants to secure the benefits and services available to them under the Rehabilitation Act; and

2. When requested by clients and client applicants, assisting them in their relationships with projects, programs, and facilities providing services to them under the Rehabilitation Act; and

WHEREAS, Section 112 of the Rehabilitation Act specifies that the designated agency is independent of any agency which provides treatment, services, or rehabilitation to individuals under the Rehabilitation Act; and

WHEREAS, the designated agency has the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of rights of individuals with disabilities who are

receiving treatments, services, or rehabilitation under the Act within the state, including the authority to pursue remedies against the state vocational rehabilitation agency and other appropriate state agencies;

NOW, THEREFORE, I hereby order that:

1. The Legal Aid Society of Minneapolis, Inc. be designated the Client Assistance Program.
2. The Legal Aid Society of Minneapolis, Inc. shall appoint an advisory committee for the Client Assistance Program. The committee shall have at least nine members, at least one-half of whom will be consumers. The committee shall meet at least quarterly.
3. The Legal Aid Society of Minneapolis, Inc. shall submit to the Governor, State Planning Agency, and the Department of Jobs and Training, an annual plan and an annual report that contains information as specified in federal regulations governing this program. The plan shall be submitted 30 days prior to the beginning of the federal fiscal year and the annual report shall be submitted 30 days after the close of the federal fiscal year.
4. The Legal Aid Society of Minneapolis, Inc. will implement procedures designed to ensure that, to the maximum extent possible, mediation procedures are used prior to resorting to administrative or legal remedies.
5. The Legal Aid Society of Minneapolis, Inc. shall follow all applicable laws and rules of the State of Minnesota including the Data Practices Act.

FURTHER, the State of Minnesota assures that:

1. Legal Aid Society of Minneapolis, Inc. will be afforded reasonable access to policy making and administrative personnel in the state and local rehabilitation programs, projects, or facilities.
2. All clients and client applicants under the Rehabilitation Act will be advised of the existence of the client assistance program, the services provided by the program, and how to contact the program.
3. Legal Aid Society of Minneapolis, Inc. will not bring any class action in carrying out its responsibilities under the Client Assistance Program.

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 fourth day of August, 1986.



RUDY PERPICH  
Governor

## EXECUTIVE ORDERS

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### Statement of Assurances

**Regarding the Minnesota Protection and Advocacy System for Submission to the  
Administration on Developmental Disabilities  
Office of Human Development Services  
United States Department of Health and Human Services**

**By the Governor of the State of Minnesota**

WHEREAS, the Legal Aid Society of Minneapolis, Inc. has been designated as the protection and advocacy system of the State of Minnesota to protect and advocate the rights of persons with developmental disabilities; and

WHEREAS, Public Law 98-527 requires that certain assurances be made in order that continued funding for that system be provided;

THEREFORE, as Governor of the State of Minnesota, I herewith submit the following statement of assurances with regard to the Legal Aid Society of Minneapolis, Inc. in its capacity as the protection and advocacy system for the State of Minnesota.

1. The Legal Aid Society of Minneapolis, Inc. has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of developmentally disabled persons who are receiving treatment, services, or habilitation within the state.

2. The Legal Aid Society of Minneapolis, Inc. has the authority to provide information on and referral to programs and services addressing the needs of persons with developmental disabilities.

3. The Legal Aid Society of Minneapolis, Inc. has not administered by the State Planning Council and is independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities.

4. The Legal Aid Society of Minneapolis, Inc. is able to obtain access to records of a person who is developmentally disabled who resides in a facility for persons with developmental disabilities if a complaint has been received by the system from or on behalf of such person and if such person does not have a legal guardian or the State or the designee of the State is the legal guardian of such persons.

5. Funds allotted to the State of Minnesota under Section 142 of Public Law 98-527 will be used to supplement and increase the level of funds that would otherwise be made available for the purposes for which federal funds are provided and not to supplant such non-federal funds.

6. The Legal Aid Society of Minneapolis, Inc. will be provided with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to Section 1902(a) (31) (B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in the State within 30 days after completion of each such report or plan.

7. No redesignation of the agency implementing the protection and advocacy system will be made unless there is good cause for such redesignation and unless notice is given of the intention to make such redesignation to persons with developmental disabilities or their representatives.

Dated this fourth day of August, 1986.



RUDY PERPICH  
Governor

# PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

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

## Board of Accountancy

### Proposed Permanent Rules Relating to License Nonrenewals

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

Notice is hereby given that the Minnesota Board of Accountancy ("Board") proposes to adopt the above-entitled amendments to existing rules of the Board without a public hearing. A public hearing will not be held on these rules, in accordance with Minnesota Statutes, Sections 14.22, 16A.128 and 214.06 (1984 & Supp. 1985), as amended.

Persons interested in this rule have 30 days to submit comments in support of or in opposition to the proposed amendment. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Small businesses are encouraged to participate in the rule making process. The proposed rule will have an impact on small businesses, in that small businesses which fail to renew their annual licenses in a timely manner will be required to pay additional fees and may be required to apply for reinstatement of their licenses.

Persons who wish to submit comments should submit such comments within 30 days following the publication of this notice to:

Pamela K. Smith, Executive Secretary  
Minnesota Board of Accountancy  
500 Metro Square Building  
St. Paul, Minnesota 55101  
Telephone: (612) 296-7937

Authority for the adoption of these rules is contained in Minnesota Statutes §§ 16A.128, 214.06, 326.17, 326.18 and 326.22 (1984 & Supp. 1985), as amended. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Ms. Smith upon request.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to its legality, and as to its form to the extent the form relates to legality, including the issue of substantial change, and for a determination as to whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rule. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, will be notified if they submit a written request for notification to Ms. Smith.

A copy of the proposed rule follows.

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## PROPOSED RULES

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Copies of this notice and the proposed rule are available and may be obtained by contacting Ms. Smith.

Michael M. Vekich, Chairman  
Board of Accountancy

### Rules as Proposed

#### 1100.3600 FEES.

Subpart 1. and 2. [Unchanged.]

Subp. 2a. Annual license late processing fees. Annual license late processing fees shall be as follows: active individuals, \$20; inactive individuals, \$10; and partnerships/corporations, \$25.

Subp. 2b. Annual license reinstatement fees. Annual license reinstatement fees shall be as follows: \$50 per year of nonrenewal; and \$20 for application for reinstatement after one year of nonrenewal.

Subp. 3. to 5. [Unchanged.]

### Rules as Proposed (all new material)

#### 1100.2150 NONRENEWAL OF INDIVIDUAL LICENSE.

Subpart 1. **Late processing fee.** Licensees who renew their annual license, active or inactive, after the license has expired but before January 31 of the renewal year, shall pay a late processing fee in addition to their annual license fee as required in part 1100.3600, subpart 2a.

Subp. 2. **Reinstatement fee.** Licensees who renew their license, active or inactive, after January 31 of the renewal year to the end of the renewal year, shall pay a reinstatement fee in addition to the annual license fee. Licensees who fail to renew within one year of the expiration date of the license shall submit an application for reinstatement of their license. Applicants for reinstatement shall pay an application for reinstatement fee; a reinstatement fee; and annual license fee for each year of nonrenewal as required in part 1100.3600, subpart 2b.

#### 1100.2750 NONRENEWAL OF PARTNERSHIP LICENSE.

Subpart 1. **Late processing fee.** A partnership that renews its annual license after the license has expired but before January 31 of the renewal year shall pay a late processing fee in addition to its annual license fee as required in part 1100.3600, subpart 2a.

Subp. 2. **Reinstatement fee.** A partnership that renews its annual license after January 31 of the renewal year to the end of the renewal year shall pay a reinstatement fee in addition to the annual license fee as required in part 1100.3600, subpart 2a. Partnerships that fail to renew within one year of the expiration date of the license shall submit an application for reinstatement of their license. Applicants for reinstatement shall pay an application for reinstatement fee; a reinstatement fee; and annual license fee for each year of nonrenewal as required in part 1100.3600, subpart 2b.

#### 1100.3250 NONRENEWAL OF CORPORATION LICENSE.

Subpart 1. **Late processing fee.** A corporation that renews its annual license after the license has expired but before January 31 of the renewal year shall pay a late processing fee as required in part 1100.3600, subpart 2a, in addition to the annual report fee required by Minnesota Statutes, section 319A.21.

Subp. 2. **Reinstatement fee.** A corporation that renews its annual license after January 31 of the renewal year to the end of the renewal year shall pay a reinstatement fee in addition to the annual license fee as required in part 1100.3600, subpart 2a. Corporations that fail to renew within one year of the expiration date of the license shall submit an application for reinstatement of their license. Applicants for reinstatement shall pay an application for reinstatement fee; a reinstatement fee; and annual license fee for each year of nonrenewal as required in part 1100.3600, subpart 2b.

## Board of Optometry

### Proposed Permanent Rules Relating to Home Study Programs, Emeritus Registration

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

Notice is hereby given that the Minnesota Board of Optometry proposes to amend Minn. Rule 6500.0900, Home Study Programs, and adopt proposed rule, Emeritus Registration, as authorized by Minn. Stat. 148.53. A copy of the proposed amendment and proposed rule is attached to this notice.

THE PUBLIC IS HEREBY ADVISED that:

1. They have 30 days in which to submit comment in support of or in opposition to the proposed amendment and proposed rule;
2. Each comment should identify the portion of the proposed amendment and proposed rule addressed, the reason for the comment, and any change proposed;
3. All comments shall be submitted to Burton H. Skuza, O.D., Executive Director, Minnesota Board of Optometry, 2700 University Avenue West, St. Paul, Minnesota 55114, Telephone (612) 642-0594.
4. Under the procedure for adopting noncontroversial rules, the Board must submit action on its rules to the Attorney General for review of the form and the legality of the change. Notice of the date of submission of the proposed amendment and rule to the Attorney General for review will be mailed to any person requesting to receive the notice. Request to receive such notice must be submitted to Dr. Skuza at the above address.
5. Authority to amend and adopt rules is contained in Minn. Stat. 148.53. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of the proposed amendment and rule has been prepared and is now available.

Dated: 7 August 1986

Burton H. Skuza, O.D., Executive Director  
Board of Optometry

### Rules as Proposed

#### 6500.0100 DEFINITIONS.

Subpart 1. **Scope.** ~~The following terms and expressions when used in these rules shall this chapter have the meanings hereinafter stated given them in this part.~~

Subp. 2. **Act.** "Act" means the Minnesota Optometric Practice Act, Minnesota Statutes, ~~section~~ sections 148.52 ~~et seq~~ to 148.62.

Subp. 3. **Board.** "Board" means the Minnesota Board of Optometry.

Subp. 4. **Clinical rounds.** "Clinical rounds" means a group of people sponsored by a clinic or a hospital assembled for discussion of information.

Subp. 5. **Contact hour equivalents.** "Contact hour equivalents" means the number of hours of home study equivalent to one hour of continuing education credit.

Subp. 6. **Home study.** "Home study" means the utilization of educational programs and materials outside the classroom setting.

#### 6500.0150 CONTINUING EDUCATION.

Subpart 1. **Home study and contact hours.** Licenses may acquire nine hours of continuing education credits through home study in each three-year compliance period. Licenses may earn continuing education credits through contact hour equivalents. One contact hour is equivalent to one continuing education credit. Contact hour equivalents include:

A. Licenses may utilize self-instruction components presented in vision care periodicals, audio, and audio-visual taped programs, and other program materials specifically designed for self-instruction. All programs must include a self-test. One contact hour may be earned for each hour of self-instruction activity. Contact hours may include both the instructional and testing activity.

B. The presentation of a lecture before an audience of optometric or other health professionals will result in one contact hour for each hour of presentation. For one time only, the lecturer can also acquire two contact hours for preparation of the lecture for each hour of presentation. A syllabus or lecture manuscript shall be furnished to the board to document the presented program.

C. Licenses may earn continuing education credits for the preparation of articles accepted for publication in optometric journals or other health-related journals and for the preparation of books accepted for publication. A maximum of three hours of continuing education credits will be granted for acceptance and publication of articles in optometric or health-related journals. A maximum of nine hours of continuing education credits will be granted for acceptance and publication of books on optometry-related subjects.

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## PROPOSED RULES

D. Each hour spent in clinical rounds will be granted one contact hour equivalent.

Subp. 2. Approval of other home study programs. Upon written request, the board may approve the use of home study methods not listed in subpart 1, and may determine the number of earned contact hours. Board approval will be determined on the following criteria:

A. Whether or not the program is likely to contribute to the advancement and extension of professional skill and knowledge in the practice of optometry.

B. Whether the sponsor or author of the program is recognized by the board as being qualified to design a program of home study in the field of optometry.

C. As a condition of approval of a program of self-instruction, the board may require that the author, sponsor, or licensee furnish the board with copies of instructional materials and testing tools.

### **6500.2700 OPTOMETRIST EMERITUS REGISTRATION.**

Subpart 1. Application. Any optometrist duly licensed to practice optometry in Minnesota pursuant to Minnesota Statutes, sections 148.52 to 148.62 who declares that he or she is retired from active practice of optometry may apply to the board for emeritus registration on the annual license renewal form. To qualify, the optometrist must be retired and must not be subject to any disciplinary action or be subject to an order of the board imposing a suspended, conditional, or restricted license to practice optometry.

Subp. 2. Status of registrant. The emeritus registration is not a license which permits the registrant to practice optometry as defined in Minnesota Statutes, sections 148.52 to 148.62, and the rules of the board.

Subp. 3. Continuing education. The continuing education requirements of part 6500.0900 are not applicable to emeritus registration.

Subp. 4. Change to active status. The emeritus optometrist must:

A. apply to the board for reinstatement of his or her active license; and

B. comply with the continuing education requirements for the time period in which the license was in emeritus status. This requirement must be fulfilled prior to petitioning the board for reinstatement of license.

Subp. 5. Renewal cycle or fees. Being registered as an emeritus optometrist will not subject the person to the annual license renewal cycle or renewal fee.

## 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.

## Office of Administrative Hearings

### Adopted Rule Relating to Awards of Expenses and Fees in Contested Cases

The rule proposed and published at *State Register*, Volume 10, Number 50, pages 2446-2448, June 9, 1986 (10 S.R. 2446) is adopted with the following modifications:

**Rule as Adopted****1400.8401 EXPENSES AND ATTORNEY FEES.**

Subpart 1. **Authorization.** Pursuant to Minnesota Statutes, sections 3.761 to 3.765, expenses and attorney's fees may be awarded to a prevailing party, other than the state, in a contested case in which the position of the state is represented by counsel, but excluding a contested case conducted for the purpose of establishing or fixing a rate or for granting or ~~reviewing~~ renewing a license. Expenses and fees shall be awarded following compliance with this part if the prevailing party other than the state shows that the position of the state was not substantially justified, unless special circumstances make an award unjust.

Subp. 3. **Application.** A party seeking an award of expenses and attorney's fees shall, within 30 days of a final disposition in the contested case, submit to the judge an application that shows:

E. a proof of service showing that the state agency and all other parties have been served, either personally or by first class mail, with a copy of the application.

The application must be signed and sworn to by the party and the attorney or other agent or representative submitting the application on behalf of the party, showing the addresses and phone numbers of all persons signing the application.

The application must be received at the office no later than 4:30 p.m. on the ~~30th~~ 40th day following the date of issuance of the final disposition.

Subp. 6. ~~Stay of proceedings pending~~ Applications when appeal is filed. In the event that an appeal from all or any part of the final agency decision in the contested case which gives rise to the application for expenses and attorney's fees has been taken to the appropriate court, ~~all proceedings under this part shall be stayed and all time limits imposed shall be tolled pending a final judicial determination the application for fees and expenses shall be made to the court as provided by Minnesota Statutes, section 3.764, subdivisions 1 and 3.~~

## Department of Agriculture

### Adopted Rules Relating to Seed Potato Certification

The rules proposed and published at *State Register*, Volume 10, Number 52, pages 2534-2535, June 23, 1986 (10 S.R. 2534) are adopted as proposed.

## Board of Pharmacy

### Adopted Rules Relating to Fees

The rules proposed and published at *State Register*, Volume 10, Number 45, pages 2259-2260, May 5, 1986 (10 S.R. 2259) are adopted as proposed.

## Department of Revenue Property Equalization Division

### Adopted Rules Relating to Railroad Valuation

The rules proposed and published at *State Register*, Volume 10, Number 41, pages 2058-2074, April 7, 1986 (10 S.R. 2058) and Volume 10, Number 42, page 2173, April 14, 1986, (10 S.R. 2173) are adopted with the following modifications:

**Rules as Adopted****8106.0200 GENERAL PROCEDURES.**

Laws of Minnesota 1979, chapter 303, article VII (called the Omnibus Tax Bill) codified as Minnesota Statutes, sections 270.80 to 270.90, eliminated the gross earnings tax on Minnesota railroads and replaced it with an ad valorem tax on all railroad operating property. The article also charges the commissioner of revenue with the responsibility of developing rules, both emergency and permanent, which will implement the provisions of the law dealing with the ad valorem method of taxing railroads. Subsequently,

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# ADOPTED RULES

Laws of Minnesota 1984, chapter 502, article 9 gave additional instructions to the commissioner regarding the method of valuing railroad property and the equalization of these valuations. This article also gives the commissioner the authority to promulgate emergency rules in order to implement these valuation and equalization procedures.

The methods, procedures, indicators of value, capitalization rates, weighting percents, allocation factors, apportionment standards, and equalization methods will be used as described in this chapter for 1986 and subsequent years.

## 8106.0400 VALUATION.

Subpart 1. **In general.** The Minnesota legislature has said that railroads may be valued using the unit basis of estimating value. Consequently, the commissioner has chosen to use this method. The approaches to value that will be used in determining the estimated unit value of railroad operating property are cost, capitalized income, and stock and debt except as provided in subparts 4 and 6. It is the decision of the commissioner of revenue that for 1986 and subsequent years the value of railroad property will be determined using these three approaches to value, where applicable, in the manner provided in this part until time or conditions warrant a change in either methods or procedures.

Subp. 2. **Cost approach to valuation.** The cost factor that will be considered in the railroad valuation method is the restated cost of the railroad system, plus the restated cost of construction work in progress on the assessment date. The railroad system shall be considered to be made up of the following ICC accounts: all road and equipment accounts, including leased equipment accounts; all general expenditures; and other elements of investment and railroad property owned and leased to others as well as railroad property leased from others. Book depreciation and obsolescence shall be allowed as a deduction from the restated cost of the railroad's assets enumerated above. The original cost if known, and the annual lease payments of any leased operating property used by the railroad must be reported to the commissioner in conjunction with the annual railroad report. The commissioner shall incorporate the value of the leased property into the railroad's unit value utilizing this information.

If any railroad is not required by the ICC to restate the cost of its assets in accordance with Code of Federal Regulations, title 49, part 1201, the commissioner will make an estimate based upon the best available information of the impact of this restatement on the railroad's assets.

Obsolescence will be calculated through the use of the "Blue Chip Method." This method compares the railroad being appraised with the best railroads in the country, the so-called blue chip railroads. Three indicators of obsolescence will be used. First, a five-year average rate of return will be calculated for the railroad under appraisal. This rate of return is computed by dividing the subject's annual net railroad operating income for each of the most recent five years preceding the assessment, by the railroad's total owned transportation property less recorded depreciation and amortization (net investment in railroad property) for each corresponding year. The resulting five rates of return are then averaged using a simple arithmetic average to arrive at a five-year average rate of return. An example of this computation is as follows:

XYZ Railroad			
Year	Net Railroad Operating Income	Net Investment	Indicated Rate of Return
19XX	\$2,700,000	\$31,500,000	8.57%
19XX	\$2,900,000	\$32,000,000	9.06%
19XX	\$3,100,000	\$33,500,000	9.25%
19XX	\$3,300,000	\$34,000,000	9.70%
19XX	\$3,530,700	\$35,000,000	10.08%
		Total	46.66%
Five-year Average Rate of Return			9.33%

A study will then be made of the major railroads operating within the United States for the same five-year period using such informational sources as Standard and Poor's Statistical Service, Moody's Transportation Manual, and Transportation Statistics in the United States. Each year the railroad with the highest rate of return will be selected as the blue chip railroad. The resulting five rates of return will then be averaged to find the five-year average blue chip rate of return. An example of this process is as follows:

Year	Railroad	Rate of Return
19XX	ABC	11.50%
19XX	FGH	11.27%
19XX	JKL	10.57%
19XX	MNO	11.02%
19XX	XYZ	10.08%
	Total	54.44%
Five-year Average Blue Chip Rate of Return		10.89%

The five-year average rate of return for the railroad under appraisal will be compared to the five-year average blue chip rate of return. The deviation of the subject railroad's rate of return from the blue chip railroads' rate of return is the amount of indicated obsolescence. The following example illustrates the computation.

XYZ Railroad 5-year Average Rate of Return	9.33%
Blue Chip 5-year Average Rate of Return	10.89%
Indicated Obsolescence $1 - (9.33\% \div 10.89\%)$	14.30%

Second, a five-year average freight traffic density indicator will be calculated. ~~This indicator is based on the premise that increased traffic volume reduces unit costs and therefore enhances net income; thus, as traffic density rises obsolescence decreases.~~ This indicator is calculated by dividing the subject railroad's ton miles of revenue freight for the most recent five years preceding the assessment by the average miles of road operated for each corresponding year. The resulting five indicators of freight traffic density are then averaged using a simple arithmetic average to arrive at a five-year average of freight traffic density. An example of this computation is as follows:

XYZ Railroad				
Year	Ton Miles of Revenue Freight	Average Miles of Road Operated	Indicated Freight Traffic Density	
19XX	1,300,000,000	575	2,260,000	
19XX	1,402,500,000	550	2,550,000	
19XX	1,200,000,000	550	2,180,000	
19XX	1,100,000,000	500	2,200,000	
19XX	1,000,000,000	500	2,000,000	
		Total	11,190,000	
Five-Year Average Freight Traffic Density			2,238,000	

A five-year study is then made of the major railroads operating within the United States in the same manner and using the same sources as the rate of return study with the exception that this study concentrates on the freight traffic density achieved by the various major railroads. Each year the railroad with the highest freight traffic density will be selected as the blue chip railroad. The resulting five freight traffic density amounts will then be averaged to find the five-year average blue chip freight traffic density amount. An example of this process is as follows:

Year	Railroad	Freight Traffic Density
19XX	JKL	2,280,000
19XX	FGH	2,600,000
19XX	FGH	2,200,000
19XX	MNO	2,900,000
19XX	ABC	2,280,000
	Total	12,260,000
Five-year Average Blue Chip Freight Traffic Density		2,452,000

The five-year average freight traffic density indicator of the railroad under appraisal will be compared to the five-year average blue chip freight traffic density indicator. The deviation of the subject railroad's freight traffic density from the blue chip railroad's freight traffic density is the amount of indicated obsolescence. The following example illustrates this computation:

XYZ Railroad Five-Year Average Freight Traffic Density	2,238,000
Blue Chip Five-Year Average Freight Traffic Density	2,452,000
Indicated Obsolescence $1 - (2,238,000 \div 2,452,000)$	8.70%

Third, a five-year average gross profit margin indicator will be calculated. This indicator measures a railroad's ability to convert gross revenue to net profit; ~~and would therefore be an important consideration to an investor. A high percentage of gross profit margin indicates a more efficient railroad in converting gross revenue to net profit and thus this railroad is less economically obso-~~

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lete. A low percentage of gross profit margin indicates a railroad with high operating expenses and a good deal of economic obsolescence. This indicator is calculated by dividing net railway operating income, before federal and deferred taxes, by gross revenues. This calculation is performed using the subject railroad income figures for the most recent five years preceding the assessment. The resulting five indicators of gross profit margin are then averaged using a simple arithmetic average to arrive at a five-year average of gross profit margin. An example of this computation is as follows:

XYZ Railroad			
Year	Net Railroad Operating Income Before Taxes	Gross Revenue	Indicated Gross Profit Margin
19XX	4,050,000	15,000,000	27.0%
19XX	4,350,000	15,800,000	27.5%
19XX	4,650,000	16,500,000	28.2%
19XX	4,950,000	17,300,000	28.6%
19XX	5,295,000	19,000,000	27.9%
		Total	139.2%

Five-Year Average Gross Profit Margin 27.8%

A study will then be made of the major railroads operating within the United States for the same five-year period in the same manner and using the same sources in the two previous five-year studies mentioned above. This study will look at the gross profit margin achieved by the various major railroads. Each year the railroad with the highest gross profit margin will be selected as the blue chip railroad. The resulting five gross profit margin percents will then be averaged to find a five-year average blue chip gross profit margin percentage. An example of this process is as follows:

Year	Railroad	Gross Profit Margin
19XX	ABC	30.0%
19XX	ABC	31.2%
19XX	JKL	29.9%
19XX	FGH	32.6%
19XX	JKL	33.3%
	Total	157.0%

Five-Year Average Blue Chip Gross Profit Margin 31.4%

The five-year average gross profit margin percent for the railroad under appraisal will be compared to the five-year average blue chip gross profit margin percent. The deviation of the subject railroad's gross profit margin from the blue chip railroad's gross profit margin is the amount of indicated obsolescence. The following example illustrates this computation:

XYZ Railroad Five-Year Average Gross Profit Margin	27.8%
Blue Chip Five-Year Average Gross Profit Margin	31.4%
Indicated Obsolescence 1 - (27.8% ÷ 31.4%)	11.5%

The obsolescence percentage indicated by this comparison of gross profit margins will be added to the obsolescence indicated by a comparison of rates of return and freight traffic density. The total of these three amounts will be averaged and this result will be the overall obsolescence percentage for the subject railroad. The following is an example of this computation:

XYZ Railroad	
Obsolescence Indicated by Rate of Return Comparison	14.30%
Obsolescence Indicated by Freight Traffic Density Comparison	8.70%
Obsolescence Indicated by Gross Profit Margin Comparison	11.50%
	Total 34.50%
Average Obsolescence Percentage	11.50%

The obsolescence percentage will then be applied to the road accounts of the subject railroad, excluding land and personal property, after the allowance for depreciation has been deducted. In no instance shall the allowance for obsolescence exceed 50 percent. The following example illustrates how the cost indicator of value is computed and how the allowance for obsolescence is applied.

XYZ Railroad

Account	Amount
Road	\$24,000,000
Equipment — Owned and Leased	9,000,000
Construction Work in Progress	4,500,000
General Expenditures	1,823,000
Gross Cost Indicator	39,323,000
Less Depreciation	10,000,000
Net Cost Indicator	\$29,323,000
Road	\$24,000,000
Less Land and Personal Property	1,000,000
Adjusted Road	23,000,000
Adjusted Road	\$23,000,000
Depreciation on Adjusted Road	7,000,000
Net Road	16,000,000
Obsolescence Percent	11.5%
Obsolescence Amount	1,840,000
Adjusted Cost Indicator of Value	\$27,483,000

This cost indicator of value computed in accordance with this part will bear a weighting of 15 percent of the total unit value estimate of the railroad's property, except in the case of bankrupt railroads, or railroads with no income to be capitalized, as provided for in subpart 6, or railroads not meeting the criteria for use of the stock and debt approach to value as specified in subpart 4. These railroads will be valued using a 40 percent weighting for the cost indicator of value.

Subp. 5. **Unit value computation.** The estimated unit value of the railroad property will be the total of the three weighted indicators of value. The following is an example of the computation of the unit value.

Valuation Approach	XYZ Railroad Value	Weighting	
Cost indicator of value	\$27,483,000	15%	\$ 4,122,500
Income indicator of value	21,275,000	60%	12,765,000
Stock and debt indicator of value	21,300,000	25%	5,325,000
		Unit Value	\$22,212,500

The weighting shown above may vary from railroad to railroad, as provided for in subparts 2 to 4, depending on the conditions and circumstances involved in each valuation. For example, a railroad with no outstanding stock would not have a computation for a stock and debt indicator of value and, therefore, the cost indicator of value would be weighted 40 percent.

**8106.0600 ADJUSTMENTS FOR NONFORMULA ASSESSED PROPERTY OR EXEMPT PROPERTY.**

After the Minnesota portion of the unit value of the railroad company is determined, property which is either exempt from taxation, such as pollution control equipment and personal property, or classified as nonoperating will be deducted from the Minnesota portion of the unit value to the extent that it has been included in the computation of this value.

Property which has been included in the computation of the unit value but has been defined as nonoperating property will be valued by the local assessor. The Minnesota portion of the unit value will be reduced by the restated cost of this property. Only nonoperating property located within Minnesota will be eligible for this exclusion.

The railroad company shall have the responsibility to submit to the commissioner of revenue, in the form required by the commissioner, such schedules of nonoperating property as the commissioner may require.

In addition to nonoperating property which will be valued and assessed locally, a deduction from the Minnesota portion of the unit value will be made for personal property. The unit value method presupposes that the value of any one portion of the unit is interdependent upon all other elements of the unit; therefore, it is extremely difficult to make a separation of this value into real and personal property.

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A percentage of the Minnesota portion of the unit value after deducting nonoperating and exempt property will be excluded as personal property. This percentage will be computed in the following way:

A. The following ICC accounts for property within Minnesota will be totaled:

- (1) that portion of coal and ore wharves determined to be personal property;
- (2) communication equipment;
- (3) signals and interlockers;
- (4) roadway machines;
- (5) shop machinery;
- (6) power plant machines; and
- (7) equipment, allocated to Minnesota on the basis of car and locomotive miles in Minnesota compared to total system car and locomotive miles.

B. The total of these accounts will then be divided by the total of the Minnesota road, equipment, leased property, general expenditures, construction work in progress, and other elements of investment accounts. The resulting percentage will be used to determine the personal property amount of the Minnesota portion of the unit value. This amount will not be taxable for ad valorem purposes.

C. The following is an illustration of the computation for the personal property exclusion.

### XYZ Railway

Personal Property Account		Amount in
Coal and Ore Wharves		Minnesota
Communication Equipment		\$ 189,200
Signals and Interlockers		100,000
Roadway Machines		200,000
Shop Machinery		200,000
Power Plant Machinery		100,000
* Equipment — Owned and Leased		100,000
		2,250,000
		3,139,200
* Total Equipment Account	\$9,000,000	
Car and Locomotive Miles in		
Minnesota	1,000,000	
Total Car and Locomotive Miles	4,000,000	
Ratio of Minnesota to Total		25%
Minnesota Allocated Equipment		
Account	\$2,250,000	
Restated Cost Account		Amount in
Road		Minnesota
Equipment — Owned and Leased		\$2,990,000
Construction Work in Progress		2,250,000
General expenditures		800,000
		500,000
		\$6,540,000
Minnesota Personal Property		
Accounts	\$3,139,200	
Minnesota Restated Cost	\$6,540,000	
Ratio of Personal Property to		
Cost		48%
Minnesota portion of unit value		
		5,108,875
Personal Property exclusion at 48%		2,452,260
Taxable Minnesota Portion of Unit Value		\$2,656,615

**8106.0700 APPORTIONMENT.**

Subp. 4. **Miles of track.** The information for the computation of this apportionment component will be based on information submitted by the railroads to the commissioner of revenue in conjunction with the annual report required by part 8106.0300, subpart 1. Each railroad will be required to list the miles of track they own in each taxing district within Minnesota. The track must be separated into two classes, main line track and all other track.

In order to make the miles of track in each taxing district compatible with the other apportionment components, the miles must be converted to dollars. This conversion will be computed annually. The conversion will be accomplished by adding together the following ICC accounts for each railroad's net investment in Minnesota: account 3, grading; account 8, ties; account 9, rails; account 11, ballast. The total of these accounts will then be divided by the number of miles of track operated by the respective railroads within Minnesota to obtain a cost per mile figure. This will be used as the average cost per mile for track within Minnesota.

The following is an example of how the average cost per mile of track in Minnesota will be computed:

Railroad	Total of Accounts #3, 8, 9, 11	Mileage Operated in Minnesota
ABC Railway	\$ 4,000,000	154
FGH Railway	800,000	42
JKL Railroad	500,000	20
MNO Railroad	7,450,000	290
XYZ Railroad	<u>2,500,000</u>	<u>104</u>
	\$15,250,000	610

Total cost of track (\$15,250,000) ÷ Total miles operated (610) = Average Cost per Mile of Track \$25,000.

~~An additional calculation is necessary to adjust this average cost per mile of track to allow for weighting.~~ Main line track shall be weighted at 1.5 times the cost of all other track; thus, if the average cost per mile of track is \$25,000, main line track would be worth more than \$25,000 per mile, while all other track would be worth less. The calculation for the average cost of both main line and all other track shall be made annually on an industry basis.

The calculation to determine the average cost per mile of main line track and the average cost per mile of all other track will be computed in the following manner:

- A. Total mileage operated will be multiplied by the average cost per mile to arrive at a total track cost.
- B. Total mileage operated will be separated into the two types of track, main line and all other track.
- C. Main line track will be multiplied by 1.5 to arrive at adjusted main line miles.
- D. Adjusted main line miles will be added to all other track miles to arrive at adjusted total track miles.
- E. Total track cost will be divided by adjusted total track miles to arrive at the cost per mile of all other track.
- F. The cost per mile of main line track will be computed by multiplying the cost per mile of all other track by 1.5.

An illustration of this computation is as follows:

Railroad	Mileage Operated	Main Line Miles	All other Track Miles
ABC Railway	154	96	58
FGH Railway	42	10	32
JKL Railroad	20	15	5
MNO Railroad	290	132	158
XYZ Railroad	<u>104</u>	<u>52</u>	<u>52</u>
	610	305	305
Total Mileage Operated			610
Average Cost Per Mile of Track			\$ 25,000
Total Track Cost			\$15,250,000

**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

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Main Line Miles	305	
Weighting Factor	1.5	
Adjusted Main Line Miles		457.5
Other Track Miles		305.0
Adjusted Total Track Miles		762.5
Total Track Cost		\$15,250,000
Adjusted Total Track Miles		762.5
Average Cost Per Mile of Other Track		\$ 20,000
Average Cost Per Mile of Other Track		\$ 20,000
Weighting Factor		1.5
Average Cost Per Mile of Main Line Track		\$ 30,000

After the per mile cost figures for main line and all other track are obtained, these per mile cost figures would be multiplied by the length of each type of track in a particular taxing district to obtain the value of the trackage in that district. The same cost figures will be used for all railroads operating in Minnesota.

Subp. 6. **Apportionment computation.** After the three apportionment components have been calculated for each taxing district in which the railroad operates, the apportionment of the railroad's taxable Minnesota portion of the unit value can begin. This The apportionment of a railroad's taxable Minnesota value is accomplished by totaling the amount of the land, track, and structure components as developed in subparts 3 to 5 for each taxing district, then finding the sum of these totals for all the taxing districts in which the subject railroad operates. The taxable Minnesota portion of the railroad's unit value is divided by the total of the three apportionment components for all taxing districts in which the railroad operates in order to arrive at a percentage. This resulting percentage is then applied to the total amount of the three apportionment components for each specific taxing district. The figure produced by this multiplication process is the taxing district's share of the railroad's taxable Minnesota portion of the unit value. It is important to note that No more value can be distributed to the various taxing districts than that produced by the valuation process described in parts 8106.0100 to 8106.0600.

The example in part 8106.9900 illustrates the apportionment process.

### 8106.0800 EQUALIZATION.

Subp. 2. **Assessment/sales ratio computation.** Each year the sales ratio section of the Minnesota Department of Revenue, Property Equalization Division, prepares a comprehensive assessment/sales ratio study commonly known as the State Board of Equalization Sales/Ratio study. This study is used by the State Board of Equalization to equalize assessment levels of ad valorem property among various counties and taxing jurisdictions within Minnesota. The study is conducted in many parts. A comprehensive assessment/sales ratio study compiled annually by the sales ratio section of the Property Assessment and Review Division of the Department of Revenue commonly known as the State Board of Equalization Sales/Ratio Study will be used in this computation. The portions of this study which will be used for purposes of this section are known as the "County Commercial and Industrial Sales Ratio."

This commercial and industrial (C & I) sales ratio is computed through an analysis of the certificates of real estate value filed by the buyers or sellers of commercial or industrial property within each county. The information contained on these certificates of real estate value is compiled pursuant to requests, standards, and methods set forth by the Minnesota Department of Revenue acting upon recommendations of the Minnesota legislature. The most recent C & I study available will be used for purposes of this section.

The median C & I sales ratio from the County Commercial and Industrial Sales Ratio study will be used as a basis to estimate the current year C & I median ratio for each county.

The process used to estimate this current year median ratio will be as follows.

The State Board of Equalization abstract of market value will be examined. This statistical compilation, commonly called the mini abstract, is filed each year by every county assessor, with the commissioner of revenue. The abstract is a listing of the current estimated market values, together with other information for the various classes of property - residential agricultural, commercial, industrial, recreational, etc. - within each particular county. The current estimated market value of commercial and industrial property within each county will be taken from this abstract. The amount of the value of new commercial and industrial construction, ("new" meaning since the last assessment period) as well as the value of commercial and industrial property which has changed classification (i.e. commercial to tax exempt property) will also be taken from the abstract. The value of new construction will then be deducted from the estimated market value, resulting in a net estimated current year market value for commercial and industrial property within the county. The value of commercial and industrial property which has changed classification will be deducted from the previous years estimated market value to arrive at a net estimated previous year market value for commercial and industrial property within the county. The net current year value will be compared to the net previous year's estimated market value for

commercial and industrial property within the county and the difference between the two values noted. This difference will be divided by the previous year's net estimated market value for commercial and industrial property to find the percentage of increase, or decrease, in assessment level for each year. This percent of change will be applied to the most recent C & I median ratio to estimate the current year's C & I median ratio. An example of this calculation for a typical county is shown below.

1986 Estimated Market Value for		
Commercial and Industrial Property	\$12,000,000	
Less: New Construction	<u>1,500,000</u>	
1986 Net Estimated Market Value		
for Commercial and Industrial Property		10,500,000
1985 Estimated Market Value for		
Commercial and Industrial Property	10,250,000	
Less: Classification Changes	<u>250,000</u>	
1985 Net Estimated Market Value		
for Commercial and Industrial Property		10,000,000
Difference 1985 vs. 1986		
Estimated Market Value		500,000
Percent of Change (500,000 ÷ 10,000,000)		5%
1985 Median Commercial and Industrial Ratio		88%
1986 Estimated Median Commercial and		
Industrial Ratio (88% x 105%)		92.4%

This same calculation is performed for each Minnesota county which contains operating railroad property. ~~However,~~ If there are five or fewer valid sales of commercial and industrial property within a county during the study period, ~~it is the commissioner's decision that~~ these few sales are insufficient to form the basis for a meaningful C & I ratio. Therefore, the median assessment/sales ratio to be used for purposes of the above computation will not be the median C & I ratio but will be the weighted median ratio of all property classes within the county for which a sales ratio is available. This weighted median ratio is computed in the same manner using the same procedures and standards as the C & I ratio. In addition, the computation described above will not be performed using the commercial and industrial estimated market value but will use the estimated market value for all property within the county. All other aspects of the calculations are identical except for this substitution.

The weighted median ratio is developed by multiplying the median ratio for each class of property (agricultural, residential, recreational, commercial) by the percentage of value that class of property comprises of the total county value. An example of this calculation is as follows:

Class of Property	Amount of Value	Percent of Value	Median Ratio	Weighted Median Ratio
Residential	\$ 20,000,000	20%	85%	17.00%
Agricultural	55,000,000	55%	95%	52.25%
Seasonal - Recreational	5,000,000	5%	90%	4.50%
Commercial - Industrial	20,000,000	20%	85%	17.00%
TOTAL	\$100,000,000	100%		90.75%

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

# OFFICIAL NOTICES

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

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

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## Department of Commerce, Division of Financial Examinations

### Outside Opinions Sought Concerning Rules Governing Development Loans, Net New Funds, Rating Scale, Publication Notice and Relevant Information Required in the Applications, Reporting and Approval Procedures for Applicants to Acquire and for Financial Institutions Owned by Interstate Bank Holding Companies, Including the Impact of the Rules on Small Business

Notice is hereby given that the Minnesota Department of Commerce is soliciting information and opinions from sources outside the agency in preparing to promulgate new rules relating to the requirement that:

- A financial institution located in this state owned by an interstate bank holding company provide a level of development loans in this state. The adoption of these rules is authorized by Minn. Laws Ch. 339, § 14.
- The application for the acquisition of a bank located in this state to be owned by an interstate bank holding company must show how the acquisitions will bring net new funds into Minnesota. The adoption of these rules is authorized by Minn. Laws Ch. 339, § 7, Subd. 3(9).
- The Commissioner may require any additional relevant information in the application form for the acquisition of a bank located in this state by an interstate bank holding company. The adoption of these rules is authorized by 1986 Minn. Laws Ch. 339, § 7, Subd. 3(9).
- The Commissioner shall adopt a five point rating scale to determine the performance of each financial institution located in this state owned by an interstate bank holding company in meeting the credit needs of the community and in reaching its targeted level of development loans. This includes the information to be required in the annual report by each such financial institution to determine investment and lending categories. The adoption of these rules is authorized by 1986 Minn. Laws Ch. 339, § 11, Subd. 3 and 14.
- The Commissioner shall prescribe the form and procedure for the publication of the notice of application for the acquisition of banks located in this state by interstate bank holding companies.

The Department of Commerce requests information and opinions concerning the subject matter of the rules. Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Statutes § 14.115, subdivision 1. Interested persons or groups may submit data or views on the subject matter of concern orally or in writing. Written statements should be addressed to:

James G. Miller, Deputy Commissioner  
Division of Financial Examinations  
500 Metro Square Building  
Seventh and Robert Streets  
St. Paul, Minnesota 55101  
(612) 296-2135

Oral statements will be received during regular business hours over the telephone at (612) 296-2715 and in person at the above address.

Notice regarding development loans requirements has been previously published June 2, 1986 for comments by July 31, 1986. This is to extend the time and expand upon the scope of the notice pursuant to Chapter 339, 1986 Session Laws.

All statements of information and comment shall be accepted until September 25, 1986. Any written material received by the Department of Commerce shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Michael A. Hatch  
Commissioner of Commerce

## **Department of Energy and Economic Development, Energy Division**

### **Outside Opinion Sought Regarding Proposed Amendments to Rules Governing Community Energy Council Grants to Govern the Distribution of Oil Overcharge Funds for Community Energy Initiatives Grants**

Notice is hereby given that the Department of Energy and Economic Development, Energy Division (DEED) is seeking information or opinions from sources outside the agency in preparing to promulgate amendments to rules governing Community Energy Councils Grants (Minn. Rules, parts 4160.5100-4160.5900) to govern the distribution of oil overcharge funds for community energy initiatives grants. The promulgation of these rules is permitted by Minnesota Statutes, sections 116J.035, subdivision 2 and 116J.381, subdivision 4, which permit the Commissioner to adopt rules pursuant to chapter 14 as necessary to carry out his duties and responsibilities pursuant to chapter 116J, and to provide professional and financial assistance to communities to establish community energy councils and develop and implement community energy programs.

DEED requests information and comments concerning the subject matter of these amendments to the rules. Interested or affected persons may submit statements of information or comment orally or in writing. Written statements should be addressed to: Mark Schoenbaum, DEED, 900 American Center Building, 150 E. Kellogg Blvd., St. Paul, MN 55101. Oral statements will be received during regular business hours by telephone at (612) 297-3602 and in person at the above address.

All statements and comments pertaining to this matter shall be accepted until the end of the comment period for any proposed amendments to the rules or until the close of the hearing record should there be a public hearing on these rules, whichever is later. Any written material received by DEED shall become part of the rulemaking record in the event that amendments to the rules are promulgated.

Mark B. Dayton, Commissioner

## **Department of Health, Services for Children with Handicaps**

### **Cost-Sharing Schedule**

Notice is hereby given that the Cost-Sharing Schedule, prepared according to Minnesota Rules, Chapter 4705.0600 Subp. 3 and published here will be effective October 1, 1986.

Dated: 13 August 1986

Sister Mary Madonna Ashton  
Commissioner of Health

### **Cost-sharing Schedule**

The applicant's share is one percent of cost for each \$1,000 or fraction of \$1,000 of income above 60 percent of the state gross median income for a household of the same size as the applicant's. The applicant's percent share is found on the schedule by looking under the number which is the number of members of applicant's household to find the income level which includes the applicant's annual household income. The applicant's percent share is shown to the far left of that income level. To extend the schedule to households of more than ten members add \$457 for each household member in excess of ten to the income levels for a household of ten members.

# OFFICIAL NOTICES

Percentage which eligible applicants share in the cost of treatment

Income Levels by Numbers of Members in Household

	1	2	3	4	5
0	0- 9,605	0-12,560	0-15,516	0-18,471	0-21,426
1	9,606-10,605	12,561-13,560	15,517-16,516	18,472-19,471	21,427-22,426
2	10,606-11,605	13,561-14,560	16,517-17,516	19,472-20,471	22,427-23,426
3	11,606-12,605	14,561-15,560	17,517-18,516	20,472-21,471	23,427-24,426
4	12,606-13,605	15,561-16,560	18,517-19,516	21,472-22,471	24,427-25,426
5	13,606-14,605	16,561-17,560	19,517-20,516	22,472-23,471	25,427-26,426
6	14,606-15,605	17,561-18,560	20,517-21,516	23,472-24,471	26,427-27,426
7	15,606-16,605	18,561-19,560	21,517-22,516	24,472-25,471	27,427-28,426
8	16,606-17,605	19,561-20,560	22,517-23,516	25,472-26,471	28,427-29,426
9	17,606-18,605	20,561-21,560	23,517-24,516	26,472-27,471	29,427-30,426
10	18,606-19,605	21,561-22,560	24,517-25,516	27,472-28,471	30,427-31,426
11	19,606-20,605	22,561-23,560	25,517-26,516	28,472-29,471	31,427-32,426
12	20,606-21,605	23,561-24,560	26,517-27,516	29,472-30,471	32,427-33,426
13	21,606-22,605	24,561-25,560	27,517-28,516	30,472-31,471	33,427-34,426
14	22,606-23,605	25,561-26,560	28,517-29,516	31,472-32,471	34,427-35,426
15	23,606-24,605	26,561-27,560	29,517-30,516	32,472-33,471	35,427-36,426
16	24,606-25,605	27,561-28,560	30,517-31,516	33,472-34,471	36,427-37,426
17	25,606-26,605	28,561-29,560	31,517-32,516	34,472-35,471	37,427-38,426
18	26,606-27,605	29,561-30,560	32,517-33,516	35,472-36,471	38,427-39,426
	6	7	8	9	10
0	0-24,382	0-24,936	0-25,490	0-26,044	0-26,598
1	24,383-25,382	24,937-25,936	25,491-26,490	26,045-27,044	26,599-27,598
2	25,383-26,382	25,937-26,936	26,491-27,490	27,045-28,044	27,599-28,598
3	26,383-27,382	26,937-27,936	27,491-28,490	28,045-29,044	28,599-29,598
4	27,383-28,382	27,937-28,936	28,491-29,490	29,045-30,044	29,599-30,598
5	28,383-29,382	28,937-29,936	29,491-30,490	30,045-31,044	30,599-31,598
6	29,383-30,382	29,937-30,936	30,491-31,490	31,045-32,044	31,599-32,598
7	30,383-31,382	30,937-31,936	31,491-32,490	32,045-33,044	32,599-33,598
8	31,383-32,382	31,937-32,936	32,491-33,490	33,045-34,044	33,599-34,598
9	32,383-33,382	32,937-33,936	33,491-34,490	34,045-35,044	34,599-35,598
10	33,383-34,382	33,937-34,936	34,491-35,490	35,045-36,044	35,599-36,598
11	34,383-35,382	34,937-35,936	35,491-36,490	36,045-37,044	36,599-37,598
12	35,383-36,382	35,937-36,936	36,491-37,490	37,045-38,044	37,599-38,598
13	36,383-37,382	36,937-37,936	37,491-38,490	38,045-39,044	38,599-39,598
14	37,383-38,382	37,937-38,936	38,491-39,490	39,045-40,044	39,599-40,598
15	38,383-39,382	38,937-39,936	39,491-40,490	40,045-41,044	40,599-41,598
16	39,383-40,382	39,937-40,936	40,491-41,490	41,045-42,044	41,599-42,598
17	40,383-41,382	40,937-41,936	41,491-42,490	42,045-43,044	42,599-43,598
18	41,383-42,382	41,937-42,936	42,491-43,490	43,045-44,044	43,599-44,598

## Department of Human Services

### Notice of Hospital Cost Index

Pursuant to Minnesota Rules, Part 9500.1120 hospitals participating in the Medical Assistance and General Assistance Medical Care programs are subjected to a Health Cost Index (HCI) that is used in the determination of prospective inpatient hospital rates. Each hospital whose fiscal year starts during a given calendar quarter shall be notified of the HCI to be used 30 days prior to the start of that quarter. It has been determined that the HCI is 4.1 percent according to an independent source, Data Resources, Inc. for Health Care Costs for hospitals whose fiscal years begin during the calendar quarter beginning October 1, 1986.

Leonard W. Levine, Commissioner  
Department of Human Services

## **State Board of Investment**

### **Official Notice of State Board of Investment and Investment Advisory Council Meetings**

The State Board of Investment will meet on Wednesday, September 3, 1986 at 8:00 A.M. in Room 118, State Capitol, Saint Paul, MN.

The Investment Advisory Council will meet at 2:00 P.M. on Tuesday, September 2, 1986, in the MEA Building, 41 Sherburne Avenue, Conference Room "A", Saint Paul, MN.

## **Department of Labor and Industry, Workers' Compensation Division**

### **Outside Opinion Sought on Amendments to Rules Governing Eligibility Criteria for Qualified Rehabilitation Consultants**

Notice is hereby given that the Minnesota Department of Labor and Industry, Workers' Compensation Division, is seeking information or opinions from sources outside the agency in preparing to amend rules governing eligibility criteria and requirements for registration of qualified rehabilitation consultants, Minn. Rules Parts 5220.0100, 5220.1400, 5220.1500, 5200.1600. These rules are authorized by Minn. Stat. §§ 176.102, subd. 2 and 176.83, subd. 2 (1984).

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

Steve Keefe, Commissioner  
Department of Labor and Industry  
444 Lafayette Road  
St. Paul, Minnesota 55101

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

Oral statements will be received during regular business hours over the telephone at 612/296-2342 and in person at the above address.

Information will be accepted until September 2, 1986.

Dated: 18 August 1986

Steve Keefe, Commissioner  
Labor and Industry

## **Soil and Water Conservation Board, Department of Agriculture**

### **Special Board Meeting**

The Soil and Water Conservation Board will hold a Special Board Meeting on Friday, August 29, 1986, starting at 9:00 a.m. The meeting will be held in Conference Room A of the Department of Agriculture Building, 90 West Plato Boulevard, St. Paul, Minnesota.

The Soil and Water Conservation Board will resume its regularly scheduled monthly meeting on Wednesday, September 17, 1986.

## **Department of Transportation**

### **In the Matter of the Debarment of Ridgedale Electric, Inc.**

Pursuant to Laws 1984, Chapter 654, Article 2, Section 8, Minnesota Rule 1230.3400, and a Stipulation for Informal Disposition, you are debarred and disqualified from entering into or receiving a Minnesota Department of Transportation contract and from

## OFFICIAL NOTICES

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serving as a subcontractor or material supplier under a Mn/DOT contract. Neither you nor any business or entity owned by, or associated with you may enter into a contract with Mn/DOT or serve as a subcontractor or supplier of materials or services under a Mn/DOT contract.

Minnesota Rule 1230.3100, Subpart 9, states:

Subp. 9. Mn/DOT contract. "Mn/DOT contract" means a written instrument:

A. containing the elements of offer, acceptance, and consideration to which the Minnesota Department of Transportation is a party, or acts as an agent for a party under Minnesota Statutes, section 161.36, subdivisions 2 and 3, 360.016, subdivisions 2 and 3, or 360.039, subdivisions 2 and 3;

B. for which competitive bids are required or taken; and

C. which is subject to the approval of the commissioner.

This order takes effect on July 1, 1986, and continues until and including June 30, 1987.

## Department of Transportation

### In the Matter of the Debarment of Gerald Andrew Wagoner

Pursuant to Laws 1984, Chapter 654, Article 2, Section 8, Minnesota Rule 1230.3400, and a Stipulation for Informal Disposition, you are debarred and disqualified from entering into or receiving a Minnesota Department of Transportation contract and from serving as a subcontractor or material supplier under a Mn/DOT contract. Neither you nor any business or entity owned by, or associated with you may enter into a contract with Mn/DOT or serve as a subcontractor or supplier of materials or services under a Mn/DOT contract.

Minnesota Rule 1230.3100, Subpart 9, states:

Subp. 9. Mn/DOT contract. "Mn/DOT contract" means a written instrument:

A. containing the elements of offer, acceptance, and consideration to which the Minnesota Department of Transportation is a party, or acts as an agent for a party under Minnesota Statutes, section 161.36, subdivisions 2 and 3, 360.016, subdivisions 2 and 3, or 360.039, subdivisions 2 and 3;

B. for which competitive bids are required or taken; and

C. which is subject to the approval of the commissioner.

This order takes effect on July 1, 1986, and continues until and including June 30, 1987.

# STATE CONTRACTS

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

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

### Contracts and Requisitions Open for Bid

Call 296-6152 for Referral to Specific Buyers.

Commodity for Bid	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Hard Disk Drives	August 25, 1986	Vocational-Technical Education Board	St. Paul	36-000-05931
Copy Machine Supplies	August 26, 1986	State University	Mankato	26-071-16854
Photocopy Machine Rental	August 26, 1986	Attorney General	St. Paul	06-000-05894
Mower Attachment & Accessories	August 26, 1986	Veterans Affairs	Minneapolis	75-200-00527
Construct Pole Bldg.—Rebid	August 26, 1986	Transportation Administration, Central Stores	Detroit Lakes	79-400-02644
Mimeograph Supplies	August 26, 1986		St. Paul	Price-Contract
Refuse Pickup	August 26, 1986	Human Services	St. Peter	55-105-07313
Profile Projector	August 26, 1986	State University	Mankato	26-071-16914
Hazardous Waste Excavation and Securement of Contaminated Soil	August 26, 1986	Pollution Control Agency	Roseville	32-300-14907
Rubbish Disposal	August 27, 1986	Community College	Willmar	27-145-49020
Helicopter Rental for Fire Control	August 27, 1986	Natural Resources, Forestry	Hibbing	29-000-44427
Helicopter Rental for Fire Control	August 27, 1986	Natural Resources, Forestry	Brainerd	29-000-44428
Van Conversion	August 27, 1986	Jobs & Training		21-606-66838
Repair of McQuay Centrifugal Chiller	August 28, 1986	State University	St. Cloud	26-073-19099
Blasting Materials	August 28, 1986	Various	Various	Price-Contract
Poultry	August 29, 1986	Correctional Facility	St. Cloud	78-830-08090
TI Procad System—Rebid	August 29, 1986	State University	Mankato	26-071-16902
Exercise Equip.	August 29, 1986	Community College	White Bear Lake	27-154-46588

## Iron Range Resources and Rehabilitation Board

### Request for Proposals for Graphic Arts Services

The Iron Range Resources and Rehabilitation Board is seeking proposals from Minnesota graphic arts vendors to provide professional graphic arts services to the Agency. The Agency administers various divisions including: Giant's Ridge Ski Area; Ironworld, USA; Mineland Reclamation—Hill Annex Mine Tours; and a multiple-use Trails Division.

#### Cancellation of Solicitation

“THIS REQUEST FOR PROPOSAL DOES NOT OBLIGATE THE STATE OF MINNESOTA TO COMPLETE THE PROJECT, AND THE STATE RESERVES THE RIGHT TO CANCEL THIS SOLICITATION IF IT IS CONSIDERED TO BE IN THE STATE'S BEST INTEREST.”

# STATE CONTRACTS

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## Tasks of the Contractor

A. To provide quality, professional appearing camera-ready graphic arts materials, and original ideas for production of effective brochures, logos, and advertisements.

B. Development of, but not limited to, graphic art work for use by the Agency in the meeting and promoting its objectives through the various programs and facilities it now administers, or any new programs which surface in the future during the term of the contract.

C. Provide, aid, advise, and assist in the production phase of graphic arts provided to the Agency through working closely with Agency staff. A certain priority to be given the Agency objectives and requests, whether long-term, or short-term and critical, as viewed and opinioned by the Agency.

## Tentative Proposal/Contract Timelines

Publication in *State Register*: Monday, August 25, 1986.

Response Period: Tuesday, August 26, 1986—Monday, September 15, 1986, 4:30, P.M.

Tentative Respondent Interviews: September 16-18, 1986.

Anticipated Date of Contract Award: September 26, 1986.

Effective Contract Date: On or near October 15, 1986.

Term of Contract: October 15, 1986—October 14, 1986.

## Cost of Contract

This, of course, is a negotiable item. However, the IRRRB estimates expenditures to approximately \$50,000.00 during the term of the contract based on historical expenditures for this type of service for the facilities involved.

## Statutory Proposal Requirements

In accordance with the provisions of Minnesota Statute, § 363.073, for State contracts in excess of \$50,000.00, all responders having more than twenty (20) full-time employees at any time during the previous twelve (12) months must have a certificate of compliance issued by the Commissioner of Human Rights before a proposal may be accepted. The proposal will not be accepted unless it includes one of the following:

- A. A copy of the firm's current certificate issued by the Commissioner of Human Rights; or,
- B. A statement certifying that the firm has a current certificate of compliance issued by the Commissioner of Human rights; or,
- C. A statement certifying that the firm has not had more than 20 full-time employees in Minnesota at any time during the previous twelve months.

Any questions concerning a Certificate of Compliance may be referred to the Contract Compliance Unit of the Minnesota Department of Human Rights at (612) 296-5663.

## Department of Natural Resources

### Request for Proposals for Health and Safety Services

The Minnesota Department of Natural Resources is seeking proposals from individuals or organizations to assist the Department's Safety and Health Administrator in developing, writing and implementing the following:

1. Develop a new employee orientation program. The program will contain information relative to DNR safety and health policies, procedures, and employees' work environment. Program will include various documents and booklets regarding specific safety and health concerns.

A format for supervisors' orientation training and follow-up procedures will accompany this program.

2. Develop an inspection program tailored to DNR facility needs.
  - a. Program to include a planned inspection strategy and an inspection form.
  - b. Develop a written method of recording and follow-up. Procedures for action-orientated results.
  - c. Develop a strategy to identify operational errors that allow accidents to occur.
3. Develop a DNR employee safety rules handbook.
  - a. Handbook will contain general rules for the DNR.

- b. The handbook will also identify specific rules for discipline activities and functions.
4. Develop a supervisor/employee communication tool identifying specific issues relative to DNR needs.
  - a. Book will contain:
    - 1) Posters
    - 2) Suggested method of implementation
5. Develop an employee wellness handbook to raise employee awareness of those concerns and lifestyles that encourage employees to stay healthy.
  - a. The handbook will identify benefits as well as the relationship of professional guidance to the success of the goals and activities.
  - b. Handbook will contain references to professional guidance.

Prospective responders who have any questions regarding this request for proposal may call, write or submit proposal to:

John Ostrowski, Health and Safety Administrator  
Department of Natural Resources, Field Services  
500 Lafayette Road  
St. Paul, MN 55155-4016  
(612) 297-4906

Proposals will be accepted until 4:30 p.m. September 5, 1986.

Estimated amount of the contract is not to exceed \$12,000.

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## STATE GRANTS

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

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## Department of Jobs and Training, Community Services

### Food Demonstration Projects Funding

#### Announcement

The division of Community Services of the Minnesota Department of Jobs and Training announces the availability of \$40,000.00 to fund up to five demonstration projects designed to increase participation in the Federal Food Stamp Program, maximize cooperation among a variety of food programs, and eliminate duplication of sites, services, and personnel. A project may receive a maximum of \$10,000.00. Project proposals must have written agreements, signed by all parties. Projects will be reviewed and selected in order to provide for a variety of host agencies.

#### Background

The 74th Legislature has mandated efforts aimed at increasing participation in the Federal Food Stamp Program. The Emergency Steering Committee, an independent group formed to discuss and make recommendations about issues relating to the hungry and homeless in Minnesota, has suggested that efforts be undertaken to make the application process for Food Stamps more accessible to potential participants and to increase coordination and cooperation among existing food programs, specifically, Food Stamps, food shelves, WIC, surplus commodities distribution. These efforts would potentially lead to "one-stop" services for participants to utilize these programs, making them more convenient for recipients and more efficient and cost-effective for service deliverers.

#### Project Examples

The types of projects which might be funded could include, but are not limited to:

- locating Food Stamp intake at the same location with other food services such as a food shelf, WIC site, surplus commodity distribution site;
- defraying the travel expenses of a county employee to do Food Stamp intake at a decentralized site and/or to supervise non-county employees in taking Food Stamp applications;

## STATE GRANTS

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- paying the cost of a computer terminal to be used at a decentralized site to access data to facilitate the Food Stamp application process;
- developing an informational brochure which would list the food programs in an area.

### Submitting Proposals

Proposals, which must include a statement of purpose, goals, a detailed work plan, and budget, should be submitted to:

Beverly J. Gleeson, Director,  
Community Services  
Minnesota Department of Jobs and Training  
690 American Center Building  
150 East Kellogg Boulevard  
St. Paul, MN 55101

The final date for submission of applications is 4:30 p.m., October 3, 1986. Projects may be funded through September 30, 1987.

## State Board of Vocational Technical Education Instructional/Student Support Services Section

### Notice of Availability of Funds for Community Based Organization Programs

The State Board of Vocational Technical Education will distribute federal funds to eligible recipients in accordance with the Carl D. Perkins Vocational Education Act for individuals who are to be served by Community Based Organizations. The amount of federal funds available for Community Based Organization Program activities is \$118,591.

Organizations and associations interested in applying for federal funds should contact the nearest AVTI for additional information or refer to Section 4.19 "Community Based Organizations or Minnesota State Plan for Vocational Technical Education for information relating to the availability and disbursement of federal funds.

Qualified organizations and associations must prepare a joint application with an appropriate eligible recipient whose main responsibility will be to act as fiscal agent for distribution of and accountability for the federal funds.

An eligible recipient is defined as: 1) a nonprofit educational recipient legally authorized to provide post-secondary vocational education; and b) have established certified vocational technical education programs.

Additional information will be included in the "Request for Proposal" which will be mailed upon request. To receive a Request for Proposal notify Sharon Grossbach, 529 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101 no later than 4:30 p.m. on September 26, 1986.

Final proposals must be submitted to 529 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101 by 4:30 p.m. on October 3, 1986.

## State Board of Vocational Technical Education Instructional/Student Support Services Section

### Notice of Availability of Funds for Incarcerated Programs

The State Board of Vocational Technical Education will distribute federal funds to eligible recipients in accordance with the Carl D. Perkins Vocational Education Act for individuals who are Incarcerated. The amount of federal funds available for Incarcerated Program and activities is \$75,121.

Organizations and associations interested in applying for federal funds should contact the nearest AVTI for additional information or refer to Section 4.14 "Incarcerated" in the Fiscal Year 1987 Minnesota State Plan for Vocational Technical Education for information relating to the availability and disbursement of federal funds.

Qualified organizations and associations must prepare a joint application with an appropriate eligible recipient whose main responsibility will be to act as fiscal agent for distribution of and accountability for the federal funds.

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## SUPREME COURT CALENDAR

An eligible recipient is defined as: a) a nonprofit educational recipient legally authorized to provide post-secondary or secondary vocational education; and b) have established certified vocational technical education programs.

Additional information will be included in the "Request for Proposal" which will be mailed upon request. To receive a Request for Proposal notify Sharon Grossbach, 529 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101 no later than 4:30 p.m. on September 26, 1986.

Final proposals must be submitted to 529 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101 by 4:30 p.m. on October 3, 1986.

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## SUPREME COURT CALENDAR

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

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### SEPTEMBER 1986

#### MONDAY, 09-08-86

**C1-86-196 WHITNEY E. TARUTIS AND EVA G. TARUTIS (Attorney: Whitney E. Tarutis, Pro Se.) vs. COMMISSIONER OF REVENUE (Attorney: Amy Eisenstadt) ORIGIN: Tax Court**

Whether a taxpayer is collaterally estopped from litigating factual issues regarding his federal adjusted gross income that he has previously litigated in federal tax court.

Whether the Commissioner can make a valid assessment of income tax for the years 1976 and 1977, after an expiration of the Statutes of Limitations, with no allegations of fraud or criminal violations of the Tax Code.

#### MONDAY, 09-08-86

**CX-85-719 STATE OF MINNESOTA (Attorney: R. Kathleen Morris) vs. JAMES A. FORD (Attorney: Moss & Barnet and Phillip Gainsley) ORIGIN: Court of Appeals.**

Should a defendant in a criminal action be permitted to withdraw his negotiated plea of guilty where the State elects not to proceed with the plea agreement or the court imposes a sentence beyond the terms of the agreement without advising the defendant?

Does venue of this case rest properly in Scott County?

Did the trial court err in holding that the complaint contained a sufficient showing of probable cause to bind the defendant over for trial?

#### TUESDAY, 09-09-86

**C5-85-708 DAVID FRANKEN (Attorney: Carlsen, Greiner & Law and Christopher S. Hayhoe and Paul C. Wolf) vs. DESIGN SPACE INTERNATIONAL ET AL. (Attorney: Leonard, Street & Deinard and Allen I. Saeks and James V. Roth) ORIGIN: Court of Appeals.**

Did the preparation and placement of a notice of termination by an employer in an employee's file constitute a "publication?"

Did the plaintiff take the required showing of malice in order to break the qualified privilege protecting communications between employer and employee?

Was there sufficient evidence to support the jury's award of punitive damages, and, if so, was the award of excessive damages excessive?

# SUPREME COURT CALENDAR

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## TUESDAY, 09-09-86

**C1-84-2106 STATE OF MINNESOTA (Attorney: Thomas L. Johnson and Paul R. Jennings) vs. TWARNA (NMN) RICHARDSON (Attorney: C. Paul Jones and Elizabeth B. Davies) ORIGIN: Court of Appeals.**

Was the evidence sufficient as a matter of law to sustain Appellant's conviction for first degree murder?

Did the post conviction court err in ruling that an inculpatory statement against penal interest by a State's witness was inadmissible hearsay?

Must appellant be granted a new trial because new evidence established that a material witness testified falsely at trial with respect to critical evidence?

Did the trial court err in refusing to instruct the jury that actual danger is not necessary to justify acting in self-defense.

## WEDNESDAY, 09-10-86

**C5-85-1356 SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY (Attorney: Dorsey & Whitney and Craig A. Beck) vs. PHILIP W. SCHRADER (Attorney: Meyer & Miller) ORIGIN: Court of Appeals.**

Whether a three-person hearing Board (sitting as a review board) appointed and proceeding under the veteran's Preference Act has the power to reduce a proposed sanction for misconduct by a veteran from dismissal to unpaid suspension.

## WEDNESDAY, 09-10-86

**CO-86-416 J.L. SHIELY COMPANY (Attorney: Pophaim, Haik, Schnobrich, Kaufman & Doty and Fred L. Morrison and Gary D. Blackford) vs. COUNTY OF STEARNS (Attorney: Rinkke, Noonan, Grote & Smoley and Gerald W. Von Korff and Hubert H. Humphrey III and Linda F. Close) ORIGIN: Tax Court**

Does the aggregate tax, which imposes a county tax on production aggregate for county bridge and highway purposes, violate the Tax Uniformity Clause because it is not imposed in all Minnesota counties?

Does the Federal Equal Protection Clause prohibit disparate local tax legislation in counties?

Must the Legislature have a rational basis for the classification it draws in order constitutionally to impose a tax on some taxpayers and to exempt others engaged in the same activity?

Did the Legislature have a rational basis for the classification it drew in Minn. Stat. 298.75 (1984)?

## THURSDAY, 09-11-86

**CX-85-1238 TERRENCE ALHOLM (Attorney: Harold R. Fritz II) vs. RICHARD WILT, D/B/A LAKESIDE BAR (Attorney: John W. Person) ORIGIN: Court of Appeals**

Does Rule 47.02 of the Minnesota Rules of Civil Procedure preclude the selection of an alternate juror by random drawing after the jury has been instructed as to the law of the case?

Was it proper for the trial court to refuse a party's request for an instruction on his theory of the case when there was evidence to support the instruction and the instruction was in accordance with the applicable law.

## THURSDAY, 09-11-86

**SAFECO INSURANCE COMPANY (Attorney: Arthur, Chapman, Michaelson, & McDonough and Robert W. Kettering, Jr., and Brian J. Love.) vs. LARRY LINDBERG (Attorney: Larry Lindberg, pro se, Abdo & Abdo and Robert A. Johnson and Associates for Respondent Kim Barrett) ORIGIN: Court of Appeals**

Is the inception date of Lindberg's homeowner's policy with Safeco the first day of the policy period as stated in the policy?

Is there insurance coverage under the Safeco Insurance Policy as it is written?

## MONDAY, 09-15-86

**C1-86-487 NORTHERN STATES POWER COMPANY (Attorney: Briggs & Morgan and Samuel L. Hanson & John B. Van de North, Jr.) vs. MINNESOTA PUBLIC UTILITIES COMMISSION, ET AL. (Attorney: Hubert H. Humphrey, III, Karl W. Sonneman, Deretich & Timmons, Craig R. Anderson, Mary Jo Murray, and Carla C. Kjellberg) ORIGIN: Court of Appeals**

Does the Minnesota Public Utilities Commission have lawful authority to dismiss a rate case where there is a potentially illegal conflict of interest on the part of the utility?

Is the Commission's decision to dismiss the rate case on the grounds of illegal conduct supported by substantial evidence which is not arbitrary or capricious?

**MONDAY, 09-15-86**

**C4-85-1574 NORWEST BANK EAST ST. PAUL (Attorney: Stein & Moore) vs. LARSON ET AL. (Attorney: Michael McNabb) ORIGIN: Court of Appeals**

Does a mortgagor-grantor remain personally liable on a mortgage note after the mortgaged property has been conveyed to a grantee who assumes the mortgage under an assumption clause in the deed of conveyance?

**TUESDAY, 09-16-86**

**C8-85-1342 JEFFREY ARNDT (Attorney: Nilva & Frisch and Thomas Laughlin) vs. AMERICAN FAMILY INSURANCE COMPANY (Attorney: Peterson, Bell & Converse) ORIGIN: Court of Appeals**

Where farm liability coverage is not defined in an insurance policy, is the coverage limited only to the condition of the premises, to the exclusion of acts of personal negligence, even though that personal negligence is incident to the farm operation?

Did the trial court err in refusing to consider procedural matters raised by American Family?

Does the "other premises" exclusion apply?

**TUESDAY, 09-16-86**

**C4-85-1381 IN RE THE MARRIAGE OF: GAIL D. KATZ (Attorney: Cox & Goudy and Charles A. Cox, III) vs. A. LARRY KATZ (Attorney: Katz, Lange, Davis, & Manka and Brian L. Sobol) ORIGIN: Court of Appeals**

Does the Court of Appeals have jurisdiction over Appellant's appeal pursuant to Minn. R. Civ. App. P.103.33?

Did the trial court have jurisdiction to increase the amount of support paid to children between the ages of 18 and 21?

Did the trial court abuse its discretion by setting support in conformity with the support guidelines?

**WEDNESDAY, 09-17-86**

**C6-85-1639 and C0-85-2057 VALLEY FARMER'S ELEVATOR (Attorney: Gislason, Dosland, Hunter & Malecki and Robert M. Halvorson and William A. Moeller) vs. LINDSAY BROTHERS COMPANY (Attorney: Maun, Green, Hayes, Simon, Johanneson & Brehl and Garret E. Mulrooney and Gordon J. Apple) vs. MARTIN STEEL CORPORATION (Attorney: Rider, Bennett, Egan & Arundel and Eric J. Magnuson) ORIGIN: Court of Appeals**

Is a commercial contract for the sale of mixed goods and services governed by Article II of the Minnesota Uniform Commercial Code when the predominant aspect of the transaction is the sale of goods?

Does the "economic loss" rule adopted in *Superwood* preclude recovery under negligence and strict liability theories for damage to a product allegedly resulting from the negligent design and installation of that product in a case involving no personal injury or damage to other property?

**WEDNESDAY, 09-17-86**

**C7-85-1357, C7-85-1665, C9-85-1666 IN THE MATTER OF THE WELFARE OF: L.Z., C.R.P., AND S.L.P. (Attorney: Thomas L. Johnson and Beverly J. Wolfe, attorneys for petitioner State of Minnesota; William R. Kennody and Philip D. Bush, attorneys for respondent children) ORIGIN: Court of Appeals**

Are school records admissible to establish that Respondents were absent from school?

Has the prosecution proven, beyond all reasonable doubt, that the respondent children absented themselves from school, without lawful excuse, for seven school days?

**FRIDAY, 09-19-86**

**C5-84-2139 IN RE PROPOSED AMENDMENTS TO RULES FOR ADMISSION TO THE BAR**

Hearing to consider amending certain rules of the Supreme Court for Admission to the Bar.

# SUPREME COURT DECISIONS

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## Opinion Released Friday 1 August 1986

**C4-86-984** City of Duluth, petitioner, Lake Superior Paper Industries, intervenor v. State of Minnesota, County of St. Louis, et. al., Jeno F. Paulucci, et al., Appellants. St. Louis County.

There was a "public use" served by the condemnation of Paulucci's property, thus satisfying the requirements of the Fifth Amendment to the United States Constitution and Minn. Const. art. 1, § 13.

The city's condemnation of the land in this case was "necessary" for its papermill project.

The City of Duluth substantially complied with the condemnation procedures of Minn. Stat. ch. 458, 472A (1984).

Affirmed. Yetka, J.

## Decisions Filed Friday 8 August 1986

**Compiled by Wayne O. Tschimperle, Clerk**

**C2-85-1136** In re: Estate of Amelia M. Turner, Deceased. Court of Appeals.

Minn. Stat. § 256B.15 (1984), providing for the recovery from the estates of those who received medical assistance after age 65, is rationally related to a legitimate state interest and is thus not an unconstitutional denial of equal protection.

Affirmed. Amdahl, C.J.

Concurring specially, Wahl, J.

**C8-86-65** Minneapolis Star & Tribune Co., Gannett Broadcasting, Inc., Joint Media Committee of Minnesota, Inc., Midwest Radio and Television, et al., Society of Professional Journalists, v. The Honorable Robert H. Schumacher, Judge of Hennepin County District Court, petitioner, Appellant, Bradley A. Wicks, Executor for the Estate of E. Allen Wicks, and Janenne M. Wicks, deceased, et al., petitioners, Appellants, Edward F. Stasik, Trustee for the Heirs and Next-of-Kin of Agnes R. Yakymi, f/k/a Agnes R. Stasik, decedent, Galaxy Airline, Inc., and Hy Thayer, petitioners, Appellants, Desert Palace, Inc., et al., Catherine Aune, as Trustee for the Heirs and Next-of-Kin of Gordon G. Aune, decedent, petitioner, Appellants, Connie Granfors, as Trustee for the Heirs of Mary Granfors, Deceased; Connie Granfors, as Trustee for the Heirs of Jack Granfors, Deceased, petitioner, Appellant. Court of Appeals.

The proper legal standard to apply when a party seeks to restrict access to settlement documents and transcripts made part of a civil court file by statute is the common law standard.

Under the common law standard, the trial court did not abuse its discretion when it sealed the settlement documents and transcripts in question.

A non-party seeking to challenge a trial court's order restricting access to civil court files may intervene as of right under Minn.R.Civ.P. 24.01 for the limited purpose of challenging the court's order.

An intervenor whose request for access is denied may seek review of the trial court's ruling through a writ of prohibition.

Reversed; writ of prohibition vacated; amended orders reinstated. Amdahl, C. J.

**C5-86-671** State of Minnesota v. Douglas Barg, petitioner, Appellant. Court of Appeals.

Under the Minnesota Sentencing Guidelines, convicted felon serving a prison term following revocation of probation is entitled to credit against the term for both time actually spent in jail as a condition of probation before probation was revoked and "good time credit" for time actually spent in jail.

Affirmed in part, reversed in part. Amdahl, C. J.

Concurring specially, Kelley, J.

**CX-85-1952** State of Minnesota ex rel. Robert W. Mattson, Treasurer of the State of Minnesota, Petitioner v. Peter J. Kiedrowski, Commissioner of Finance of the State of Minnesota. Supreme Court.

As it relates to the State Treasurer, Chapter 13 of the 1985 Minnesota Special Session Laws violates Section 1 of Article V and Section 1 of Article IX of the Minnesota Constitution. The functions and positions of the State Treasurer's Office transferred by the statute to the Department of Finance are to be returned to the State Treasurer and the funds appropriated for such transferred functions and positions are to be added to the appropriation of the State Treasurer's Office for fiscal year 1987.

Writ will issue. Scott, J.

Concurring specially, Yetka and Simonett, JJ.

**C9-84-1950 Evan J. Henry v. Minnesota Public Utilities Commission, Petitioner-Appellant. Court of Appeals.**

The MPUC acted in this case within its statutory authority under Minn. Stat. § 237.075, subd. 2 (1984) in ordering a rehearing after reaching a final determination.

The MPUC was not required by Minn. Stat. § 237.075, subd. 2 (1984) or Minn. Rules pt. 1400.8300 (1985) to consider the issue of Northwestern Bell's corporate reorganization in a contested case proceeding. The summary procedure adopted for the rehearing in this case did not violate Henry's constitutional right to due process.

This court is not an appropriate forum in which to challenge the qualifications under Minn. Stat. § 216A.03 (1984) of the MPUC commissioners who heard this case.

Northwestern Bell met its statutory burden of proof under Minn. Stat. § 237.075, subd. 4 (1984) as to the rate increase ordered.

Reversed in part; affirmed in part. The July 27, 1984, and the September 26, 1984 orders of the MPUC are reinstated. Wahl, J.

**C8-85-7 Ruth Adeline Lewis, et al. v. Pennsylvania General Insurance Company, Appellant and Phyllis McCallum. Court of Appeals.**

The coverage implied by law under Minn. Stat. § 65B.49, subd. 6 (1978) is to be read into the insurance policy in effect at the time of the accident.

Where the single limit bodily injury liability coverage in effect at the time of the accident is insufficient to meet the uninsured motorist limits required by Minn. Stat. § 65B.49, subd. 6 and *Holman v. All National Insurance Co.*, 298 N.W.2d 244 (Minn. 1980), new limits will be read into the policy.

Affirmed as modified. Wahl, J.

**C8-85-119, C9-85-131 In the Matter of the Welfare of: J.W. and A.W. Court of Appeals.**

Discovery sanctions in a dependency and neglect hearing that deemed the central issues admitted and prohibited the introduction of evidence or cross-examination of witnesses did not violate respondents' constitutional rights and did not constitute an abuse of discretion requiring reversal.

The trial court findings that J.W. and A.W. are dependent and neglected children within the meaning of Minn. Stat. § 260.015, subs. 6(d) and 10(b) (1984) are not clearly erroneous and are supported by clear and convincing evidence.

Reversed; order of trial court reinstated. Wahl, J.

Dissenting, Yetka, J.

**C0-85-468, C2-85-505 In the Matter of the Contested Case of Mapleton Community Home, Inc., Meadow Manor Nursing Home, Minnesota Odd Fellows Home, St. Luke's Lutheran Home, St. Mark's Lutheran Home, and Janesville Nursing Home, Appellants v. Minnesota Department of Human Services. Court of Appeals.**

The Department of Human Services properly applied the rate limitations of Minn. Rules pt. 9510.0130 (1982) (Rule 49) to adjust property-related costs under Minn. Stat. § 256B.431, subd. 3(a) (1984). The application of Rule 49 rate limitations and the ratio method of calculating the rate limitation adjustment under MCAR §§ 2.05001-2.05016 (Temporary Rule 50) are not rules that must be promulgated under the Minnesota Administrative Procedures Act to be valid.

The administrative law judge did not commit reversible error in giving deference to the Department of Human Services' interpretation of temporary Rule 50.

The interim Medical Assistance property-related payment rate is not arbitrary, capricious or confiscatory.

Affirmed. Wahl, J.

**C7-85-872 Illinois Farmers Insurance Co. v. Oliver V. Wright, Appellant. Court of Appeals.**

An insurer need not prove the total amount of its insured's damages in a subrogation action against an alleged tortfeasor where, following payment of uninsured motorist benefits, the insured separately settles the liability claim with the alleged tortfeasor and the alleged tortfeasor relies in negotiating the settlement with the insured upon the amount of benefits that has already been paid.

Reversed; decision of the trial court reinstated. Wahl, J.

Took no part, Simonett, J.

**C0-85-1264 Jefferey Quam, Relator, Office of Administrative Hearings and Duane R. Harves, Chief Administrative Law Judge, intervenor, Relator v. State of Minnesota, Minnesota Zoological Garden, self-insured. Workers' Compensation Court of Appeals.**

An attorney representing an injured employee in a claim for permanent partial disability is entitled to immediate payment of attorney fees awarded once the employee's permanent partial disability has been adjudicated and no appeal taken from that adjudica-

## SUPREME COURT DECISIONS

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tion, even though payment of compensation awarded to the employee for this disability is delayed pursuant to Minn. Stat. § 176.021, subds. 3 and 3a (1982).

The Workers' Compensation Court of Appeals exceeded the scope of its statutorily delegated authority in vacating the order of the Chief Administrative Law Judge for lack of jurisdiction.

Reversed and remanded. Wahl, J.

### **C1-83-135 Specialized Tours, Inc. v. Ronald D. Hagen, Appellant. Rice County.**

A warranty by a sole stockholder of a travel tour corporation which warranted that the business, to the best of his personal knowledge, was in compliance with all laws, rules and regulations, was not breached when he personally had no knowledge of non-compliance with a recently promulgated federal regulation.

Under the facts and circumstances of this case, the seller of a business corporation did not breach a warranty as to the accuracy of a mid-year balance sheet that was not completed according to generally accepted accounting principles.

Seller of a travel tour corporation breached a contract warranty that no material fact regarding the corporation had been omitted which would reasonably affect an investor's decision to purchase the corporation by neglecting to reveal that substantial tour prepayments were due shortly after the closing of the sale.

Seller of corporation did not fraudulently represent facts in a financial statement furnished buyer prior to execution of the sale contract.

Omission by seller of travel tour corporation to reveal to buyer that substantial prepayments from the corporation were due to promoters of the tours constituted common law fraud and a violation of the Minnesota Securities Act.

Settlement of a claim with one wrongdoer, without reservation of right to pursue claims against other wrongdoers, or without other contemporaneous manifestations of intent to hold the latter, supports the trial court's conclusion that the latter was likewise discharged from liability by the release.

A sale by the sole stockholder of a business corporation of 100 percent of the corporate stock to a buyer who was to solely operate the corporation is governed by the Minnesota Securities Act.

The Minnesota Securities Act does not unconstitutionally discriminate against the seller of 100 percent stock of a corporation.

The seller of 100 percent stock of a business corporation who had no personal knowledge that the corporation was in violation of recently promulgated CAB rules was not in violation of the Minnesota Securities Act when he failed to disclose that fact to buyer.

The seller of 100 percent stock of corporation did not violate the Minnesota Securities Act by not affirmatively telling buyer that tour tickets had not been confirmed when seller gave buyer, his accountant, and his employee access to all of the records of the tours showing that the accommodations had not, in fact, been confirmed.

Amount of costs awarded successful claimant for a violation of the Minnesota Securities Act is discretionary with the trial court operating within guidelines established by Minn. Stat. § 549.02 (1982); Minn. Stat. § 357.25 (1982); as well as Part 1, Rule 11 of the Code of Rules for District Courts.

Trial court correctly applied the rate found in Minn. Stat. § 334.01 (1982) in computing prejudgment interest on an award following violation of the Minnesota Securities Act.

In computing attorney fees recoverable under the Minnesota Securities Act by a party only partially successful, the court, in addition to computing hours spent times a reasonable hourly rate, should consider other factors, including the time spent on the successful issue, and the result obtained.

The trial court properly refused to relieve buyer of corporate stock from its contact performance under the facts and circumstances of this case.

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

(Original opinion withdrawn and this opinion substituted therefor.)

### **C9-84-2077 Kay Carlson, et al., and Diane Achter, et al., intervenors v. Independent School District No. 623, et al., petitioners, Appellant, Independent School District No. 270, petitioner, Appellant, Independent School District No. 14, Independent School District No. 704, Independent School District No. 276, petitioner, Appellant, Independent School District No. 482, petitioner, Appellant, Independent School District No. 454, petitioner, Appellant. Court of Appeals.**

The 6-month filing requirement of Minn. Stat. § 363.06, subd. 3 (1976) was a jurisdictional prerequisite for maintaining a lawsuit under the Human Rights Act before 1981 amendments to the act.

Teachers whose sex discrimination claims arose before 1981 and who failed to timely file a charge with the Department of Human Rights are barred from asserting those claims.

Membership in a class action suit filed by the Commissioner of Human Rights under the law prior to the 1981 amendments of the HRA is limited to individuals eligible to file charges within 6 months preceding the date of the commissioner's class action complaint.

Reversed in part, affirmed in part. Kelley, J.

Took no part, Simonett, J.

**C4-85-571 Kristian Ouellette, a minor, by Frank Ouellette, his father and natural guardian, and Frank Ouellette, individually, Petitioners-Appellants v. Barbara H. Subak and Maxine O. Nelson. Court of Appeals.**

Failure to instruct the jury in a negligence action against physicians that liability is not established merely because the physicians' efforts were unsuccessful or because they made a wrong choice between two accepted methods of treatment, considering the facts and circumstances of this case, was reversible error.

Determination by trial court of competency of expert witness to testify on causation issue, being discretionary, was not clearly erroneous.

Physicians charged with negligence in prenatal care causing brain damage to a baby were not entitled to judgment as a matter of law.

Affirm the court of appeals and remand for new trial on all issues. Kelley, J.

Took no part, Wahl & Coyne, JJ.

**C7-85-1861 Frank DeRogatis, Trustee for the next of kin of Patricia DeRogatis, deceased, and Frank DeRogatis, individually v. Mayo Cliic, et al. United States District Court**

Under Minn. Stat. § 573.02, subd. 1 (1984), the 2-year limitation period for a wrongful death action predicated upon alleged medical malpractice begins to run not on the date of death but when the limitation period for the decedant's claim for medical malpractice began to run.

Certified question answered. Coyne, J.

**C2-85-2108 Sterling Custom Homes Corporation, Relator v. Commissioner of Revenue. Tax Court.**

A manufacturer of prefabricated custom home packages, not responsible for the erection of the structure, is not a contractor or subcontractor under the sales tax statutes.

Affirmed. Coyne, J.

**CX-86-228 Barton Enterprises, Inc., Relator v. County of Ramsey. Tax Court.**

Oil tanks used in storing asphalt cement and fuel oils are real property within the meaning of tax statutes imposing taxes on resale property.

Affirmed. Coyne, J.

**C2-86-286 Harley Sweep v. Hanson Silo Company and St. Paul Fire and Marine Insurance Company, Relators, Minnesota Department of Economic Security, intervenor. Workers' Compensation Court of Appeals.**

A settlement which precludes an employee from receiving medical compensation or rehabilitation benefits except as provided therein is a full, final, and complete settlement of his right to medical compensation and rehabilitation. Minn. Stat. § 176.521, subd. 2 (1984) requires that such a settlement be submitted for approval to the Workers' Compensation Division, a compensation judge, or the Workers' Compensation Court of Appeals.

The Workers' Compensation Act does not prohibit parties from making a full, final, and complete settlement barring future disability claims arising from a work-related injury.

The Workers' Compensation Court of Appeals' determination that the settlement is broader than is permissible under the Workers' Compensation Act was justified because the settlement is reasonably susceptible of being interpreted as foreclosing employee's right to seek compensation for any and all injuries sustained in the course of his employment with relator-employer.

Affirmed. Coyne, J.

**C3-79-50661 In the Matter of the Application for the Discipline of Timothy W. Jorissen, an Attorney at Law of the State of Minnesota. Supreme Court.**

When a lawyer, suspended by the court for violation of disciplinary rules, repeatedly engaged in the law practice while suspended, his disbarment is warranted.

Disbarred. Per Curiam.

## SUPREME COURT DECISIONS

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**CX-85-1773** In the Matter of the Complaint of J.G., Complainant, against R.P., Respondent. Supreme Court.

Affirmed as modified. Per Curiam.

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

**C7-85-2203** In the Matter of the Application for the Discipline of John H. Feldman, an Attorney at Law of the State of Minnesota. Supreme Court.

The cumulative weight and severity of respondent's disciplinary violations, absent any mitigating circumstances, compel his disbarment.

Disbarred. Per Curiam.

### Orders

**C2-86-76** In the Matter of the Application for the Discipline of James H. Reud, an Attorney at Law of the State of Minnesota. Supreme Court.

Suspended. Amdahl, C. J.

Took no part, Wahl, J.

### Decisions Filed Friday 15 August 1986

**C9-85-906** State of Minnesota v. Lemoyne Peter Jones, Appellant. Sherburne County.

The plea negotiations between the state and two testifying witnesses did not violate the defendant's rights under the due process clause of the fourteenth amendment to the United States Constitution.

The evidence of prior acts of defendant was admissible under *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965), and its progeny.

The seven-month delay from the date of defendant's arrest to the date of his trial did not, in this case, constitute a deprivation of the defendant's sixth amendment right to a speedy trial.

The defendant's federal and state right to effective assistance of counsel was not violated.

Affirmed. Scott, J.

**C4-85-585** Timothy John Huver, a minor, by his father, John Huver, and John Huver v. Cheryl Opatz, et al., LeSauk Township, petitioner, Appellant. Court of Appeals.

Minn. Stat. § 164.12 (1984) authorizes agreements between adjoining townships that allocate the responsibility for both the cost of construction and maintenance of townline roads and the legal liability for injuries caused by negligent construction and maintenance of those roads.

The trial court did not err in granting summary judgment where no genuine issue of material fact exists.

Reversed; order of the trial court granting summary judgement reinstated. Wahl, J.

**C1-85-1516** Acton Construction Co., et al., Appellants v. The Commissioner of Revenue. Tax Court.

The Commissioner of Revenue may, under the facts of this case, require the contractors to return the refunded amount of sales tax to their contract customers as a condition of the refund under Minn. Stat. § 297A.35 (1984).

Application of Minn. Stat. § 297A.35 (1984) to appellants' sales tax refund claims does not impair the obligation of contract in violation of the Constitution of the United States or the Constitution of the State of Minnesota.

The Commissioner of Revenue has not applied Minn. Stat. § 297A.35, subd. 5 (1984) in violation of federal and state constitutional guarantees of equal protection of law and uniform taxation.

A claim for refund of sales tax must be brought within the statute of limitations prescribed by Minn. Stat. § 297A.35, subd. 1(1984).

Affirmed. Wahl, J.

**C4-85-554** John Andrade, individually and as parent and natural guardian for Joseph J. Andrade, and Dennis W. Aasen, individually and as parent and natural guardian for Jerrett J. Aasen v. Elizabeth Ellefson, et al., County of Anoka, petitioner, Appellant. Court of Appeals.

A county, acting on behalf of the state in inspecting day care facilities for state licensure, is immune from tort liability under Minn. Stat. § 3.736, subd. 3 (1984), but the county waives its defense of governmental immunity by procuring liability insurance to the extent stated in the insurance policy.

A special relation exists between a county investigating day care facilities for licensure and the small children in the facilities giving rise to a tort duty of care owed by the county to the children who constitute a protected class under the analysis set out in *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801 (Minn. 1979).

It is premature in this motion for summary judgment to consider issues of causation,

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

Concurring specially, Wahl, Scott & Yetka, JJ.

**C2-85-1377 Roseville Education Association, et al. v. Independent School District No. 623, petitioner, Appellant. Court of Appeals.**

As to eight respondent-relators, the writ of certiorari was untimely issued and their appeals are dismissed.

Teachers who did not request a school board hearing on the board's proposed action to place them on unrequested leave acquiesced in the board's final action placing them on leave; provided, however, those teachers who gained seniority ranking when the school board rescinded the proposed leaves of some teachers did not acquiesce in loss of their bumping rights by reason of the change in their seniority ranking.

Affirmed as to Olson and Ramaker (whose claims are remanded); as to the other relators, either reversed or dismissed. Simonett, J.

**C6-85-636 Douglas Dean Clemens v. Troy Wilcox, et al., State Farm Fire and Casualty Company, petitioner, Appellant. Court of Appeals.**

When a liability insurance policy contains an exclusion of coverage for "bodily injury\*\*\* expected or intended by the insured," both the issue of whether the claimant sustained a "bodily injury," and, if so, whether it was "expected or intended by the insured," are questions for resolution in a declaratory judgment action commenced prior to trial of the main action.

Reversed and remanded. Kelley, J.

Dissenting in part, concurring in part, Simonett, J. and Amdahl, C. J.

Took no part, Coyne, J.

**C8-84-2085 Harry A. Fine and Betty L. Fine on behalf of themselves and all others similarly situated, petitioners, Appellants v. City of Minneapolis, etc., et al v. Hennepin County, third-party defendant. Court of Appeals.**

Minn. Stat. § 117.042 (Supp. 1975) did not contemplate the accrual or payment of interest on "quick-take" approved appraisal value funds deposited with the court and immediately available to the landowner.

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

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**TAX COURT**

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

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**Order Dated 11 August 1986**

**Docket No. 3803**

**Northwestern Bell Telephone Co., Appellant, vs. Commissioner of Revenue, Appellee.**

The above-entitled matter came on for hearing before the Honorable M. Jean Stepan, Judge of the Minnesota Tax Court, on June 5, 1986, at the Hennepin County Government Center in Minneapolis, Minnesota, on appellant's motion for rehearing of a partial summary judgment motion.

Robert L. Schnell, Jr., Attorney at Law, appeared for appellant.

Thomas R. Muck, Deputy Attorney General, appeared for appellee.

## TAX COURT

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The Court, having heard and considered the arguments of counsel and upon the files and records herein,  
DOES HEREBY DENY APPELLANT'S MOTION for a rehearing of the Commissioner's partial summary judgment motion,  
and

DOES HEREBY GRANT APPELLEE'S MOTION for summary judgment.

IT IS SO ORDERED.

Dated: 11 August 1986.

M. Jean Stepan, Judge  
Minnesota Tax Court

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