

State of Minnesota

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State Register

Judicial Notice Shall Be Taken of Material Published in the 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, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

Printing Schedule and Submission Deadlines

Vol. 12 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
19	Monday 26 October	Monday 2 November	Monday 9 November
20	Monday 2 November	Monday 9 November	Monday 16 November
21	Monday 9 November	Monday 16 November	Monday 23 November
22	Monday 16 November	Monday 23 November	Monday 30 November

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the State Register editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

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Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

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Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
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NOTICE: How to Follow State Agency Rulemaking in the *State Register*

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific *Minnesota Rule* chapter numbers.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the *Official Notices* section of the *State Register*.

When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*.

After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as **Proposed Rules**. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted.

For a more detailed description of the rulemaking process, see the *Minnesota Guidebook to State Agency Services*.

Every odd-numbered year the *Minnesota Rules* are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-16; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August.

For copies of the *State Register*, a subscription, the annual index, the *Minnesota Rules* or the *Minnesota Guidebook to State Agency Services*, contact the Minnesota Documents Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-652-9747 and ask for "Documents."

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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.

Department of Corrections

Proposed Permanent Rules Relating to Municipal Jail Facilities

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Corrections proposes to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedure set forth in *Minnesota Statutes* 14.22-14.28 (1986).

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

Unless 25 or more persons submit requests for a public hearing on the proposed rules within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of *Minnesota Statutes* section 14.14 to 14.20 and a notice of the public hearing shall be published in the *State Register*.

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

John McLagan, Director, Standards Development
Minnesota Department of Corrections
300 Bigelow Building
450 North Syndicate Street
St. Paul, MN 55104

Authority for the adoption of these rules is contained in *Minnesota Statutes* section 241.021, subd. 1. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from John McLagan.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons or groups who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to John McLagan.

A copy of the proposed rules are attached with this notice.

Additional copies of this notice and the proposed rules are available and may be obtained by contacting Mr. McLagan at the Department of Corrections.

Orville B. Pung
Commissioner of Corrections

Rules as Proposed (all new material)**CHAPTER 2945
DEPARTMENT OF CORRECTIONS
MUNICIPAL JAIL FACILITIES****2945.0100 DEFINITIONS.**

Subpart 1. **Scope.** For the purpose of this chapter, the following terms have the meanings given them.

Subp. 2. **Administrative segregation.** "Administrative segregation" means the physical separation of prisoners prone to escape, prone to assault staff or other prisoners, likely to need protection from other prisoners or themselves, or determined to be mentally deficient and in need of special care.

Subp. 3. **Approved capacity.** "Approved capacity" means the maximum number of prisoners that any cell, room, unit, building, facility, or combination of them is approved for in compliance with the standards.

Subp. 4. **Average daily population.** "Average daily population" means the average number of prisoners residing daily during the last calendar year. Prisoners on furlough or hospitalized are excluded.

Subp. 5. **Class I municipal holding facility.** "Class I municipal holding facility" means an adult detention facility operated by a municipal government used to confine prisoners for more than 48 hours.

Subp. 6. **Class II municipal holding facility.** "Class II municipal holding facility" means an adult detention facility operated by a municipal government used to confine prisoners for up to 48 hours excluding weekends and holidays.

Subp. 7. **Class III municipal holding facility.** "Class III municipal holding facility" means an adult detention facility operated by a municipal government used to confine prisoners for up to 16 hours.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Corrections.

Subp. 9. **Controlled substance.** "Controlled substance" means a drug, substance, or immediate precursor in Schedules I to V of Minnesota Statutes, section 152.02. The term does not include distilled spirits, wine, malt beverages, intoxicating liquor, or tobacco.

Subp. 10. **Custody personnel.** "Custody personnel" means those staff members who are responsible for the custody and supervision of prisoners.

Subp. 11. **Department of Corrections; department.** "Department of Corrections" or "department" means the Minnesota Department of Corrections.

Subp. 12. **Emergency.** "Emergency" means a significant incident or disruption of normal facility procedures, policies, routines, or activities arising from fire, riot, natural disaster, suicide, assault, or medical emergency.

Subp. 13. **Existing facility.** "Existing facility" means a facility used for detention and confinement of prisoners before the effective date of this chapter.

Subp. 14. **Facility administrator.** "Facility administrator" means the individual who has been delegated the responsibility and authority for the administration and operation of a local facility.

Subp. 15. **Holding cell.** "Holding cell" means a cell or room used to hold one or more persons temporarily while awaiting release, booking, court appearance, transportation, or interrogation.

Subp. 16. **Inspection.** "Inspection" means an on-site assessment or existing conditions made to determine the facility's compliance with this chapter.

Subp. 17. **Jail.** "Jail" means a secure adult detention facility used to confine sentenced prisoners for a time not to exceed one full year per conviction, adult pretrial and presentenced detainees indefinitely, and juveniles up to limits prescribed by Minnesota statute and commissioner approval.

Subp. 18. **Legend drug.** "Legend drug" means a drug required by federal law to bear the following statement: "Caution: Federal law prohibits dispensing without prescription."

Subp. 19. **Local facility.** "Local facility" means any city, county, city and county, or multiple county corrections facility.

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

Proposed Rules

Subp. 20. **Mandatory.** "Mandatory" means the rule must be met by the facility in order for the facility to be licensed.

Subp. 21. **Maximum security areas.** "Maximum security areas" means areas that provide the greatest degree of physical security for the control and separation of prisoners.

Subp. 22. **Medicine.** "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases, or that is used for that purpose. For the purpose of this chapter, medicine includes legend and nonlegend drugs.

Subp. 23. **Minimum security areas.** "Minimum security areas" means areas that provide functional living accommodations with a nominal reliance on physical security for the control and management of prisoners.

Subp. 24. **Policy.** "Policy" means a statement declaring mission, purpose, and ideological position.

Subp. 25. **Prisoner.** "Prisoner" means an individual, adult or juvenile, detained or confined in a local facility.

Subp. 26. **Procedure.** "Procedure" means a written statement establishing the action plan to implement policy.

Subp. 27. **Rule.** "Rule" means that which is defined by Minnesota Statutes, section 14.02, subdivision 4.

Subp. 28. **Substantially conform.** "Substantially conform" means a compliance rating of 100 percent on items labeled mandatory and a rating of 70 percent compliance on all other items in this chapter.

Subp. 29. **Undue hardship.** "Undue hardship" means the financial costs are not warranted when weighed against the benefits derived.

Subp. 30. **Variance.** "Variance" means the waiver of a specific rule for a specified period of time.

2945.0110 INTRODUCTION.

Minnesota Statutes, section 642.09, provides that the sheriff of a county in which a municipality maintains a lockup shall inspect the lockup once a year, with reference to its security and administration, and make a written report to the commissioner on blanks furnished by the commissioner and deliver a copy of the report to the governing body of the municipality maintaining the lockup.

Minnesota Statutes, section 241.021, subdivision 1, provides that the commissioner adopt rules establishing minimum standards for all correctional facilities throughout the state, whether public or private, established and operated for the detention and confinement of persons detained or confined in them according to law except to the extent that they are inspected or licensed by other state regulating agencies. The rules that follow are minimum standards for municipal lockup facilities. Facilities that house males and females must provide comparable care for each group. Facilities housing juveniles must meet the special criteria established for that group. All inspections made by the sheriff must be according to the standards in this chapter and must compare the care level for male and female groups.

2945.0120 INTENDED USE NONCONFORMANCE; LIMITATIONS OF RULES.

Subpart 1. **Intended use.** A facility must be used only for classifications for which it is intended.

A. Class I municipal holding facilities must meet the standards of chapter 2910.

B. Class II municipal holding facilities must meet all standards in chapter 2945.

C. Class III municipal holding facilities must meet all standards except those waived as Class III municipal holding facilities.

Subp. 2. **Nonconformance, unsafe, unsanitary, or illegal conditions.** When conditions do not substantially conform to this chapter or where specific conditions endanger the health, welfare, or safety of prisoners or staff, the commissioner shall condemn the holding facility by written order and it shall not be further used while the order is in force according to Minnesota Statutes, section 642.10.

2945.0130 VARIANCES.

Subpart 1. **Variances; general.** The granting of a variance under this part does not constitute a precedent for any other adult detention facility. The granting and denial of all variances shall be in writing and made within 30 days of the request for a variance. The variance will be granted by the commissioner if, in the licensing procedure or enforcement of the standards in this chapter:

A. requirements for an adult detention facility to strictly comply with one or more of the provisions will result in undue hardship or jeopardize the health, safety, security, detention, or well-being of the residents or facility staff;

B. the adult detention facility is otherwise in substantial conformity with the standards contained in this chapter or making satisfactory progress toward substantial conformity;

C. granting of the variance will not preclude the facility from making satisfactory progress toward substantial conformity with this chapter;

D. the granting of the variance will not leave the interests and well-being of the residents unprotected; and

E. the facility will take action to comply with the general purpose of the standards to the fullest extent possible.

Subp. 2. **Emergencies.** The facility administration may declare a state of emergency suspending those rules affected by the emergency if to not suspend the rules would adversely affect the health, security, safety, or well-being of the persons confined or the facility staff.

The facility administrator shall immediately notify the sheriff of the county and the Department of Corrections of an emergency that results in the suspension of a rule. A formal written report must follow within 72 hours.

No suspension of rules because of an emergency declared by a facility administrator may exceed seven days unless the administrator obtains the approval of the commissioner for a variance to the rules and the variance is necessary for the protection of the health, security, safety, or well-being of the staff or the persons detained or confined in the institution where the emergency exists.

PERSONNEL STANDARDS

2945.0500 MEDICAL EXAMINATIONS.

Employees who work in a facility must have a medical examination on record to include screening for tuberculosis and blood tests to determine the presence of other communicable diseases. The test for tuberculosis must be either the tuberculin skin test or the chest roentgenogram (X-ray). If the skin test is positive, a chest roentgenogram is required.

2945.0510 STAFF RECRUITMENT.

The selection, appointment, and promotion of facility personnel must be based on assessed ability. There must not be discrimination on the grounds of race, color, religion, sex, or national origin (mandatory). Custody personnel must be a minimum of 18 years old. Recruitment standards must set forth the basic requirements of ability, preparatory experience, physical condition, and character, as well as those qualities that may disqualify.

2945.0520 EMPLOYEE EVALUATION.

Custody staff shall complete a probationary period and be evaluated during the probationary period before being permanently appointed and must be evaluated annually after that. The evaluation must be in writing, discussed with the employee, and made a part of the employee's personnel record.

2945.0530 EXTRA DUTY.

No employee may be scheduled for duty for two consecutive work periods except where unusual circumstances require reasonable and prudent exception.

2945.0540 STAFFING REQUIREMENTS.

Subpart 1. **Staffing plan.** The facility administrator shall prepare and retain a staffing plan indicating the personnel assigned to the facility and their duties.

Subp. 2. **Staff person in charge (mandatory).** There must be a designated staff person in charge of the facility. In the absence of the regular facility supervisor, a staff person must be designated in charge.

Subp. 3. **Condition of staff person on duty (mandatory).** No person may be detained without a staff person on duty, present in the facility, awake and alert at all times, and capable of responding to the reasonable needs of the prisoner.

Subp. 4. **Opposite sex policy (mandatory).** There must be a policy consistent with state statute that provides procedures to be followed by staff supervising prisoners of the opposite sex.

Subp. 5. **Assistance for dispatcher/custody staff person (mandatory).** In facilities that use the dispatcher/custody position as sole supervision, the dispatcher/custody staff person must be assisted on duty by another custody staff person when the jail population exceeds 15. This requirement applies only during shifts when prisoners are not in lockup status.

Subp. 6. **Reporting incidents and responding to emergencies. (mandatory).** A combination of staff and physical plant resources shall provide the capability of reporting incidents and responding to emergencies.

Subp. 7. **Ancillary functions.** Personnel must be provided to perform ancillary functions such as transportation or court escort to the extent necessary to ensure security and supervision of prisoners.

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STAFF TRAINING

2945.1000 STAFF TRAINING PLAN.

Each facility administrator shall develop and implement a training plan for the orientation of new employees and volunteers and provide for continuing in-service training programs for all employees and volunteers. The training plans must be documented and describe curriculum, methods of instruction, and objectives. In-service training plans must be prepared annually, and orientation training plans shall be reviewed and revised to changing conditions.

A training program must be established by the responsible health authority in cooperation with the facility administrator and provide instruction in the following areas:

- A. the ability to respond to health-related situations within four minutes;
- B. recognition of signs and symptoms, and knowledge of action required in potential emergency situations;
- C. administration of first aid and cardiopulmonary resuscitation (CPR);
- D. methods of obtaining assistance;
- E. recognition of signs and symptoms of mental illness, retardation, emotional disturbance, and chemical dependency;
- F. procedures for patient transfers to appropriate medical facilities or health care providers; and
- G. prevention of communicable diseases.

2945.1010 PART-TIME AND RELIEF STAFF

Part-time and relief staff shall complete orientation training appropriate to the facility's classification.

STAFF DEPLOYMENT, JOB DESCRIPTIONS, WORK ASSIGNMENTS, POST ORDERS, POLICIES AND PROCEDURES

2945.1600 GUIDELINES AND RESPONSIBILITIES.

Each facility supervisor shall develop written guidelines that define responsibilities, duties, and qualifications of the persons working in the detention facility.

2945.1610 POLICY AND PROCEDURE MANUALS.

Policies and procedures concerning the facility's operation must be made available to employees at the time of employment and as revised after that time.

2945.1620 PERSONNEL POLICIES.

Written personnel policies must be developed by the facility administrator and governing body that specify hours of work, vacations, illness, sick leave, holidays, retirement, employee health services, group insurance, evaluation procedures, promotions, personal hygiene practices, attire, conduct, disciplinary actions, and other items that will enable employees to perform their duties properly.

RECORDS AND REPORTS

2945.2100 MAINTENANCE OF RECORDS AND REPORTS.

The following records, reports, and statistics shall be maintained:

- A. admission and release records (mandatory);
- B. prisoner personal property records;
- C. clothing, linen, and laundry records (not applicable to Class III municipal holding facilities);
- D. records of budget requests and work orders (not applicable to Class III municipal holding facilities);
- E. special occurrence records (mandatory);
- F. records of policies and procedures;
- G. employee personnel records;
- H. records of staff training;
- I. accounting records (not applicable to Class III municipal holding facilities);
- J. registers (mandatory);
- K. food service records;
- L. daily logs;

M. medical and dental records; and

N. disciplinary records.

The department must make available sample approved forms upon request on items A to N.

2945.2110 STORAGE AND PRESERVATION OF RECORDS (MANDATORY).

Space must be provided for the safe storage of records.

2945.2120 FILING AND DISPOSITION OF PRISONER RECORDS.

Prisoner booking records shall be maintained.

2945.2130 CONFIDENTIALITY OF AND ACCESS TO PRISONER RECORDS (MANDATORY).

Confidentiality of prisoner records and prisoner access to factual (nonconfidential) data in their personal files must be provided in conformity with state law.

PRISONER WELFARE

2945.2500 SEPARATION OF PRISONERS.

Subpart 1. **General (mandatory).** A combination of separate living spaces, sanitation facilities, activity spaces, cell units, and detention rooms must be provided to properly segregate prisoners under Minnesota Statutes, section 641.14.

Subp. 2. **Prisoners to be housed separately (Class I and II facilities only).** The following prisoners must be housed separately:

- A. female prisoners from male prisoners;
- B. juvenile prisoners from adult prisoners; and
- C. insane prisoners from all other prisoners.

Juvenile prisoners must be separated from adult prisoners by sight and sound.

Subp. 3. **Separation standards (Class II facilities only).** Prisoners must be held in compliance with separation standards as space permits. At no time may juveniles and adults be detained in the same cell. At no time may males and females be held in the same cell.

2945.2510 INFORMATION TO PRISONERS.

Subpart 1. **Information to prisoners.** Minimal rules for inmate behavior must be posted in a conspicuous place or provided to the inmate.

Subp. 2. **Official charge, legal basis for detention (mandatory).** Every prisoner admitted to a facility must be advised of the official charge or legal basis for detention and confinement, information gathered, and to whom disseminated.

Subp. 3. **Limitations on disciplinary actions.** The decision to deprive a prisoner of articles of clothing and bedding as a result of the prisoner's destruction of those items must be reviewed by the officer in charge during each eight-hour period, and the review must be documented.

The delegation of authority to a prisoner or group of prisoners to exercise the right of punishment over another prisoner or group of prisoners is prohibited.

No prisoner may be deprived of the use of materials necessary to maintain an acceptable level of personal hygiene.

Subp. 4. **Instruments of restraint.** Instruments of restraint, such as handcuffs, chains, irons, and straitjackets must not be used as punishment.

A. Instruments of restraint must not be used except in the following circumstances:

- (1) as a precaution against escape during a transfer;
- (2) on medical grounds by direction of a consulting or attending physician or licensed psychologist; or
- (3) by order of the facility administrator or person in charge in order to prevent a prisoner from injuring himself or herself, others, or from damaging property.

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Proposed Rules

B. The facility administrator shall develop written policies and procedures to govern the use of restraints.

C. Instruments of restraint must not be applied for any longer time than is strictly necessary.

D. Each incident involving the use of restraints consistent with item A, subitem (2) or (3), must be documented and on file.

Subp. 5. **Disciplinary records.** Disciplinary records must be maintained on all documented disciplinary infractions and punishment administered.

2945.2520 PRISONER VISITATION.

Each facility administrator shall develop and implement a prisoner visiting policy. The policy shall be in writing and include the requirements in items A to J.

A. Nonmonitored visits between the prisoner and the prisoner's attorney must be permitted.

B. A schedule of visits that specifies days and times must be included (not applicable to Class III municipal holding facilities).

C. A uniform number of permissible visits and the number of visitors permitted per visit must be established (not applicable to Class III municipal holding facilities).

D. Adult prisoners must be permitted an initial visit with a member or members of their immediate family at the next regularly scheduled visiting period (not applicable to Class III municipal holding facilities).

E. Visits must be allowed for identified members of a prisoner's immediate family, legal counsel, and clergy.

F. When a visit to a prisoner is denied for reasonable grounds on the belief that the visit might endanger the security of the facility, the action and reasons for denial must be documented.

G. Visitors must register, giving name, address, relationship to prisoner, and nature of business.

H. Visiting must not be audio monitored.

I. Policies for parents, guardians, and attorneys visiting juvenile prisoners must be as unrestrictive as is administratively possible. The initial visit for parents, guardians, and attorneys must be permitted at any time (mandatory).

J. Prisoners requesting private interviews for family problems with accredited clergy, nuns, seminarians, and laypersons active in community church affairs, must be afforded this opportunity within such policies as are reasonable and necessary to protect the facility's security.

2945.2530 CORRESPONDENCE.

Subpart 1. **Plan for prisoner mail.** A facility administrator shall develop a plan for prisoner mail consistent with established legal rights of prisoners and reasonable and necessary facility rules to protect the facility's security (not applicable to Class III municipal holding facilities).

Subp. 2. **Unrestricted volume of mail.** The volume of written mail to or from a prisoner must not be restricted (not applicable to Class III municipal holding facilities).

Subp. 3. **Inspection and censorship.** Mail must not be read or censored if it is between a prisoner and an elected official, officials of the department, the ombudsman for corrections, attorneys, or other officers of the court. Inspection of incoming mail from this group is permitted in the presence of the prisoner (mandatory; not applicable to Class III municipal holding facilities).

Subp. 4. **Money.** Cash, checks, or money orders must be removed from incoming mail and credited to a prisoner's account (not applicable to Class III municipal holding facilities).

Subp. 5. **Contraband.** If contraband is discovered in either incoming or outgoing mail, it must be removed (not applicable to Class III municipal holding facilities).

Subp. 6. **Sacred books.** A prisoner desiring to read the Bible or sacred book of another religion must be provided a copy at the expense of the appointing authority (mandatory).

2945.2540 BEDDING, LAUNDRY, AND CLOTHING REMOVAL.

Subpart 1. **Bedding.** Upon request, or after eight hours, each detainee shall be issued clean, sanitary, and fire-retardant bedding.

Subp. 2. **Laundry.** Sheets must be laundered and blankets cleaned before reissuing them to another prisoner.

Subp. 3. **Removing clothing and bedding.** The facility administrator shall develop a policy and procedure for removing clothing and bedding from a prisoner. Clothing and bedding must be removed from a prisoner only when the prisoner's behavior threatens the health, safety, or security of self, other persons, or property. Clothing and bedding must be returned to the prisoner as soon as it is reasonable to believe that the behavior that caused the action will not continue.

2945.2550 EMERGENCIES AND SPECIAL OCCURRENCES.

Subpart 1. **Emergency plan (mandatory).** The facility administrator shall develop a written disaster plan. The plan must include:

- A. location of alarms and fire fighting equipment;
- B. emergency drill policy;
- C. specific assignments and tasks for personnel;
- D. persons and emergency departments to be notified;
- E. a procedure for evacuation of prisoners; and
- F. arrangements for temporary confinement of prisoners.

Subp. 2. **Review of emergency procedures.** There must be a documented quarterly review of emergency procedures that includes:

- A. assignment of persons to specific tasks in case of emergency situations;
- B. instructions in the use of alarm systems and signals;
- C. systems for notification of appropriate persons outside the facility;
- D. information on the location and use of emergency equipment in the facility; and
- E. specification of evacuation routes and procedures.

Subp. 3. **Reporting of special incidents.** Incidents of a special or serious nature that endanger the lives of staff or prisoners or the physical plant must be reported in writing within ten days to the county sheriff and the department. The reports must include the names of staff members and prisoners involved, the nature of the special occurrence, actions taken, and the date and time of the occurrence. Special occurrences include:

- A. attempted suicide;
- B. suicide;
- C. homicide;
- D. death other than suicide or homicide;
- E. serious injury or illness incurred after detention;
- F. escape or runaway;
- G. fire causing serious damage;
- H. riot;
- I. assaults requiring medical care;
- J. other serious disturbances; or
- K. occurrences of infectious diseases and disposition of the occurrences.

Special occurrences must be reported on forms provided by the department or comparable forms used by the facility.

In the event of an emergency such as serious illness, accident, imminent death, or death, the prisoner's family or others who maintain a close relationship must be notified.

Subp. 4. **Prisoner death.** When a prisoner's death occurs:

- A. the date, time, and circumstances of the prisoner's death must be recorded in the prisoner's record;
- B. if the prisoner dies in the facility, the coroner, medical examiner, or sheriff must be notified immediately;
- C. personal belongings must be handled in a responsible and legal manner;
- D. records of a deceased prisoner must be retained for a period of time in accordance with law; and
- E. the facility administrator shall observe all pertinent laws and allow appropriate investigating authorities full access to all facts surrounding the death.

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Proposed Rules

FOOD SERVICE

2945.3400 GENERAL REQUIREMENTS FOR FOOD SERVICE.

The goal of food service in each facility is to provide prisoners with food and beverages that are nutritionally adequate, palatable, produced in a manner to prevent foodborne illness, of adequate quantity and variety, served at appropriate temperatures, and prepared by methods that conserve nutritional value.

2945.3410 FOOD HANDLING PRACTICES (MANDATORY).

Food service shall be provided according to parts 4625.2500 to 4625.5000.

2945.3420 FREQUENCY OF MEALS.

There must be no more than 14 hours between a substantial evening meal and breakfast. Where prisoners are not routinely absent from the facility for work or other purposes, at least three meals must be made available at regular times during each 24-hour period.

2945.3430 THERAPEUTIC DIETS (MANDATORY).

A facility housing prisoners in need of medically prescribed therapeutic diets must have documentary evidence that the diets are provided as ordered by the attending physician.

2945.3440 USE OF FOOD IN DISCIPLINE (MANDATORY).

Food must not be withheld as punishment.

2945.3450 SUPERVISION OF MEAL SERVING.

All meals must be served under the direct supervision of staff.

2945.3460 HOT MEAL MINIMUM.

A minimum of one hot meal must be provided for each 24 hours of confinement (not applicable to Class III municipal holding facilities).

SECURITY

2945.4700 SECURITY POLICIES AND PROCEDURES, GENERAL.

Security policies and procedures must be written, operational, and include the following:

- A. control and recovery of contraband (mandatory);
- B. visitor and visit control;
- C. prohibition on firearms in prisoner areas (mandatory);
- D. search and shakedown schedules and procedures;
- E. escort of prisoners outside security areas;

F. the requirement that all high and medium security inmates are personally observed by a corrections officer at least every 30 minutes, but on an irregular schedule; more frequent observation is required for those inmates who are violent, suicidal, mentally disordered, or who demonstrate unusual or bizarre behavior (mandatory);

- I. escape prevention and action plans;
- J. tool, medication, key, and weapon control procedures;
- K. count procedure;
- L. classification of prisoners; and
- M. riot prevention and control procedures (not applicable to Class III municipal holding facilities).

2945.4710 ADMISSIONS.

Subpart 1. **Admission policies.** Admission policies and procedures must include the following:

- A. a thorough search of all admissions and prisoners on release status returning to the facility;
- B. showering and delousing facilities (Class III municipal holding facilities must have some type of facilities for inmates to wash up if showers are not available);
- C. an assessment of health status;
- D. security classification (not applicable to Class III municipal holding facilities);
- E. inventory of prisoner's property;

- F. fingerprinting and photographing, if appropriate; and
- G. completion of admission form.

Subp. 2. **Identification (mandatory)**. No prisoners may be received or released by the staff of a facility until the arresting or escorting officer has produced proper credentials or until the proper documents have been completed, identifying the purpose for detention or release.

Subp. 3. **Privacy**. All intake procedures shall be conducted in a manner and location that assures the personal privacy of the prisoner and the confidentiality of the transaction.

2945.4720 RELEASES.

Subpart 1. **Return of prisoner property**. Upon release of a prisoner, the property of that prisoner, unless held for authorized investigation or litigation, must be returned with a receipt for the prisoner to sign or for the transporting officer to sign.

Subp. 2. **Transportation**. Prisoners must be permitted to make arrangements for transportation before release.

Subp. 3. **No release in intemperate weather**. No prisoner must be released in intemperate weather without proper clothing to ensure the prisoner's health and comfort.

2945.4730 SEARCH AND SHAKEDOWNS.

Subpart 1. **Visitors**. Visitors who seek to enter the security area of the facility must not be permitted admission if they refuse to submit to a requested search conducted by a staff member of the same sex.

Subp. 2. **Regular inspection of facility**. The facility must be regularly inspected for contraband, evidence of breaches in security, and inoperable security equipment. Inspections must be documented.

Subp. 3. **Inspection of materials delivered to or transported from the detention facility**. All materials delivered to or transported from the facility must be inspected for contraband before distribution. Inspections must be documented.

2945.4740 LOCKS AND KEYS.

Subpart 1. **General**. All keys to security locks must be properly tagged and stored in a secure cabinet within a secure area, and out of reach of the prisoners or the public (mandatory). At least one complete set of facility keys must be kept on hand for replacement purposes. Keys that serve a critical security purpose must be easily identifiable and never issued except upon order of the facility administrator or person in charge, and in accordance with established procedure. No security keys may be made available to prisoners regardless of status. All electronic locking systems must have a manual override.

Subp. 2. **Regular inspection**. Locks to security doors or gates must be inspected regularly to ensure efficient operation.

Subp. 3. **Inoperable locks**. No lock to a security door or gate may be permitted to be inoperable or left in an unsuitable condition. No prisoner shall be placed in a cell or area that has inoperable locks (mandatory).

2945.4750 DANGEROUS MATERIALS (MANDATORY).

Materials dangerous to either security or safety shall be properly secured.

2945.4760 COUNT PROCEDURE.

Each facility must have a written policy describing the system of counting prisoners. Formal counts must be completed with an official entry made in the daily log after each mass movement and at least once each eight hours.

ENVIRONMENTAL-PERSONAL HEALTH AND SANITATION

2945.5400 AVAILABILITY OF MEDICAL AND DENTAL RESOURCES (MANDATORY).

Subpart 1. **Availability of resources, general**. Each facility must have a licensed physician or medical resource such as a hospital or clinic designated for the medical supervision and treatment of prisoners. Resources must ensure 24-hour-a-day service.

Subp. 2. **Emergency dental care**. Each facility must have emergency dental care available to prisoners.

Subp. 3. **Ambulance service**. Ambulance services must be available on a 24-hour-a-day basis.

Subp. 4. **Examination of prisoner where medical attention is necessary**. A prisoner must be examined by trained medical personnel if the prisoner is visibly ill, chronically ill, or when it is suspected that medical attention is necessary.

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Proposed Rules

2945.5410 POSTING OF AVAILABLE RESOURCES.

A listing of telephone numbers of the medical, dental, and ambulance services available must be posted at each staff station along with the schedule of availability.

2945.5420 HOSPITALIZATION OF A PRISONER.

Subpart 1. **Agreement between facility and hospital.** Each facility must have an agreement with a hospital in the same or nearby community permitting admission of a prisoner on the recommendation of the attending physician.

Subp. 2. **Guarding of prisoner.** When a prisoner requires hospitalization, the prisoner must be guarded on a 24-hour-per-day basis unless one of the following conditions has been satisfied: the prisoner is not in need of custody supervision; or the prisoner is medically incapacitated in the opinion of the attending physician.

2945.5430 FIRST AID.

Subpart 1. **Training of personnel.** Custody personnel responsible for the supervision, safety, and well-being of prisoners must be trained in emergency first aid.

Subp. 2. **First aid kit.** Facilities must have a minimum of one first aid kit located at the facility's control center or primary staff station.

Subp. 3. **Medical and dental records.** A facility must record all complaints of illness or injury and actions taken.

Medical or dental records must be maintained on prisoners under medical or dental care (mandatory). The records must include:

- A. the limitations and disabilities of the prisoner;
- B. instructions for prisoner care;
- C. orders for medication, including stop date;
- D. any special treatment or diet;
- E. activity restriction; and
- F. times and dates when the prisoner was seen by medical personnel.

Medical and dental records must be available to staff for consultation in case of illness and for recording administration of medications.

2945.5440 PREVENTIVE HEALTH SERVICES.

Subpart 1. **Written plan for personal hygiene.** The facility administrator shall develop and implement a written plan for personal hygiene practices of all prisoners with special assistance for those prisoners who are unable to care for themselves.

Subp. 2. **Delousing materials.** Delousing materials and procedures must be approved through consultation with trained medical personnel.

Subp. 3. **Bathing.** A prisoner shall be permitted daily washing.

Subp. 4. **Indigent prisoners (mandatory).** Indigent prisoners shall receive reasonable personal hygiene items upon request.

2945.5450 DELIVERY, SUPERVISION, AND CONTROL OF MEDICINE.

Subpart 1. **Delivery by unlicensed staff.** The delivery of legend drugs by unlicensed staff must be under the direction of a consulting physician.

Subp. 2. **Plan for storage, delivery, and control of medicine.** A facility administrator, in consultation with a licensed physician or physician trained paramedic, shall develop a plan and procedure for the secure storage, delivery, and control of medicine.

A. The plan must include the following storage requirements:

- (1) medicine must be stored in a locked area;
- (2) the storage area must be kept locked at all times;
- (3) medicine requiring refrigeration must be refrigerated and secured;
- (4) prisoners must not be permitted in the medicine storage area;
- (5) only staff authorized to deliver medicine may have access to keys for the medicine storage area;
- (6) stock supplies of legend, prescription-type drugs must not be maintained (mandatory);
- (7) prescribed medicine must be kept in its original container, bearing the original label; and
- (8) poisons and medicine intended for external use must be clearly marked and stored separately from medicine intended for internal use.

B. Policy must dictate the delivery of medicine and must include the following:

- (1) Medicine administered by injection must be administered by a physician, registered nurse, or licensed practical nurse. Diabetics under physician order and direct staff supervision must be permitted to self-administer insulin (mandatory).
- (2) Medicine delivered to a prisoner must be self-administered under staff supervision.
- (3) There must be a means for the positive identification of the recipient of medicine.
- (4) Policy must include procedures and records to assure that medicine is delivered in accordance with physician instructions, and by whom.
- (5) No prisoner while receiving legend drugs may receive any nonlegend drug without the approval of the attending physician (mandatory).
- (6) Policy must include procedures for confirming that medicine delivered for oral ingestion has been ingested.
- (7) Policy must include procedures for reporting to the physician any adverse reactions to drugs. Any reports shall be included in the prisoner's file (mandatory).
- (8) Policy must include procedures for reporting to the attending physician a prisoner's refusal of prescribed medicine, and an explanation made in the prisoner's record (mandatory).
- (9) Policy must include procedures for ensuring that no prisoner is deprived of medicine as prescribed because of penalty or staff retaliation (mandatory).
- (10) Policy must include procedures that prohibit the delivery of medicine by prisoners (mandatory).
- (11) Policy must include procedures requiring that a physician be contacted for instructions before the next prescribed medicine dosage time for all newly admitted prisoners who are either in possession of prescribed medicine or indicate a need for prescribed medicine (mandatory).

C. Records of receipt, the quantity of the drugs, and the disposition of legend drugs shall be maintained in sufficient detail to enable an accurate accounting.

Subp. 4. **Medicine given to prisoner upon release.** Prescribed medication belonging to a prisoner must be given to the prisoner or to the appropriate authority upon transfer or release. This shall be recorded in the prisoner's file.

Subp. 5. **Destruction of unused prescribed medicine.** Unused prescribed medicine must be destroyed by incineration or by flushing into the sewer system. A notation of the destruction must be made in the prisoner's record and must include a statement of what was destroyed, who destroyed it, and how it was destroyed.

2945.5460 REPORTING SUSPECTED CONTAGIOUS DISEASE (MANDATORY).

It is the responsibility of the facility administrator or person in charge to report to the Minnesota Department of Health any known or suspected contagious disease.

2945.5470 SEPARATION OF PRISONERS SUSPECTED OF HAVING A CONTAGIOUS DISEASE.

Prisoners suspected of having a contagious disease must be separated from other prisoners.

2945.5480 MENTALLY ILL PRISONERS.

A policy must be developed for the management of mentally ill prisoners and must include a procedure for managing prisoners who are suspected of being mentally ill and considered to be a danger to self or others.

2945.5490 HOUSEKEEPING, SANITATION, AND PLANT MAINTENANCE.

Subpart 1. **General.** The facility must be kept in good repair to protect the health, comfort, safety, and well-being of prisoners and staff.

Subp. 2. **Maintenance plan.** The person responsible for plant maintenance, housekeeping, and sanitation must develop a written maintenance plan.

Subp. 3. **Compliance with rules (mandatory).** Housekeeping, sanitation, water supplies, plumbing, sewage disposal, solid waste disposal, and plant maintenance conditions must comply with rules required by the Minnesota State Building Code, the Minnesota

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Proposed Rules

Fire Marshal's Office, the Minnesota Department of Health, the Minnesota Department of Labor and Industry (O.S.H.A.), and other departmental rules having the force of law.

Subp. 4. **Plan for daily inspection.** The facility administrator shall establish a plan for the daily inspection of housekeeping, sanitation, and plant maintenance when the facility is occupied.

Subp. 5. **Policies and procedures to detect deterioration of building and equipment.** The facility administrator shall develop policies and procedures designed to detect building and equipment deterioration, safety hazards, and unsanitary conditions. Policies and procedures must include:

A. a requirement that facility staff report unsanitary and unsafe conditions as well as physical plant and equipment repairs and replacement needs (mandatory);

B. a process for prioritizing work requests and reporting to the governing body in an expedient manner; and

C. a records system for review of budget and work requests, expenditures, dates and actions pursuant to detection of need, submission of work orders, and completion of requests.

Subp. 6. **Elimination of conditions conducive to vermin (mandatory).** A condition in the facility conducive to harborage or breeding of insects, rodents, or other vermin must be eliminated immediately.

Subp. 7. **Fire inspection (mandatory).** Fire inspections of the facility must be conducted on an annual basis by a state fire marshal or local fire official. Documentation of the inspection and any resulting orders must be maintained and available for inspection by the regulatory authority. Failure to comply with fire safety requirements will result in a denial of approval to continue facility operations.

Minnesota Housing Finance Agency

Proposed Permanent Rules Relating to the Definition of Capital Contribution of Investors

Notice of Intent to Adopt Rules Without a Public Hearing

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

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules within the 30-day comment period. Such comments are encouraged, and should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule may be modified as the result of comments received if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Unless twenty-five or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of *Minnesota Statutes* Sec. 14.14 *et. seq.* Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

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

Kathleen J. Johnson
Legal Division
Minnesota Housing Finance Agency
Suite 300
400 Sibley Street
St. Paul, Minnesota 55101
Telephone: 612/296-9794

Authority for the adoption of these rules is contained in *Minnesota Statutes* Sec. 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change, and to determine whether the agency has the authority to adopt the rules and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules.

Proposed Rules

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

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

Please be advised that *Minnesota Statutes* Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes* Sec. 10A.01, Subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155 (612) 296-5615.

Dated: 6 November 1987

James J. Solem
Commissioner

Rules as Proposed

4900.0010 DEFINITIONS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Capital contribution of the investors.** "Capital contribution of the investors" means the excess of the value of the project at the times and in the manner determined by the agency, whether or not paid in cash, over the then current principal amount of the agency's loan for those developments which:

A. to F. [Unchanged.]

G. have a current waiting list equal to at least 1-1/2 times the annual turnover for the prior 24 months, but the requirements of this item are not applicable to developments that have reserves equal to or exceeding the sum that is the greater of \$5,000 per dwelling unit or 30 percent of the outstanding principal balance of the mortgage;

H. to K. [Unchanged.]

For all other developments, "capital contribution of the investors" means the excess of the total development cost of the project as determined by the agency, whether or not paid in cash, over the original principal amount of the agency's loan.

Subp. 8. to 24. [Unchanged.]

Minnesota Housing Finance Agency

Proposed Permanent Rules Relating to the Definition of Federally Subsidized Mortgages

Notice of Intent to Adopt Rules Without a Public Hearing

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

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules within the 30-day comment period. Such comments are encouraged, and should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule may be modified as the result of comments received if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed

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Proposed Rules

language. Unless twenty-five or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of *Minnesota Statutes* Sec. 14.14 *et. seq.* Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

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

Kathleen J. Johnson
Legal Division
Minnesota Housing Finance Agency
Suite 300
400 Sibley Street
St. Paul, Minnesota 55101
Telephone: 612/296-9794

Authority for the adoption of these rules is contained in *Minnesota Statutes* Sec. 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change, and to determine whether the agency has the authority to adopt the rules and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to receive notice of the date of submission of these rules to the Attorney General for review, or who wish to receive a free copy of the final rules as adopted, should make such requests to Kathleen J. Johnson.

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

Please be advised that *Minnesota Statutes* Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes* Sec. 10A.01, Subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155 (612) 296-5615.

Dated: 6 November 1987

James J. Solem
Commissioner

Rules as Proposed

4900.0010 DEFINITIONS.

Subpart 1. to 11. [Unchanged.]

Subp. 11a. Federally subsidized mortgages. "Federally subsidized mortgages" means loans funded or acquired with the proceeds of bonds or notes the income from which is exempt from taxation under federal law except, where applicable, for federal alternative minimum tax laws, including federally insured mortgages, and loans that are benefitted by payments under interest reduction, rental assistance, housing assistance, or other similar programs from agencies or instrumentalities of the federal government to assist persons and families of low and moderate income in obtaining decent, safe, and sanitary housing.

Subp. 12. to 23. [Unchanged.]

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Human Services

Adopted Permanent Rules Relating to Licensure of Training and Habilitation Services for Adults with Mental Retardation or Related Conditions

The rules proposed and published at *State Register*, Volume 11, Number 41, pages 1862-1886, April 13, 1987 (11 S.R. 1862) are adopted with the following modifications:

Rules as Adopted

9525.1500 DEFINITIONS.

Subp. 2. **Assessment.** "Assessment" means the process of identifying and describing under part 9525.1630 a person's skills or lack or skills and behaviors ~~and, the impact of these skills or lack of skills and behaviors on the person's daily activities,~~ the environmental, physical, medical, and health factors that determine the services needed to increase the person's skills and improve behaviors independence and productivity, and the types of supervision, assistance, and training that would best meet the person's needs.

Subp. 5. **Aversive or deprivation procedure.** "Aversive or deprivation procedure" means the planned application of an unpleasant stimulus or consequence or the planned delay in the delivery of goods, services, or activities to which a person is otherwise entitled:

B. in an emergency situation as defined in rules adopted by the commissioner to govern parts 9525.2700 to 9525.2810 governing use of aversive and deprivation procedures in licensed facilities and services serving persons with mental retardation and related conditions.

Subp. 19. **Immediate danger.** "Immediate danger" results from ~~severely maladaptive~~ severe assaultive or self-injurious behavior that can be quantified according to intensity, rate, or duration and that has one or more of the following characteristics:

A. the behavior is ~~endangering~~ endangers a person's or another individual's life, sensory abilities, limb mobility, brain functioning, or other major physical functioning or threatening a person's or other individual's physical appearance or sexual integrity; or

B. the behavior seems likely to cause severe physical injury requiring medical treatment, or has caused such injury within 60 days immediately before the date of the present occurrence threatens a person's or other individual's physical appearance; or

C. the behavior seems likely to cause or has caused, within 60 days immediately before the date of the present occurrence, property damage in excess of \$300 as measured by the estimated cost of repair or replacement, whichever is less poses an immediate threat to the physical safety of a person or others in a way not specified in item A or B.

Subp. 23. **Intermediate care facility for persons with mental retardation and related conditions or ICF/MR.** "Intermediate care facility for persons with mental retardation and related conditions" or "ICF/MR" means a program licensed under Minnesota Statutes, sections 245.781 to 245.812 245A.01 to 245A.16 and 252.28, subdivision 2, to provide services to persons with mental retardation and related conditions and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for persons with mental retardation and related conditions.

Subp. 24. **Legal representative.** "Legal representative" means the parent or parents or of a person who has or who might have mental retardation or a related condition when that person is under 18 years of age, or a court appointed guardian or conservator

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Adopted Rules

who is authorized by the court to make decisions about services for a person who has or who might have mental retardation or a related condition regardless of that person's age.

Subp. 28. **Professional support staff.** "Professional support staff" means licensed professional staff such as rehabilitation counselors, physical therapists, occupational therapists, registered nurses, speech therapists, and consulting psychologists, who assist the direct service staff by:

A. providing specific services to the same persons who are served by the direct service staff; or

B. instructing the direct service staff in procedures, practices, or programs to follow with persons receiving services.

Subp. 29. **Provider.** "Provider" means a corporation, governmental unit, partnership, individual, or individuals licensed by the commissioner under parts 9525.1500 to 9525.1690 to provide training and habilitation services to adults with mental retardation and related conditions. The term provider includes a license holder as defined in Minnesota Statutes, section 245A.02, subdivision 9.

Subp. 31. **Regional center.** "Regional center" means one of the ~~eight~~ seven state-operated facilities servng that serve persons with mental retardation and related conditions ~~that and~~ are under the direct administrative authority of the commissioner. The following facilities are regional centers: ~~Anoka Metro Regional Treatment Center;~~ Brainerd Regional Human Services Center; Cambridge Regional Human Services Center; Faribault Regional Center; Fergus Falls Regional Treatment Center; Moose Lake Regional Treatment Center; St. Peter Regional Treatment Center; and Willmar Regional Treatment Center.

Subp. 32. **Service or support service.** "Service or support service" means planned activities designed to achieve the outcomes assigned to the provider and specified in the individual service plan of a person receiving services.

Subp. 34. **Supported employment.** "Supported employment" means employment of a person with a disability or disabilities so severe that the person needs ongoing training and support to get and keep a job in which:

A. the person engages in paid work at a work site where individuals without disabilities who do not require public subsidies ~~are~~ also may be employed;

Subp. 36. **Training and habilitation services.** "Training and habilitation services" means services that include training, supervision, assistance, and other support activities designed and implemented in accordance with a person's individual habilitation plan to help that person attain and maintain the highest possible level of independence, productivity, and integration into the community where the person lives and works. The term as used throughout parts 9525.1500 to 9525.1690 refers specifically to training and habilitation services with the characteristics in items A to D.

D. The services offered by the provider include training, supervision, assistance, and supported employment, work-related activities, or other community-integrated activities related to a person's employment or work, self-care, communication skills, socialization, community orientation, transportation needs, emotional development, development of adaptive behavior, cognitive development, and physical mobility.

9525.1510 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** Parts 9525.1500 to 9525.1690 establish the standards that an individual, organization, or association must meet to be licensed under Minnesota Statutes, sections ~~245.781 to 245.812~~ 245A.01 to 245A.16 and 252.28, subdivision 2, as a provider of training and habilitation services for adults with mental retardation and related conditions. Parts 9525.1500 to 9525.1690 supersede parts 9525.0750 to 9525.0830 in governing the provision of training and habilitation services to adults.

Subp. 2. **Applicability.** Parts 9525.1500 to 9525.1690 apply to any individual, organization, or association that regularly provides training and habilitation services to one or more adults with mental retardation or a related condition. The training and habilitation services governed by parts 9525.1500 to 9525.1690 include services commonly referred to as developmental achievement services when those services are provided to adults, day programs offered or administered by regional centers, and day habilitation services as defined in parts 9525.1800 to 9525.1930 governing funding and administration of home and community-based services. Nothing in parts 9525.1500 to 9525.1690 limits any individual, organization, or association providing training and habilitation services from contracting with the Division of Rehabilitation Services of the Minnesota Department of Jobs and Training or other entities for the provision of services for an adult with mental retardation or a related condition.

Subp. 3. **Exclusions.** Parts 9525.1500 to 9525.1690 do not apply to:

A. an intermediate care facility for persons with mental retardation and related conditions that is not a regional center and that provides training and habilitation services to facility residents as part of the facility's residential program licensed under parts 9525.0210 to 9525.0430; or

B. providers that are licensed under parts 9545.0510 to 9545.0670 and that provide services only to persons under 18 years of age; or

C. services provided by extended employment programs governed by parts 3300.1950 to 3300.3050.

9525.1520 LICENSING PROCESS.

Subp. 2. **Completed application.** An application for licensure or relicensure is complete when the applicant signs and submits to the department the completed application form accompanied by:

B. documentation that:

(3) a current determination of need or a biennial redetermination of need for the service and service site has been approved by the commissioner as required by Minnesota Statutes, section 252.28 and part 9525.0145; and

(4) the applicant has provided the information required by the commissioner to complete the licensing study required by Minnesota Statutes, section ~~245.783~~ 245A.04, subdivision 3.

Subp. 4. **Access to service sites owned or leased by the provider or applicant.** ~~Under Minnesota Statutes, section 245.804. The provider or applicant shall give the commissioner access to the service sites owned or leased by the provider or applicant any time during hours of operation to facilitate the commissioner's evaluation of the provider's or applicant's compliance with parts 9525.1500 to 9525.1690, in accordance with Minnesota Statutes, section 245A.04, subdivision 5. Access includes the right to review and photocopy the records required by parts 9525.1500 to 9525.1690, and to take photographs, make audio or video electronic tape recordings, and conduct interviews as a means of gathering the information required to evaluate compliance.~~

Subp. 5. **Licensing study of applicant and staff.** As specified in Minnesota Statutes, section ~~245.783~~ 245A.04, subdivision 3, a study of the applicant and of all staff members who have direct contact with persons receiving services must be made before ~~initial licensure and annually after that~~ the commissioner issues a license. The commissioner may require, at any time during the term of ~~the applicant's a provider's~~ licensure, a study of the applicant provider or of an employee if the commissioner has reasonable cause to believe that the refusal, convictions, or acts specified in subpart 6, item A occurred.

Subp. 6. **License denial or suspension.** The commissioner shall not issue a license or shall immediately suspend a license when one or any combination of the conditions described in item A, B, or C occurs.

A. The applicant or provider or a present employee of the applicant or provider:

(1) Refuses to give written consent to disclosure of information required by the commissioner to conduct a licensing study as specified in subpart 5; or

(2) Has been convicted of a crime or has admitted to an act or there ~~are reasonable grounds to believe has committed~~ is a preponderance of evidence of an act that directly relates to the physical abuse, sexual abuse or neglect of children as defined in Minnesota Statutes, section 626.566 626.556, subdivision 2, or the abuse or neglect of vulnerable adults as defined in Minnesota Statutes, section 626.557, subdivision 2, clauses (d) and (e), and subdivision 3, and does not show evidence of sufficient rehabilitation and present fitness to care for vulnerable adults. The factors in Minnesota Statutes, section 364.03, subdivisions 2 and 3 must be considered in determining whether the act or conviction directly relates to the abuse or neglect of vulnerable adults and whether the person individual has shown evidence of sufficient rehabilitation and fitness.

~~(3) Has been convicted of a crime or has admitted to an act or there are reasonable grounds to believe has committed an act that directly relates to the occupation of providing care to vulnerable adults as defined in Minnesota Statutes, section 626.557, and does not show evidence of sufficient rehabilitation and present fitness to care for vulnerable adults. The factors in Minnesota Statutes, section 364.03, subdivisions 2 and 3 must be considered in determining whether the act or conviction relates to the occupation of providing care to vulnerable adults and whether the person has shown evidence of sufficient rehabilitation and fitness.~~

Subp. 8. **Change in license terms.** The provider shall notify the commissioner and apply for a new license and the commissioner shall conduct a new or partial inspection and study of the provider and of the service site for which the license will be issued when the provider proposes to do any one or any combination of the following:

Subp. 13. **Notice to provider.** Within 30 days after receiving a request for a variance and the documentation supporting it, the commissioner shall inform the applicant or provider in writing whether the request has been granted or denied and why the request has been granted or denied. The commissioner's decision to grant or deny the variance is final. If the commissioner determines that licensing standards are not met and initiates a negative licensing action, that action may be appealed under ~~part 9525.1530~~ Minnesota Statutes, sections 245A.01 to 245A.16.

Subp. 14. **Notice by provider.** The provider shall send written notice to the legal representatives and the case managers of all persons receiving training and habilitation services from the provider, describing any variance granted by the commissioner under

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subpart 12 or any deficiency that exists if the provider has been issued a provisional or probationary license. The notice shall state that a copy of the variance or statement of deficiency may be reviewed by any interested party at the provider's office. The provider shall provide the written notice ~~annually~~ within ten working days of the provider's receipt of written notice from the commissioner granting a variance or issuing a provisional or probationary license and keep records showing that the written notice was sent. ~~Failure to comply with this subpart will result in a fine of \$250 and revocation of the license.~~

9525.1530 NEGATIVE LICENSING ACTIONS.

~~Subpart 1. **Negative licensing actions:** A negative licensing action includes denial of application for licensure or revocation, probation, suspension, nonrenewal, or immediate suspension of an existing license.~~

~~Subpart 2. **Procedure:** Under Minnesota Statutes, sections 245.801 to 245.803 and 245A.01 to 245A.16, failure to comply with parts 9525.1500 to 9525.1690 or the terms of licensure constitutes reasonable cause for a negative licensing action. If the commissioner determines that the standards in parts 9525.1500 to 9525.1690 or the terms of licensure have been violated, the commissioner shall notify the applicant or provider by certified mail unless personal service is required under subpart 5. The notice must be addressed to the name and location shown on the application or license and contain a statement of and reasons for the proposed action. The notice must inform the applicant or provider of the right to appeal the decision within the specified time period. The applicant or provider shall have an opportunity for a hearing under Minnesota Statutes, sections 14.57 to 14.69.~~

~~Subpart 3. **Denial or nonrenewal:** If the commissioner denies an application for licensure or refuses to renew an expired license, the applicant must be informed of the right to appeal the decision. The appeal must be made in writing and mailed within 20 working days of receipt of notice of the decision as specified in Minnesota Statutes, section 245.801, subdivision 1.~~

~~Subpart 4. **Suspension, revocation, or probation:** If the commissioner suspends or revokes a license or makes a license probationary, the provider must be informed of the right to appeal the decision. The appeal must be made in writing within ten working days of receipt of the notice of suspension, revocation, or probation as specified in Minnesota Statutes, section 245.801, subdivision 4.~~

~~Subpart 5. **Immediate suspension:** If the commissioner finds or has reasonable grounds to believe that the health, safety, or rights of the persons receiving services are in imminent danger, the commissioner shall immediately suspend the license of the provider. The provider must be informed of the suspension by personal service and be informed of the right to petition for reconsideration as specified in Minnesota Statutes, section 245.801, subdivision 4, within five days of receiving the notice of immediate suspension. The provider must cease operating as specified in the notice of immediate suspension. If the provider appeals, the appeal does not stay the decision of the commissioner to immediately suspend the license and does not allow the provider to resume operation while the appeal is pending.~~

~~Subpart 6. **Correction orders and fines:** If the commissioner finds that the provider does not comply with parts 9525.1500 to 9525.1690, the commissioner shall issue a correction order and the provider may be subject to a fine for each uncorrected deficiency as provided in Minnesota Statutes, sections 245.781 to 245.812 and 252.28.~~

~~Subpart 7. **Notice of negative licensing action:** The commissioner shall send notice to the host county when a license is suspended, revoked, made probationary, or immediately suspended or when a provider is fined. If a license is not immediately suspended and the provider remains in operation while an appeal of the commissioner's decision is pending, a notice of the commissioner's action and the provider's appeal must be sent by the commissioner to the host county and to the counties of financial responsibility.~~

~~Subpart 8. **Reapplication after revocation or nonrenewal:** A previous provider whose license has been revoked or has expired and has not been renewed must not be granted a new license for five years following revocation or nonrenewal. When the commissioner initiates revocation or nonrenewal against a provider, the provider may not voluntarily withdraw the license that is subject to revocation or nonrenewal in lieu of appealing the revocation or nonrenewal without giving written assurance that the provider is voluntarily accepting the revocation or nonrenewal and will not reapply for five years. Negative licensing actions shall be taken and appealed in accordance with Minnesota Statutes, sections 245A.01 to 245A.16.~~

9525.1540 ADMINISTRATION.

~~Subpart 2. **Advisory committee.** The governing body shall meet at least twice annually with an advisory committee. Half of the membership of the committee must represent the interests of the consumer, the local education agency, the local human services agency, and the local or regional vocational rehabilitation agency, and half of the membership must represent the local business community. The committee membership shall include at least one member who is a person with mental retardation or a related condition or a parent, guardian, family member, or friend of such a person and at least two members who are affiliated with one or more of the following agencies: local education agency, local human services agency, or local or regional vocational rehabilitation agency. In addition to the three members specified above, the committee shall also include at least three other members, all of whom represent the local business community. Nothing in this subpart prohibits providers in the same locale or area from sharing the same advisory committee. No more than half the members of the advisory committee may also serve on the governing board. The provider shall keep records of the minutes of the advisory committee meetings. The purpose of the advisory committee shall~~

initiate and facilitate projects to provide is to advise, consult with, and make recommendations to the governing body concerning community integration projects and employment ~~and shall advise, consult with, and make recommendations to the governing body about~~ ways to meet overall service goals, and ~~about~~ the provider's role in providing needed services to persons with mental retardation and related conditions who are currently of secondary school age when these persons become adults.

Subp. 3. **Administrative responsibility for compliance with other applicable laws and rules.** In addition to complying with parts 9525.1500 to 9525.1690, providers must comply with other applicable laws and rules, including those listed in items A to D:

D. ~~rules adopted by the commissioner parts 9525.2700 to 9525.2810~~ governing the use of aversive and deprivation procedures.

9525.1550 ADMINISTRATIVE POLICIES AND RECORDS.

Subp. 2. **Provider's policies organization and procedures policy manual.** The provider shall maintain a ~~written policies and procedures~~ an organization and policy manual. The manual must be made available on request to the commissioner, host county, and county boards that contract with the provider. The manual's contents must be reviewed annually by the governing body or a designated staff ~~person member~~ or committee. ~~A log of the reviews must be maintained by the provider and must show a date indicating when it was most recently revised.~~ The manual must contain up-to-date (current within the last calendar year) versions of the information in items A to ~~G~~ H:

A. ~~a mission statement and goals consistent with the needs of the persons served, a list of the services provided under part 9525.1570, the host county's determination of need for the service under part 9525.0145, and the resources available;~~

~~B. information identifying the availability and use of generic services, community locations, and commercial businesses to provide persons served with including a brief summary or description of the services the provider makes available to meet the requirements of part 9525.1570, subparts 2, 3, and 6;~~

B. a copy of the most current determination of need completed by the host county under part 9525.0145;

C. a summary of cooperative arrangements the provider has with community businesses and organizations to facilitate provision of employment opportunities, opportunities for social interaction with nondisabled persons people, and opportunities for training at service sites not owned or leased by the provider;

~~C. data collected under part 9525.1590 documenting outcomes of services provision;~~

D. an organizational organization chart listing the provider's employees and job titles showing current positions funded by the provider;

E. written policies and criteria governing admission, exclusion, suspension, and discharge developed under part 9525.1560;

F. the provider's written behavior management policy developed under part 9525.1640; ~~and~~

G. policies on the collection and dissemination of data on persons receiving services from the provider; and

H. policies and procedures required by the Vulnerable Adults Act, Minnesota Statutes, section 626.557.

Subp. 4. **Personnel file.** The provider must have a personnel file for each employee that includes:

B. the employee's health record, including verification of having that the employee has had a physical examination within 12 months before employment ~~and of having had examinations for tuberculosis as required by the Minnesota Department of Health or two months after employment~~;

Subp. 8. **Work performed for provider by persons receiving services.** A person receiving services from a provider shall work for the provider in place of an employee only when the conditions in items A to C are met:

B. the person is reimbursed an amount proportionate to the person's abilities and productivity except as regional centers are governed by Minnesota Statutes, section 246.151, subdivision 1; and

Subp. 13. **Daily schedules and attendance.** The provider must keep ~~records showing the documentation verifying service delivery and daily hours of attendance and scheduled activities~~ documentation for each person receiving services. The provider must keep the ~~daily schedules and attendance records~~ documentation for five years.

9525.1560 ADMISSION, EXCLUSION, SUSPENSION, AND DISCHARGE.

Subp. 2. **Admission policy and criteria.** A provider shall not refuse to admit a person solely on the basis of the type of residential

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services a person is receiving or solely on the basis of the person's severity of disability, orthopedic or neurological handicaps, sight or hearing impairments, lack of communication skills, physical disabilities, toilet habits, behavioral disorders, or past failure of the person to make progress. The provider shall have an admission policy that specifies the criteria to be applied in determining whether the provider can develop services to meet the needs specified in the person's individual service plan. The provider's determination of capability to meet a person's needs must be consistent with the host county's determination of need for the provider's service under parts 9525.0015 to 9525.0165. The admission policy must provide for ensuring that the host county concurs before the provider admits a person from a county other than the host county. The procedures established by the admission policy must specify a timeline for notifying the applicant a person applying for services of the provider's decision. The timeline must allow for a person's receiving notification within 30 days after the written request for service is received.

Subp. 3. **Admission file.** When a person is admitted, the provider must have compiled a file of information that contains:

~~C. documentation supporting the person's need for the training and habilitation services offered by the provider. The supporting documentation may include reports and assessments prepared under parts 9525.0015 to 9525.0165;~~

~~D.~~ a copy of the person's immunization record, if available; and

~~E.~~ D. registration information that includes:

Subp. 4. **Suspension procedures.** A provider may suspend a person only when the provider has documented that the person's behavior prompting the suspension presented an immediate danger as defined in part 9525.1500, subpart 19. The provider must notify the person's case manager ~~or~~ and legal representative of the suspension within 24 hours of the suspension's effective date. A person may be suspended for no more than three consecutive service days up to a maximum of six days per calendar year. Within 24 hours after the suspension the provider must:

B. document in the file the behavior prompting the suspension, including the frequency, intensity, and duration of the behavior, and the events leading up to the behavior;

Subp. 5. **Discharge procedures.** A provider may discharge a person only when a condition or the conditions specified in item A, B, or C is met.

C. The provider has documented before the discharge that the person's behavior constituted an immediate danger, the provider has notified the person's case manager ~~or~~ and legal representative of the provider's intent to discharge the person under subpart 6, and the provider documents in the person's file:

(4) the names of experts not employed by the provider who were consulted; to determine alternatives not yet documented as attempted in subitem (3) and the other community resources used to develop a program to meet the person's needs;

(7) the time period during which the provider is willing to participate in delivery of services to the person until other services can be arranged or developed.

Subp. 6. **Reporting intended discharges.** If after following the procedures in ~~subparts 1, 2, 4, and~~ subpart 5 the provider still intends to discharge a person, the provider must notify the person and the person's case manager ~~or~~ and legal representative in writing. Notice of the proposed discharge must be given at least ten days before the proposed discharge. The written notice must include the information in items A to E:

9525.1570 SERVICES REQUIRED FOR LICENSURE.

Subpart 1. **Services that must be provided available.** ~~Services available from the provider~~ must meet the specifications in subparts 2 to 6 and must be ~~provided~~ provided available for a minimum of 195 days in a calendar year.

Subp. 2. **Employment and employment-related services.** Providers shall offer or provide employment and employment-related services in accordance with the objectives specified in each person's individual habilitation plan when the services are reimbursable under state and federal regulations. Employment and employment-related services shall be designed to increase integration into the community, increase productivity, increase income level, and improve the employment status or job advancement of the person served. Supported employment shall be offered as a ~~first~~ choice to any person, regardless of the severity of that person's disability, who is currently not able to work competitively and is authorized to receive employment or employment-related services that are reimbursable under state and federal regulations. Employment and employment-related services offered or provided ~~must include but are not limited to~~ are required to have the components specified in items A to I:

A. individualized assessment in a manner consistent with part 9525.1630, subparts 4 and 5;

F. training in related skills essential to obtaining and retaining employment such as self-care, communication, social appropriateness, problem solving, task completion, safety, use of community resources, use of break or lunch areas, and mobility training;

G. transportation ~~between the individual's place of residence and the work place~~ to and from service sites when other forms of transportation are unavailable or inaccessible;

H. adaptive equipment necessary to obtain and retain employment when the equipment is not otherwise available through the Division of Rehabilitation Services of the Minnesota Department of Jobs and Training or the medical assistance program; and

I. training to improve related individual skill areas as identified in the individual habilitation plan.

Providers offering or providing employment and employment-related services are not limited to offering or providing only the required services listed in items A to L.

Subp. 3. **Community integration services.** Providers shall offer or provide community integration services designed to increase and enhance each person's social and physical interaction with nondisabled ~~persons~~ individuals who are not paid caregivers or staff ~~persons~~ members. Community integration services ~~that the provider must offer~~ offered or provide ~~include but are not limited to provided~~ are required to have the components specified in items A to G:

C. provision or development of opportunities for persons' access to and participation in the community through cooperative programming with community agencies such as senior citizen centers or senior citizen clubs, generic service organizations, adult education ~~institutions~~ programs, or mental health agencies;

E. specialized therapy and alternative communication devices designed to increase the person's communication skills and independent functioning or decrease the person's problem behaviors so that the person can participate to a greater degree in community activities and employment opportunities;

Providers offering or providing community integration services are not limited to offering or providing only the required services listed in items A to G.

Subp. 4. **Nonduplication of services.** ~~The employment, employment-related, and community integration services required in subparts 2 and 3 must not be provided as a substitute for~~ If the services in item A or B are available to persons eligible for those services, then providers must not provide training and habilitation services as a substitute for item A or B:

Subp. 6. **Required training methods, materials, and content.** Training tasks and materials used with or by a person receiving services must meet the standard of being considered age-appropriate for nondisabled individuals who are near or of the same chronological age as the person receiving services. Skills training, planned activities, and planned interactions must include the emphases in items A to C.

B. Planned interactions or activities ~~require~~ are designed to provide opportunities for mutual participation by the person receiving services and a nondisabled individual who is not a paid staff member.

9525.1580 CONTROL AND LOCATION OF SERVICES.

Subp. 2. **Control of services.** Training and habilitation services licensed under parts 9525.1500 to 9525.1690 and licensed residential services must not be provided to the same person by related legal entities. This requirement does not apply:

B. ~~until January 1, 1989,~~ to residential and day habilitation services offered by a training and habilitation services provider ~~that applied for licensure~~ licensed before April 15, 1983; or

9525.1590 DOCUMENTING OUTCOMES OF SERVICES REQUIRED FOR LICENSURE.

Subp. 2. **Outcomes of training and habilitation services.** Providers must collect data for each person receiving services on a quarterly basis throughout the calendar year. Data must be current as of the last day of the quarter being reported and must include:

B. the number of hours the person worked per ~~month~~ week;

C. the person's hourly wage ~~paid to the person for time at work site~~ and eligibility for fringe benefits;

D. the person's hourly production rate;

~~E.~~ the number of disabled coworkers receiving provider services at the same work site where the person for whom the data is reported is working; and

~~F.~~ E. the number of nondisabled and nonsubsidized coworkers employed at the work site;

~~G.~~ the length of time the person has been in his or her current work placement;

~~H.~~ the person's eligibility for fringe benefits;

~~I.~~ the number of hours per month of authorized service provision; and

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Adopted Rules

J. the support services provided to help the person obtain and maintain employment, including the staff ratio requirement established for the person under part 9525.1600 and any increase or decrease in on-site supervision at a community job site that has occurred since the last quarter.

9525.1600 MINIMUM STAFFING REQUIREMENTS.

Subpart 1. **Minimum level of staffing required.** The number of direct service staff members that a provider must have on duty at a given time to meet the minimum staffing requirements established in this part varies according to:

A. the number of persons who are enrolled and receiving direct services who are present at that given time;

Subp. 3. **Person requiring staff ratio of one to four.** A person who has one or more of the characteristics described in items A to ~~C~~ and B must be assigned a staff ratio requirement of one to four.

B. The person assaults others, is self-injurious, or manifests severe dysfunctional behaviors at a documented level of frequency, intensity, or duration requiring frequent daily ongoing intervention and monitoring as established in an approved behavior management program.

~~C. The person receives training and supervision from the provider for three or more hours a day at community locations or commercial businesses not owned or leased by the provider in accordance with the person's individual habilitation plan.~~

Subp. 4. **Person requiring staff ratio of one to eight.** A person who has all of the characteristics described in items A to ~~C~~ and B must be assigned a staff ratio requirement of one to eight.

A. The person does not meet the requirements in subpart 3.

B. On a daily basis the person requires verbal prompts or spot checks and minimal or no physical assistance to successfully complete at least three of the following activities: toileting, communicating basic needs, eating, or ambulating.

~~C. The person receives training and supervision from the provider for less than three hours a day at community locations or commercial businesses not owned or leased by the provider.~~

Subp. 7. **Conditions requiring additional direct service staff.** The provider shall increase the number of direct service staff members present at any one time beyond the number arrived at in subpart 6 if necessary when any one or combination of the circumstances described in items A to ~~C~~ and B can be documented by the commissioner as existing.

~~C. Eight or more persons are receiving training, assistance, and supervision from the provider exclusively at service sites not owned or leased by the provider in accordance with their individual habilitation plans.~~

Subp. 8. **Supervision requirements.** ~~Each person receiving services must be directly supervised by at least one direct service staff member unless the person's individual habilitation plan requires that the person spend part or all of a scheduled activity without supervision by a staff member employed by the provider. At no time shall one direct service staff member directly supervise be assigned responsibility for supervision and training of more than eight ten persons whose individual habilitation plans require direct receiving supervision and training.~~

9525.1610 STAFF QUALIFICATIONS.

Subpart 1. **Staff qualifications.** The staff employed by a provider must, at a minimum, meet the qualifications in items A to E.

B. ~~A provider's staffing pattern must allocate to each person enrolled 5.5 percent of a full-time staff member's time. There must be a sufficient number of staff members employed by or under contract to the provider with the qualifications listed below to equal 5.5 percent of a full-time equivalent employee for each person enrolled.~~ The staff member's qualifications must include at least the equivalent of one year of full-time experience working directly with persons with mental retardation or related conditions in addition to:

C. Additional staff must meet the qualifications required in their job descriptions. The qualifications required in the job descriptions must provide evidence of the ~~person's~~ individual's ability to perform the required job tasks and contain requirements for prior education, experience, and training.

D. Consultants hired by the provider must meet the Minnesota licensing requirements applicable to the disciplines in which they are providing consulting services. Additional qualifications may be required by the contracting provider where appropriate.

E. Staff ~~persons~~ members who provide training and habilitation services that are reimbursed under parts 9525.1800 to 9525.1930 must meet the requirements in those parts in addition to the requirements in these parts.

9525.1620 STAFF TRAINING.

Subp. 4. **Content of ongoing training.** Providers must be able to document that the ongoing training required in subpart 3 includes content that addresses:

H. other areas appropriate to the needs of the persons served including using alternative communication devices and sign language, assessing equipment needs, lifting and positioning of persons, and the training required in subpart 2, item A, subitem (4), and in subparts 5, 6, and 7.

Subp. 5. **First-aid training.** Within three years before or 90 days after beginning employment, direct service staff and drivers employed by the provider must have completed at least eight hours of first-aid training that offers a first-aid certificate issued by the American ~~Health~~ Heart Association or American Red Cross. First-aid training must be repeated every three years.

Subp. 7. **Medication assistance.** ~~When an employee other than a who is not licensed or registered as a physician, registered pharmacist, registered nurse, or licensed practical nurse who is responsible for assists persons receiving services in taking medication assistance, that employee must:~~

~~(1) A. provide a certificate verifying successful completion of a trained medication aide program for unlicensed personnel approved by the Minnesota Department of Health; or (2) have been~~

~~B. be trained by a registered nurse to provide medication assistance. The training must be documented in the employee's personnel file. Medication assistance by unlicensed personnel includes responsibility for assisting persons receiving services to take medication and monitoring the effects of medication but does not include giving injections. Medication includes a prescription substance ingested or applied externally to prevent or treat a condition or disease, heal, or relieve pain.~~

Subp. 8. **Training for emergencies.** A provider must train all staff to implement the written emergency procedures in part 9525.1660, subpart ~~13~~ 14.

9525.1630 INDIVIDUAL HABILITATION PLAN REQUIREMENTS.

Subp. 2. **Plan file.** The provider must have an individual habilitation plan file for each person who is receiving services. The file must contain:

C. the progress reports that: described in subpart 3;

~~(1) document the person's progress or lack of progress in attaining the goals and objectives written in the individual habilitation plan; and~~

~~(2) summarize and explain the reasons for modifications, replacements, additions, or continuance of objectives projected for the next quarter;~~

E. the annual review required in part 9525.0105 that includes: the assessment information described in subpart 6;

~~(1) observational data about the objectives specified in the person's individual habilitation plan that is stated in behavioral terms;~~

~~(2) current assessment results and summary described under subparts 4, 5, and 6; and~~

~~(3) recommendations to the case manager to continue or modify each goal or objective of a person's individual service plan or individual habilitation plan and the rationale for the recommendation; and~~

F. the documentation required in part 9525.1600.

Subp. 3. **Review of progress toward individual habilitation plan goals.** The provider must quarterly review and summarize each person's progress or lack of progress in achieving the objectives of the training and habilitation services in the person's individual habilitation plan. The progress report shall include the provider's recommendation and rationale for changing or continuing those objectives. This progress report must become part of the person's plan file.

Subp. 4. **Initial assessment.** After a person begins receiving services, the provider must assess the person to further determine the person's training and habilitation needs related to the attainment of short-term and long-range goals identified in the person's individual service plan. The assessment must be completed prior to the meeting of the interdisciplinary team where the person's individual habilitation plan is determined as specified in part 9525.0105. ~~The~~ In making this assessment, the provider may draw on and incorporate assessment relevant information about the person obtained by the case manager in the process of completing the assessment required under part 9525.0055 and. The assessment completed by the provider must address at least items A to E.

Subp. 6. **Assessment summary.** The provider must annually prepare a written assessment summary for each person receiving services. The summary assessment must ~~contain a description of the person's current status, summarize~~ the person's progress or

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lack of progress in attaining the goals and objectives, the person's service needs as identified during the assessment requested by the case manager and any other assessments conducted by the provider, and the assigned to the provider and must include observational data stated in behavioral terms. The written summary must also contain program recommendations ~~to be made to the interdisciplinary team in development and modification of the individual habilitation plan.~~ When the person is scheduled for discharge from a residential facility, the assessment summary must include the provider's recommendations for training and habilitation services in the person's new environment as identified through the assessment requested by the case manager and any other assessments conducted by the provider.

9525.1640 BEHAVIOR MANAGEMENT.

Subpart 1. **Behavior management policy.** The provider must have ~~and~~ must follow a written policy governing the use of behavior management techniques and must ensure that staff are familiar with and follow the policy. The written policy must:

B. be available to ~~staff members and~~ caregivers and other interested parties on request;

E. require documentation that instructional techniques incorporating functional analysis of behavior and positive reinforcement have been tried and found to be unsuccessful before a more intrusive procedure is implemented; and

Subp. 2. **Aversive or deprivation procedures.** A provider may use aversive or deprivation procedures only as specified in subpart 1, in Minnesota Statutes, section 245.825, and in ~~rules adopted by the commissioner under Minnesota Statutes, section 245.825 parts 9525.2700 to 9525.2810.~~ This subpart applies both to emergency and nonemergency use of aversive or deprivation procedures.

9525.1650 SERVICE SITES OWNED OR LEASED BY PROVIDER.

Subp. 2. **Building space limitations.** The licensed capacity of a service site owned or leased by the provider must be determined by the amount of primary space available, the scheduling of activities at other service sites, and the space requirements of persons receiving services. In this subpart, "primary space" does not include hallways, stairways, closets, utility areas, bathrooms, kitchens, floor area beneath stationary equipment, and floor area beneath movable equipment or furniture not used by persons receiving services or staff members. Primary space may include up to 25 percent of the floor area occupied by movable equipment and furniture used by persons receiving services and staff. The following guidelines apply in determining the licensed capacity:

A. A minimum of at least 40 square feet of primary space must be available for each person and each staff member who is engaged in a training and habilitation activity at the site for which the licensed capacity must be determined.

B. The commissioner may require ~~the provider to have~~ more than 40 square feet of primary space for each person engaged in a training and habilitation activity at the site for which licensed capacity must be determined ~~if:~~ when a number of square feet greater than 40 square feet is specified in the individual habilitation plan.

(1) ~~one or more of the persons are physically handicapped and need wheelchairs or special walking aids;~~

(2) ~~additional space is required for the person to perform the activities in the person's individual habilitation plan; or~~

(3) ~~additional space is required to comply with local and state building codes.~~

9525.1660 HEALTH- AND SAFETY-RELATED PROCEDURES.

Subp. 3. **Personal items.** ~~Procedures for storing and using toothbrushes, individual cloth towels, and washcloths at service sites must be approved by a health consultant~~ Personal health and hygiene items shall be stored in a safe and sanitary manner.

Subp. 5. **First-aid kits.** The provider must have first-aid kits and handbooks for first-aid administration ~~that are approved by a health consultant~~ and available at all service sites owned or leased by the provider.

Subp. 13. **Medication administration Administering medication.** The provider must have a written procedure governing ~~the administration of prescription and nonprescription medications to persons receiving services~~ how the provider administers or assists in administering medication to persons when the provider is authorized under part 9525.1560, subpart 3, item D, subitem (4) to administer or assist in administering prescription medications. Medication includes a prescription substance ingested, injected, or applied externally to prevent or treat a condition or disease, heal, or relieve pain. If a staff member helps persons receiving services take their medications, the staff member must meet the qualifications in part 9525.1620, subpart 6 7. The medication administration procedures and the qualifications of staff members who administer medication or provide medication as described in part 9525.1620, subpart 6 7 must be approved and reviewed annually by the provider's health consultant. The health consultant's written review shall determine whether ~~or attest that:~~

B. ~~authorizations for self-administration of medications or need for assistance in administration of medication required from the person's dentist or physician are~~ the information required in part 9525.1560, subpart 3, item D, subitem (4) is current;

E. the time lines for carrying out recommendations made by the health consultant as a result of the review have been met.

9525.1670 FOOD SERVICE.

Subpart 1. **General requirements.** The provider shall ~~not~~ prepare and serve meals for ~~persons~~ a person receiving services ~~unless only when~~ meal service by the provider is specified in ~~a the~~ person's individual habilitation plan.

Subp. 3. **Special diets.** If a person has special dietary needs prescribed by a physician or due to religious beliefs and the person eats food prepared by the provider, a written description of the specific dietary needs must be added to the person's individual habilitation plan file and must be available in the food preparation area.

Subp. 6. **Drinking water.** Drinking water must be available to all persons receiving services. ~~Drinking water must be offered to persons unable to request or obtain drinking water at least every four hours~~ If a person is unable to request or obtain drinking water, it shall be provided according to that person's individual needs but no less frequently than every four hours. Drinking water must be provided in single service containers or from drinking fountains accessible to all persons.

9525.1690 TRANSPORTATION.

Subpart 1. **Provision of transportation.** To the extent possible, a person receiving services shall use or be trained to use public transportation to and from service sites. If persons receiving services are transported in vehicles owned or leased by the provider, or contracted for by the provider, the provider must show evidence of compliance with or exemption from parts 8840.5100 to 8840.6300 governing special transportation operating standards. Providers must have a written transportation policy that meets the requirements in subparts 2 to 4.

Subp. 2. **Information on persons transported.** ~~Drivers must have in the vehicle an information sheet on the person transported~~ When a provider leases, owns, or contracts for a vehicle that is regularly used to transport persons receiving services, the provider must ensure that there is accessible to the driver information on each person transported in the vehicle. Transportation vehicles used "regularly" means vehicles used to transport persons receiving services at least 30 days in a 12-month period. The information sheet provided must include:

A. the person's name, address, ~~and~~ and photograph, and phone number;

B. ~~the nature of the person's disability and related safety needs;~~

~~C.~~ the person's emergency health care information, if applicable; and

~~D.~~ the names and phone numbers of the person's physician and caregiver; and

~~E.~~ C. the name and phone number of someone ~~other than the person's caregiver who can be contacted to call~~ in case of emergency. Nothing in this subpart prohibits the information required from being carried on or by the person being transported.

Subp. 3. **Supervision.** When the individual habilitation plan of a person being transported ~~in a vehicle owned or leased by the provider~~ requires that person to have programming or ~~supervisory~~ supervision by the provider's staff while being transported, a staff member or adult volunteer must be present in the vehicle in addition to the driver.

Subp. 4. **Travel time to and from service site.** Except in unusual circumstances, the provider must not transport a person receiving services for longer than one hour per one-way trip. In unusual circumstances, the provider may request a variance for up to one year. Variances to this subpart are ~~not~~ renewable when the provider documents that alternative solutions have not been effective and when the health and safety of persons riding the vehicle in excess of one hour per one-way trip are not jeopardized.

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Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, 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.

Attorney General's Office

Consumer Division

Public Meeting on Legal Rights and Obligations of Owners and Tenants of Rental Dwelling Units

The Minnesota Attorney General's Office, Consumer Division, will hold a public meeting on November 30, 1987, at 7:00 p.m., in Room 15 of the State Capitol Building, Aurora Avenue, St. Paul, Minnesota 55155.

The purpose of the public meeting is to receive comments on the content of the statement it has prepared in compliance with *Minnesota Statutes* § 504.22, subd. 4a, which requires the Attorney General to "prepare and make available to the public a statement which summarizes the significant legal rights and obligations of owners and tenants of rental dwelling units." This statement is in the form of a pamphlet entitled, "Landlords and Tenants: Rights and Responsibilities." A free copy of the pamphlet may be obtained by calling or writing the:

Minnesota Attorney General's Office
St. Paul: 117 University Avenue
St. Paul, MN 55155
(612) 296-3353

Duluth: 7th Floor, Government Service Center
320 W. 2nd St.
Duluth, MN 55802
(218) 723-4891

Department of Commerce

Notice of Activation of the Minnesota Joint Underwriting Association to Insure Specified Classes of Business and Public Hearing

Notice is hereby given that, pursuant to *Minnesota Statutes*, section 62I.21, the Minnesota Joint Underwriting Association (MJUA) and the Market Assistance Plan (MAP) are activated to provide assistance to the following classes of business unable to obtain insurance from private insurers:

Auto Salvage Yard

The MJUA and MAP are activated to provide assistance to the above classes of business for a period of 180 days following publication of this notice. A public hearing will be held, for the purpose of determining whether activation should continue beyond 180 days, at the Office of Administrative Hearings, 310 4th Avenue South, 5th Floor, Flour Exchange Building, Minneapolis, Minnesota 55415 on January 21, 1988 at 9:30 a.m. and continuing until all interested persons and groups have had an opportunity to be heard. The hearing shall be governed by *Minnesota Statutes* Sections 14.57-14.69 and by *Minnesota Rules* Parts 1400.5100-1400.8400, (1985). Questions regarding procedure may be directed to Administrative Law Judge, Peter Erickson, 310 4th Avenue South, 4th Floor Summit Bank Building, Minneapolis, Minnesota 55415, telephone (612) 341-7606. The authority for this proceeding is found in Chapter 62I of *Minnesota Statutes*, specifically sections 62I.21 and 62I.22. (A copy of those sections follows this notice.)

Prior to the hearing a pre-hearing conference will be held at 1:30 p.m. on January 13, 1988, at the Office of Administrative Hearings, 310 4th Avenue South, 4th Floor Summit Bank Building, Minneapolis, Minnesota 55415.

Minnesota Statutes, Chapter 62I, which governs the Minnesota Joint Underwriting Association provides for temporary activation for 180 days by the Commissioner of Commerce. To extend the Minnesota Joint Underwriting Association's authority beyond the 180 day period a hearing must be held. Those classes of business for which the Minnesota Joint Underwriting Association was temporarily activated, by this notice and by previously published notices, must prove, at that hearing, that they meet the statutory requirements for coverage by the Minnesota Joint Underwriting Association.

Among those requirements are:

- (1) That members of those classes are unable to obtain insurance through ordinary means;

(2) That the insurance being sought is required by statute, ordinance, or otherwise required by law, and is necessary to earn a livelihood or conduct a business; and

(3) That the classes of business serve a public purpose.

The classes of business specified in this notice and previously published notices must be shown to meet the statutory requirements of the Minnesota Joint Underwriting Association's authority to provide coverage to them will end after 180 days from the date the notice of activation was published in the *State Register*.

The Department strongly suggests that any persons affected by this hearing or otherwise interested in the proceedings familiarize themselves with the requirements of Chapter 62I and the contested case procedures prior to the hearing, that they take such other steps as are appropriate to protect their interests and that any questions they may have as to how to proceed or how to participate at the hearing be directed to the Administrative Law Judge prior to the hearing.

All interested or affected persons will have an opportunity to participate at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in the manner set forth in the Rules pertaining to contested cases (*Minnesota Rules* Parts 1400.5100-1400.8400).

Anyone wishing to oppose activation beyond 180-days for any particular class, must file a petition to intervene with the administrative law judge at least 10 days before the hearing date. If no notice to intervene is filed for a class then the class is activated beyond the 180-day period without further action.

Minnesota Statutes chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes* Section 10A.01, subdivision 11 as an individual:

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

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert St., St. Paul, Minnesota, 55101-2520, telephone (612) 296-5148.

Dated: 26 October 1987

Michael A. Hatch
Comissioner of Commerce

62I.21 ACTIVATION OF MARKET ASSISTANCE PLAN AND JOINT UNDERWRITING ASSOCIATION.

At any time the commissioner of commerce deems it necessary to provide assistance with respect to the placement of general liability insurance coverage on Minnesota risks for a class of business, the commissioner shall by notice in the *State Register* activate the market assistance plan and the joint underwriting association. The plan and association are activated for a period of 180 days from publication of the notice. At the same time the notice is published, the commissioner shall prepare a written petition requesting that a hearing be held to determine whether activation of the market assistance plan and the joint underwriting association is necessary beyond the 180-day period. The hearing must be held in accordance with section 62I.22. The commissioner by order shall deactivate a market assistance program and the joint underwriting association at any time the commissioner finds that the market assistance program and the joint underwriting association are not necessary.

62I.22 HEARING.

Subdivision 1. ADMINISTRATIVE LAW JUDGE. The commissioner shall forward a copy of the petition to activate the market assistance plan and the joint underwriting association with respect to a class of business to the chief administrative law judge. The chief administrative law judge shall, within three business days of receipt of the copy of the petition, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and administrative law judge assigned to the matter. The hearing date must be no less than 60 days nor more than 90 days from the date of receipt of the petition by the chief administrative law judge.

Subd. 2. NOTICE. The commissioner of commerce shall publish notice of the hearing in the *State Register* at least 30 days before the hearing date. The notice should be that used for rulemaking under chapter 14. Approval by the administrative law judge of the notice prior to publication is not required. The notice must contain a statement that anyone wishing to oppose activation beyond 180 days for any particular class, must file a petition to intervene with the administrative law judge at least ten days before the hearing date. If no notice to intervene is filed for a class then the class is activated beyond the 180-day period without further action.

Official Notices

Subd. 3. CONTESTED CASE; REPORT. The hearing and all matters after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

Subd. 4. DECISION. The commissioner shall make a decision within ten days of the receipt of the administrative law judge's report.

Subd. 5. WAIVER OR MODIFICATION. If all parties to the proceeding agree, any of the requirements of this section may be waived or modified.

Subd. 6. CASE PRESENTATION. The department of commerce, upon request by small businesses as defined by section 14.115, subdivision 1, shall assist small businesses in any specific class requesting continuation of coverage beyond the 180-day period, in coordinating the class and presenting the case in the contested hearing.

Environmental Quality Board

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Pipeline Routing

Notice is hereby given that the Minnesota Environmental Quality Board is seeking information or opinions from sources outside the Minnesota Environmental Quality Board in preparing to propose the adoption of rules for pipeline routing. The adoption of rules is authorized by *Minnesota Statutes*, section 116I.015 subd. 3 (Supp. 1987), which requires the Minnesota Environmental Quality Board to adopt rules governing the routing of pipelines.

The Minnesota Environmental Quality Board requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Larry B. Hartman, 380 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155. Oral statements will be received during regular business hours over the telephone at 612-296-5089 and in person at the above address.

All statements of information and opinions shall be accepted until 4:30 p.m., December 18, 1987. Any written material received by the Minnesota Environmental Quality Board 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.

Dated: 2 November 1987

John C. Ditmore, Chairman
Minnesota Environmental Quality Board

Department of Health

Division of Environmental Health

Notice of Intent to Solicit Outside Opinion on Various Proposed Rules

Notice is hereby given that the State Department of Health is seeking information or opinions from sources outside the agency in preparing to propose the adoption or amendment of the rules listed below.

Subject of Rule	Statutory Authority	Contact Person
Procedure for Variances (New Rule)	<i>Minnesota Statutes</i> , § 144.05	P. Bouchard 612/623-5331
Food Service Establishments (<i>Minnesota Rules</i> 4625.2400-4625.5000)	<i>Minnesota Statutes</i> , Chap. 157	M. F. Mitchell 612/623-5341
Children's Camps (<i>Minnesota Rules</i> 4630.2300-4630.4700)	<i>Minnesota Statutes</i> , § 144.74	C. B. Schneider 612/623-5335
Enclosed Sports Arenas (<i>Minnesota Rules</i> 4635.1100-4635.2000)	<i>Minnesota Statutes</i> , § 144.12	M. Thompson 612/623-5336
Water Wells (<i>Minnesota Rules</i> , Chap. 4725)	<i>Minnesota Statutes</i> , Chap. 156A	J. Nye 612/623-5339
Formaldehyde (<i>Minnesota Rules</i> 4620.1600-4620.2100)	<i>Minnesota Statutes</i> , § 144.495	L. Oatman 612/623-5219

Sources of Radiation
(Minnesota Rules, Chap. 4730)

Minnesota Statutes, § 144.121

W. Breitenstein
612/623-5346

The State Department of Health requests information and opinions concerning the subject matter of these rules. Interested persons or groups may submit data or views on the rule of concern in writing or orally. Written statements should be addressed to the contact person identified above for the rule in question, and mailed to the Minnesota Department of Health, Division of Environmental Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440. Oral statements will be received during regular business hours over the telephone at the number of the appropriate contact person, and in person at the above address.

All statements of information and opinion shall be accepted until January 1, 1988. Any written material received by the State Department of Health 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.

Dated: 28 October 1987

Raymond W. Thron, Ph.D., P.E., Director
Division of Environmental Health

Sentencing Guidelines Commission

Notice of Public Hearing to Consider Modifications to the Sentencing Guidelines

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Thursday, December 10, 1987, at 6:00 p.m. in Hearing Room 5, Ground Floor, State Office Building, 100 Constitution Ave., St. Paul, Minnesota. The public hearing is to consider proposed modifications to the sentencing guidelines regarding the presumptive sentence for offenders to the right of the dispositional line at severity levels I through VI, an additional aggravating factor for offenders with extensive criminal history, and the ranking for Sale of Cocaine and Sale of Heroin when the amount of drug involved is at least 10 grams over a 90 day period.

Additional copies of the proposed modifications that include proposed modifications to the Commentary are available, free of charge, by contacting the Minnesota Sentencing Guidelines Commission at 51 State Office Building, St. Paul, MN 55155, or by calling (612) 296-0144.

All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register in advance by contacting the Commission staff at the above address/telephone number.

The Commission will hold the record open for five days after the public hearing to accept additional written comment on the proposed modifications. On December 15, 1987, the Commission will meet in Room 10, State Office Building, 100 Constitution Avenue, St. Paul, Minnesota to formally adopt or reject the proposed modifications. If adopted, the modifications as indicated will become effective December 16, 1987. Those requiring legislative review will become effective August 1, 1988 absent legislative action to the contrary.

Proposed Modifications Effective December 16, 1987

Proposed Change to Section V. **Offense Severity Reference Table** are as follows:

- VII Sale of Cocaine—152.15, subd. 1(1), (i), (ii), (v), & (vi)
 Sale of Heroin—152.15, subd. 1(1) (ii), (v) & (vi)

Proposed Modifications Effective August 1, 1988 Barring Legislative Action to the Contrary

Proposed Change to Section II.C. (Presumptive Sentence)

C. Presumptive Sentence: The offense of conviction determines the appropriate severity level on the vertical axis. The offender's criminal history score, computed according to section B above, determines the appropriate location on the horizontal axis. The presumptive fixed sentence for a felony conviction is found in the Sentencing Guidelines Grid cell at the intersection of the column defined by the criminal history score and the row defined by the offense severity level. The offenses within the Sentencing Guidelines Grid are presumptive with respect to the duration of the sentence and whether imposition or execution of the felony sentence should be stayed.

The line on the Sentencing Guidelines Grid demarcates those cases for whom the presumptive sentence is executed from those for whom the presumptive sentence is stayed. ~~For cases contained in cells below and to the right of the line, the sentence should be executed.~~ For cases contained in cells above and to the left of the line, the sentence should be stayed, unless the conviction offense carries a mandatory minimum sentence. For cases contained in cells below and to the right of the line, the sentence should be executed unless any one of the following circumstances exist:

- 1) the current conviction offense is at severity level I or II and the offender has had less than three prior interventions; or

Official Notices

2) the current conviction offense is at severity level III or IV and the offender has had less than two prior interventions;
or

3) the current conviction offense is at severity level V or VI and the offender has not had a prior intervention.

A single intervention includes all prior felony convictions for which execution of a felony sentence was stayed or imposed, or for which a stay of imposition of sentence was given and which were served contemporaneously. A prior felony sentence or stay of imposition given for an offense committed after the last intervention began will start a new and separate intervention. Current contemporaneous felony convictions are not to be considered a prior intervention until future crimes are committed by the offender. A probation revocation for any criminal activity, other than for a traffic violation or a new felony conviction, that results in additional sanctions to the existing felony sentence or stay of imposition is considered a new and separate intervention. The computation of interventions would not include any felony sentences or stays of imposition that have decayed as described in the criminal history section II.B.1.d..

Proposed Addition to Section II.D.2.b. (Aggravating Factors for Departure)

(8) The offender had an extensive prior felony record not adequately reflected by the sentencing guidelines grid and is currently being sentenced for multiple felony convictions. The presence of the following circumstances must exist with respect to this aggravating factor:

(a) the offender's criminal history score contains at least six prior felony points; and

(b) the offender is currently being sentenced for more than one felony conviction; and

(c) consecutive sentencing is not permissive.

Department of Trade and Economic Development

Office of Financial Management

Notice of Availability Tax Exempt Financing Authority

Pursuant to *Minnesota Laws 1987, ch. 268, article 16*

The Department gives notice that the amounts of tax exempt financing authority available to qualified issuers as of November 2, '87, is as follows:

Manufacturing Pool (Small Issue Bonds)

\$ N/A

Multifamily Housing Pool

\$ N/A

Public Facilities Pool

\$ N/A

The issuance authority in the pools shown above is available to qualified issuers submitting applications, the required deposit and supporting documents by any Monday through the second to the last Monday in October.

The issuance authority shown below is available to issuers submitting applications during the period beginning with the week ending on the last Monday in October through the second last Monday in December.

Unified Pool

\$57,363,380

Application forms are available from the Department upon request.

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. § 14.10, an agency must make reasonable effort to publicize the availability of any 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 \$15,000 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 whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Department of Administration: Materials Management Division

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid. Buyer's initials are listed next to each commodity.

Commodity for Bid (and Buyer)	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Electron microscope (JG)	November 12	Health	Minneapolis	12400 14719
Signage (JD)	November 12	State University	Mankato	25071 17850
Steam & condensate pipe (DM)	November 13	Regional Treatment Center	Willmar	55106 06530
Janitorial contract (JS)	November 13	Public Safety	St. Paul	07100 45009
Data general upgrade (BV)	November 13	University Board	St. Paul	26137 04166
Arts & crafts (CA)	November 17	Various	Various	Price Contract
Safety glasses-prescription and nonprescription (DK)	November 17	Various	Various	Price Contract
Light heating fuel-rebid (EFS)	November 17	Various	Various	Schedule 93

Department of Administration: Printing & Mailing Services

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

Commodity for Bid (and Buyer)	Bid Due Date at 2 pm	Department or Division	Delivery Point	Requisition #
Annual Report	November 13	Secretary of State	St. Paul	2353
Letter Envelopes	November 13	Jobs & Training	St. Paul	2869
9" x 12" envelopes	November 13	Jobs & Training	St. Paul	2870
Mailing card	November 13	Trade & Econ. Dev.	St. Paul	2878
Forms	November 13	Finance	St. Paul	2772
Blank Deposit Slips	November 13	Jobs & Training	St. Paul	2933
Time reports	November 13	Jobs & Training	St. Paul	2871
Homestead letterhead continuous feed	November 13	Jobs & Training	St. Paul	2932
Class Grade Roster	November 13	Community College System	St. Paul	2881
Traffic Count Maps	November 13	Transportation	St. Paul	2848,9,50,1

Minnesota Department of Employee Relations

Request for Proposals from Vendors who Provide Customer-Relations Training for a Comprehensive Program to Facilitate a Statewide, Team Effort to be Customer-Centered and Responsive to the People We Serve

A copy of the Request is available from the Department contact.

Department Contact

Prospective responders who have any questions regarding this Request for Proposal may call at (612) 296-8932 or write:

Rita Phillips
Department of Employee Relations
State of Minnesota
Training and Development Division
520 Lafayette Road
St. Paul, Minnesota 55155

Submission of Proposals

All proposals must be sent to and received by the State Project Director:

Elaine Johnson, Deputy Commissioner
Department of Employee Relations
State of Minnesota
520 Lafayette Road
St. Paul, Minnesota 55155

All proposals must be received not later than 4:30 p.m. November 30, 1987. Late proposals will not be accepted. Submit four copies of the proposal. Proposals are to be sealed in mailing envelopes or packages with the responder's name and address clearly written on the outside. Each copy of the proposal must be signed, in ink, by an authorized member of the firm. Prices and terms of the proposal as stated must be valid for the length of the project.

Project Purpose

The goal is to implement a comprehensive customer-relations program that helps the state achieve and sustain its goal of being customer-centered and responsive to the public. Therefore, the program should help assess, build and sustain responsiveness.

Project Scope

This customer-relations program must be geared to the public sector and be flexible enough to deal with a variety of agency needs. It is anticipated that at least 4,000 front-line employees would participate in the customer relations component described below and at least 250 first-line supervisors would participate in the coaching component. A train-the-trainer component would require the vendor to train and certify agency personnel (at least 40) to facilitate the programs in-house. These numbers represent 20-24 agencies. Cost estimates should be based on those projections.

This Request for Proposal does not obligate the State to complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

Project Components

The program selected will include, but not be limited to, the following components:

- 1) a needs assessment and analysis to determine the focus of video scenarios and strategies to be included in a tailored customer-relations program.
- 2) a government-focused, video-based training program in customer-relations strategies for front-line employees;
- 3) a corresponding coaching program for first-line supervisors that familiarizes them with the program for front-liners and helps them to coach and reinforce the skills;
- 4) a program to inform all managers and supervisors about specific customer-relations goals and strategies.
- 5) tailored workbooks or guides for first-line supervisors and front-line employees.
- 6) a train-the-trainer component to train and certify state agency personnel to conduct in-house programs.

The responder may propose additional tasks or activities if they will substantially improve the results of the project.

Project Costs

The Department has estimated that the cost of this project should not exceed \$150,000.00.

Project Completion Date

The project will be completed by May 31, 1988; or within six months from the date of project authorization. "Completion" means that all six project components have been delivered by the vendor to the State, including a first-run demonstration of the customized program conducted by the vendor's facilitator. Completion does *not* include training to be conducted by State facilitators trained and certified by the vendor.

Proposal Contents

The following will be considered minimum contents of the proposal:

1. A restatement of the objectives, goals and components to show or demonstrate the responder's view of the nature of the project.
2. Identify and describe the deliverables to be provided by the responder.
3. Outline the responder's background and experience with particular emphasis on local, state and federal government work. Identify personnel to conduct the project and detail their training and work experience. No change in personnel assigned to the project will be permitted without the approval of the State Project Director.
4. Responder will prepare a detailed cost and work plan which will identify major tasks to be accomplished and be used as a scheduling and managing tool as well as the basis for invoicing.
5. Identify the level of Department participation in the project as well as any other services to be provided by the Department.

Evaluation

All proposals received by the deadline will be evaluated by representatives of the Department of Employee Relations. In some instances, an interview will be part of the evaluation process. Factors upon which proposals will be judged include, but are not limited to, the following:

1. Expressed understanding of project objectives.
2. Quality of the program components and the plan for their implementation. In part, quality will be determined by the soundness of the behavioral models that underly the training and the adherence to adult learning principles in the process proposed for delivery. Video vignettes and workbooks will be assessed for realism, clear writing or scripting, relevance and arrangement.
3. Project cost detail.
4. Qualifications of both company and personnel. Experience of project personnel will be given greater weight than that of firm.

Selection Process

Final selection is the responsibility of the agency and does not have to be based exclusively on the concept of the "lowest responsible bidder."

State Planning Agency

Developmental Disabilities Program: Governor's Planning Council on Developmental Disabilities

Requests for Proposals to Assist in the Development of a Microcomputer Advisor System to Improve the Efficiency of Case Managers in Dakota and Itasca Counties

Dakota County Human Services and Itasca County Social Services have jointly received a grant from the Governor's Planning Council on Developmental Disabilities for the development of a service/provider monitoring tool that would be used with a case management information system that was developed last year with a similar grant from the Council. The purpose of the monitoring tool is to assist social workers/case managers in both counties in assessing client and placement risk factors and monitoring residential services for persons who are developmentally disabled.

Dakota and Itasca Counties, in cooperation with the Council, are now seeking proposals from individuals and organizations interested in assisting with the development of such a tool. Approximately \$45,000 are available for this project. The project will start in early 1988. Proposals are due before 4:30 p.m. on Monday, December 14, 1987.

State Contracts and Advertised Bids

For additional information and copies of the RFP, contact:

Ronald E. Kaliszewski
Developmental Disabilities Program
300 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155
Phone (612) 297-3207

Department of Trade and Economic Development Business Promotion and Marketing Division

Request for Proposals for Advertising and Direct Mail Contract Services

The Department of Trade and Economic Development wishes to retain a contractor to provide advertising and direct mail services in accordance with the department's communications plan, as authorized by Statute 116J.58, Subdivision 2.

The services of the contractor would include conceptualizing and producing advertisements for radio, television, newspapers, magazines, trade journals and possibly outdoor boards when needed, and also to plan and execute a direct mail campaign for two targeted audiences and the design of related materials.

The services of the contractor would begin on December 1, 1987, and end on June 30, 1988, with a one-year renewal option. It is estimated that the cost of this project will not exceed \$150,000.00.

Proposals must be received by November 23, 1987. A copy of the Request for Proposal is available upon request. Inquiries and requests should be directed to:

Barbara Young, Communications Director
Minnesota Department of Trade and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Phone: 612/297-1300

Department of Trade and Economic Development Business Promotion and Marketing Division

Request for Proposals for General Graphic Design Contract Services

The Department of Trade and Economic Development wishes to retain a contractor to provide general graphic design services for most literature published by the department, including graphic designs and layouts for various publications. This is in accordance with the department's new Communications Plan. The services of the contractor would begin on December 1, 1987, and end on June 30, 1988, with a one-year renewal option. It is estimated that the cost of this project will not exceed \$30,000.00.

Proposals must be received by 4:30 p.m. Monday, November 16, 1987. Inquiries and requests should be directed to:

Barbara Young, Communications Director
Minnesota Department of Trade and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Phone: 612/297-1300

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.

Tax Court—Regular Division: Docket No. 4524—Dated: October 2, 1987

Plitt North Central Theatres, Inc., Appellant, vs. Commissioner of Revenue, Appellee.

The above-entitled matter came on for hearing before the Honorable Earl B. Gustafson, Chief Judge of the Minnesota Tax Court, on June 15, 1987 at the Courtroom of the Tax Court, 520 Lafayette Road, St. Paul, Minnesota.

James C. O'Neill, Esq., St. Paul, appeared for appellant.

Thomas K. Overton, Special Assistant Attorney General, appeared for the appellee.

Post-trial briefs were filed and the case was submitted to the Court for decision on July 9, 1987.

The Court, having heard and considered the evidence adduced at the hearing and upon all of the files and records herein, now makes the following:

FINDINGS OF FACT

1. Appellant is the owner and operator of the Skyway Theatre complex in downtown Minneapolis, Minnesota.
2. For monthly periods from January 1, 1973 through November 20, 1984, appellant remitted City of Minneapolis admission and amusement taxes on movie theater admissions and concessions to the Minnesota Department of Revenue as collector for the City of Minneapolis.
3. During this period there was no City of Minneapolis admission and amusement tax due on appellant's concessions.
4. Appellant filed two claims with the Department of Revenue for refund of the City of Minneapolis tax remitted on concession sales for the periods from January 1, 1973 through December 31, 1981.
5. The Commissioner of Revenue, by an Order dated December 20, 1985, denied appellant's claims for refund as untimely under *Minnesota Statutes* § 297A.35, subd. 1.
6. The attached Memorandum is hereby made a part of these Findings of Fact.

CONCLUSIONS OF LAW

1. Appellant's claims for refund were properly denied under *Minnesota Statutes* § 297A.35, subd. 1 (1984).
2. The Commissioner's Order dated December 20, 1985 is hereby affirmed.

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

Dated: 2 October 1987

BY THE COURT,
Earl B. Gustafson, Chief Judge
Minnesota Tax Court

Tax Court—Regular Division: Docket Nos. 4688, 4758 and 4838—Dated: October 23, 1987

Charles N. Belssner, Appellant, vs. Commissioner of Revenue, Appellee.

The above-entitled matter came on for hearing before the Honorable Arthur C. Roemer, Judge of the Minnesota Tax Court, on October 5, 1987 at the Hennepin County Juvenile Justice Center in Minneapolis, Minnesota.

At the request of the appellant, three dockets were consolidated for trial: Docket Number 4838, relating to an additional tax assessment for the year 1976; Docket Number 4688, relating to an additional assessment for the tax year 1980; and Docket Number 4758, relating to an appeal from additional assessments for the years 1983 and 1984.

The appellant, Charles Belssner, appeared pro se.

Thomas K. Overton, Special Assistant Attorney General, appeared for the appellee.

The Court, having heard and considered the evidence adduced at the hearing and upon all of the files and records herein, now makes the following:

FINDINGS OF FACT

1. The Commissioner of Revenue, after demanding the filing of an income tax return for 1976, prepared a return under the provisions of Section 290.47 of the Minnesota Income Tax Act, and in an Order dated February 27, 1985, assessed a tax of \$2,468.92, penalty of \$617.24 plus interest of \$2,648.91, totalling \$5,735.07, against the appellant for calendar year 1976.
2. A notice of appeal was filed with the Tax Court on April 14, 1987, contesting the assessment in the February 27, 1985 Order.
3. The Commissioner of Revenue, in his Return and Answer to the Notice of Appeal and as an affirmative defense, stated that the Tax Court lacks jurisdiction to hear the matter because more than 60 days had expired between the assessment and the filing of the appeal, and that the appeal was filed for the purpose of delay, the allocations being frivolous. The Commissioner requested that he be awarded costs, disbursements and reasonable attorney's fees.
4. The Commissioner of Revenue, by Order dated February 22, 1985, assessed an additional tax the year 1980 of \$5,310, penalty of \$1,219.25 and interest of \$3,366.93, totalling \$9,896.18, based upon similar adjustments made by the Internal Revenue Service.
5. The Commissioner of Revenue, by Order dated July 18, 1986, reduced the liability of the appellant for calendar year 1980 as follows: tax \$2,937.00, penalty \$734.25, interest \$2,363.99, totaling \$6,035.24, based upon a revised Internal Revenue agent's report.
6. The appellant, on September 10, 1986, appealed from the Order of the Commissioner dated July 18, 1986.
7. The Commissioner of Revenue, by Order dated May 9, 1986, based upon similar adjustments by the Internal Revenue Service, disallowed certain deductions on the appellant's 1983 income tax return, resulting in an additional tax of \$1,554 which, together with interest of \$378.70, totalled \$1,932.70.
8. The Commissioner of Revenue, by Order dated May 9, 1986, disallowed certain expenses on the 1984 income tax return of the appellant, resulting in an additional tax of \$2,107 which, together with interest of \$269.57, totalled \$2,376.57.
9. The Commissioner of Revenue, by Order dated May 9, 1986, also disallowed \$255.00 of the property tax refund previously paid to the appellant which, together with interest of \$17.45, totalled \$272.45.
10. The appellant filed a Notice of Appeal from the May 9, 1986 orders on December 30, 1986.
11. The Commissioner of Revenue, in his answer dated February 5, 1987, asserted as an affirmative defense that the Court lacks jurisdiction due to the late filing of the appeal, and that the Court should dismiss the appeal and affirm the Commissioner's Orders. This defense was waived however at the trial.
12. The appellant presented a letter from the Internal Revenue Service dated January 4, 1978 accepting the 1976 tax return as filed.
13. The appellant presented a letter from the Internal Revenue Service dated November 3, 1986 (form letter 590) indicating that after examination of the appellant's 1984 tax return, no change was necessary in the reported tax.
14. The petitioner had timely filed his 1976 return.
15. The Orders of the Commissioner of Revenue for the years 1976, 1980, 1983 and 1984 are hereby affirmed as the appellant did not sustain the burden of proving the incorrectness thereof. The Order for 1980 is subject to possible future adjustment by the Internal Revenue Service based on an amended return filed by Mr. Belssner. The appellee indicates that he will adjust the state liability in accordance with any such orders.

CONCLUSIONS OF LAW

1. The Orders of the Commissioner relating to the taxable years 1976, 1980, 1983 and 1984 are hereby affirmed, the appellant having failed to establish the incorrectness thereof.

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

Dated: 23 October 1987

BY THE COURT,
Arthur C. Roemer, Judge
Minnesota Tax Court

Tax Court—Regular Division: Docket No. 4731—Dated: October 23, 1987

Church of the Crucifixion, Appellant, vs. Commissioner of Revenue, Appellee.

The above-entitled matter came on for hearing before the Honorable Earl B. Gustafson, Chief Judge of the Minnesota Tax Court, on July 8, 1987 at the Houston County Courthouse in Caledonia, Minnesota.

Al Wieser, Jr., Attorney at Law, LaCrescent, Minnesota, appeared for appellant.

Michele M. Owen, Special Assistant Attorney General, appeared for appellee.

Post-trial briefs were filed and the case was submitted to the Court for decision on July 27, 1987.

The Court, having heard and considered the evidence adduced at the hearing and upon all of the files and records herein, now makes the following:

FINDINGS OF FACT

1. The Church of the Crucifixion, appellant, and its affiliated Knights of Columbus chapter were conducting bingo games open to the public in LaCrescent, Minnesota during the audit period, May, 1982 through March, 1985, and during many prior years.

2. On April 30, 1985, Mr. Daniel Cerney, tax examiner for the Minnesota Department of Revenue, conducted an audit in LaCrescent of the records of appellant and the Knights of Columbus relating to this charitable gambling.

3. Appellant and the Knights of Columbus had been using the same sales tax permit to remit taxes to the State and had been charging tax at the rate of 16 cents per admission rather than multiplying the sales tax rate times the gross sales.

4. Mr. Cerney prepared an audit report containing an assessment that recalculated the correct amount of sales tax due on the bingo operations for the period May, 1982 through March, 1985, and required payment of the deficiency.

5. Appellant paid its share of the omitted taxes and interest, a total of \$8,248.64, on May 20, 1985. The Knights of Columbus paid its omitted tax and interest, a total of \$6,860.30, on May 29, 1985.

6. In the 1985 session of the Minnesota Legislature, a bill was introduced allowing partial forgiveness of sales tax liabilities due from charitable gambling, but this bill did not pass out of the Committee of Taxation of either the Senate or House and died when the session adjourned May 20, 1985.

7. A new sales tax amnesty bill for charitable gambling was introduced in the 1986 Legislative Session and passed on March 25, 1986. Laws of Minnesota 1986, Chapter 467, Sec. 31.

8. On July 28, 1986, appellant, for itself and on behalf of the Knights of Columbus, filed a claim for refund with the Department of Revenue for half of the total additional taxes and interest which had been paid in May, 1985.

9. In making the claim for refund appellant contended that the 1986 tax amnesty law, which forgave 50 percent of a charity's sales tax liability for lawful gambling as of June 1, 1986, applied to its 1985 tax liability. Appellant withdrew this contention at trial.

10. Having paid its full delinquent sales tax liability in 1985, appellant and the Knights of Columbus had no sales tax liability on June 1, 1986 and therefore the 1986 legislation did not apply to them.

11. At trial appellant did, however, contend that Mr. Cerney, as an authorized agent of the Minnesota Department of Revenue, represented to appellant and the Knights of Columbus, prior to their payment of delinquent taxes in May, 1985, that there was no tax amnesty legislation pending and that this representation was false and was relied upon by appellant and the Knights of Columbus to their detriment.

12. Appellant further contends that had they been given accurate information by Mr. Cerney, they would not have paid their taxes in 1985 but would have waited until 1986 and received the benefit of the 50 percent tax amnesty provided by the 1986 law.

13. At no time prior to the payment of the tax in May, 1985 did Daniel Cerney, tax examiner for the Minnesota Department of Revenue, make any representation to appellant or their affiliated Knights of Columbus chapter regarding any charitable gambling tax amnesty legislation pending in the Minnesota Legislature.

CONCLUSIONS OF LAW

1. Appellee, Commissioner of Revenue, is not barred by equitable estoppel from denying appellant's claim for refund.

2. The Order of the Commissioner of Revenue dated August 12, 1986, denying appellant's claim for refund, is hereby affirmed.

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

Dated: 23 October 1987

BY THE COURT,
Earl B. Gustafson, Chief Judge
Minnesota Tax Court

Tax Court

Tax Court—Regular Division: Docket Nos. 4818 and 4832—Dated: October 22, 1987

DOCKET NO. 4818 Marvin and Rita Eno, Appellants, vs. Commissioner of Revenue, Appellee. AND DOCKET NO. 4832 Joseph and Judie Victrelli, Appellants, vs. Commissioner of Revenue, Appellee.

By agreement of the parties, the two above-entitled matters were consolidated and came on for hearing before the Honorable M. Jean Stepan, Judge of the Minnesota Tax Court, on August 4, 1987, at the Tax Court Hearing Room in St. Paul, Minnesota, upon motions by both appellants and by the appellee for summary judgment. Arguments on both motions were presented at the hearing.

Thomas O'Hern, Jr., Special Assistant Attorney General, and Beverly Conerton, Special Assistant Attorney General, appeared on behalf of the Commissioner of Revenue.

Jeffrey T. Wallace, Attorney at Law, appeared on behalf of the appellants.

Based upon the memoranda, oral arguments and all of the files, records and proceedings herein, the Court hereby concludes that:

1. The place of employment of appellants Marvin Eno and Judie Victrelli, the United States Post Office in Cloquet, Minnesota, is not located within the boundaries of the Fond du Lac Indian Reservation.
2. Income earned by these appellants at said U.S. Post Office is lawfully subject to taxation by the State of Minnesota.

ORDER

1. Summary judgment is hereby granted in favor of the appellee and the Orders of the Commissioner of Revenue in the above-captioned cases are affirmed.

IT IS SO ORDERED.

Dated: 22 October 1987

BY THE COURT,
M. Jean Stepan, Judge
Minnesota Tax Court

Supreme Court Decisions

C1-87-113 Donald and Virginia Erickson, individually and as guardian of Bonnie Erickson, a minor; Brian James Erickson; and Lynn Erickson v. Douglas MacArthur; Richard Dvorak; Elton Folkerts; Terry Balfanz; Joseph Doescher; Arlen Holland; Ronald Anderson; and the City of Minnetonka, a municipal corporation, Appellants. Court of Appeals.

Eyewitness statements taken during police Internal Affairs investigation are protected by a qualified privilege under *Minnesota Statutes* § 595.02, subd. 1(e).

Trial court erred in not reviewing materials contained in Internal Affairs files *in camera* prior to release, to insure that adequate protection is given to the privacy interests of citizens who give statements to police investigators.

Discovery order vacated and remanded. Amdahl, C.J.

C2-86-1048, CX-87-658 Donald Bergeson, et al., petitioners, Appellants, v. (C2-86-1048) United States Fidelity and Guaranty Company and Donald Bergeson v. (CX-87-658) Danny's Construction Company and U.S. Fidelity & Guaranty Company, Relators. Court of Appeals. (C2-86-1048) Workers' Compensation Court of Appeals. (CX-87-658)

The trial court's order granting summary judgment dismissing a civil action brought under *Minnesota Statutes* § 176.82 (1986) of the Workers' Compensation Act is affirmed; the Workers' Compensation Court of Appeals' decision awarding additional permanent partial disability payments under section 176.101, subd. 3, assessing penalties pursuant to section 176.225, and remanding to the compensation court for further findings is affirmed.

Affirmed. Simonett, J.

Took no part, Scott & Kelley, JJ.

C9-86-1578 Michael Guetter v. Brown County Family Services, practitioner, Appellant. Court of Appeals.

The identity of the reporter making allegations of abuse to minors pursuant to *Minnesota Statutes* § 626.556 (1986), may not be disclosed to the person accused until the trial court, *in camera*, has inspected the files and records concerning the report and any

subsequent investigation thereof in the agency's possession to which the alleged abuse has been reported, and, thereafter has made written findings that the report was false and that there exists evidence that the report was made in bad faith.

Reversed and remanded. Kelley, J.

Took no part, Scott, J.

ORDERS

C5-87-941 In re Petition for Disciplinary Action against Mark E. N. Smith, an Attorney at Law of the State of Minnesota. Supreme Court.

Indefinitely suspended. Amdahl, C.J.

Took no part, Scott, J.

C1-87-967 In Re Petition for Disciplinary Action against Randolph T. Brown, an Attorney at Law of the State of Minnesota. Supreme Court.

Publicly reprimanded. Amdahl, C.J.

C8-87-1114 In Re Allegations Concerning the Honorable Frederick R. Weddel, District Judge of the State of Minnesota. Supreme Court.

Reprimanded. Yetka, J.

Announcements

MDA Food Inspection Division Enters 15th Cooperative Agreement: Lake County Health Department is the state's 15th local government agency entering a cooperative agreement with the Minnesota Department of Agriculture to eliminate duplication of inspections and licensing while intensifying consumer protection services on all retail food distribution. Under the cooperative agreements, now in effect with Olmsted, Otter Tail, Stearns, Washington, Winona, LeSueur-Waseca, St. Louis, Aitkin, Kandiyohi, Cook, Goodhue-Wabasha, Morrison, Cass, and the Countryside Public Health Service (Big Stone, Chippewa, Lac Qui Parle, Swift and Yellow Medicine counties), state and local government agencies share resources to more effectively coordinate regulatory responsibilities for licensing and inspection of retail food stores. The cooperative agreement also provides for swift and effective response to emergency situations such as food product recalls, foodborne illness investigations, handling of consumer complaints and inquiries, as well as the training of food inspection personnel. This is the seventh year of operation for the Cooperative Food Consumer Protection Program in Minnesota, established in 1980 with the cooperation of the Olmsted County Board of Health.

Environmental Quality Board: Environmental Assessment Worksheets (EAWs) comments due December 2, and their respective regional governing units, are: Crosstown Boulevard (CSAH) Realignment, City of Andover; South Oaks PRD, City of Savage; Bills Bay Marina, Red Wing Port Authority; and the Cliff Lake Centre, City of Eagan. Final Environmental Impact Statement comment period ends December 2 for Forest highway 11 (construction of a continuous alignment between Hoyt Lakes in St. Louis County and Silver Bay in Lake County), contact Richard Hansen, St. Louis County Highway Engineer (218) 726-2588. There will be a public hearing on the application of Bayport Marina to increase by 55 the number of motorcraft moored at its marina in Bayport, beginning Wednesday 18 November at the Office of Administrative Hearings, 500 Flour Exchange Bldg., 310 Fourth Avenue South, Minneapolis. On Thursday 19 November, the hearing will continue in the West Conference Room (across from the Surveyor's office) in the Washington County Courthouse beginning at 9:30 a.m. If necessary, the hearing will continue on Friday, and Monday and Tuesday of the following week, in the Courthouse at the same time and place. The Minnesota Environmental Quality Board will hold the annual public hearing on the Power Plant Siting and Transmission Line Routing Program at 9 a.m., Saturday 21 November, in Conference Room 301 of the Centennial Office Bldg., 658 Cedar Street, St. Paul. Parking is available in the ramp east of the building. For more information on any of the above, contact *EQB Monitor* editor Gregg Downing at (612) 296-8253.

Texas Accident Reinforces Need to Seal Abandoned Wells: The near tragedy of Jessica McClure, the child who fell into an abandoned well in Texas, has underscored the importance of properly sealing abandoned wells, according to state health authorities. Officials at the Minnesota Department of Health estimate that there are over 200,000 abandoned wells in Minnesota. Although Minnesota law requires the sealing of all abandoned wells, many of those wells remain unsealed or inadequately sealed. According to Minnesota Department of Health regulations, all unused wells must be

Announcements

sealed by a licensed water well contractor. Wells temporarily taken out of service must be sealed with a steel cap or well seal, while permanently abandoned wells must be sealed with cement or bentonite. In addition to causing accidents like the one in Texas, unsealed abandoned wells can also pose a threat to the groundwater. Many groundwater contamination problems have been traced to old wells that were not properly sealed, health officials said. Unsealed wells should be reported to the Minnesota Department of Health and your local building or zoning department. A pamphlet on state rules governing well abandonment is available from the Groundwater Quality Control Unit, Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis 55440. Contact: James Nye (612) 623-5339.

Twin Cities Metropolitan Unemployment Rate Was 4.2% in September: The Minneapolis-St. Paul metropolitan area unemployment rate edged upward to 4.2 percent in September from 4.0 percent in August. The comparable national unemployment rate for September was 5.7 percent and the statewide rate was 4.6 percent. (Figures are not adjusted for seasonal variations.) The rise in the jobless rate was the result of two developments: a decrease in the labor force, accompanied by a slightly larger decline in the total number of people employed. Compared with September a year ago, the size of the Twin Cities metropolitan area civilian labor force increased by 2.0 percent; the number of employed persons increased by 1.3 percent; and the number of unemployed workers increased by 22.8 percent. The metropolitan area labor force in September was 1,333,000, down 14,200 from August and up 26,200 from September of last year. The number of persons employed in September was 1,276,900, down 16,600 from August and up 15,900 from September a year ago. The number of unemployed persons in the Twin Cities area in September was 56,100, up 2,400 from August and up 10,400 from September a year ago. The unemployment rates pertain to the entire labor force and are not used to determine whether unemployment insurance benefit payments will be extended beyond the usual 26-week maximum. The unemployment rate among persons covered by unemployment insurance is used to determine whether the benefit payments will be extended.

Nonhazardous Industrial Waste Report Approved by Waste Management Board: Generators of nonhazardous industrial wastes like foundry sands, empty containers, paint and ink should begin now to seek alternative reduction approaches. That's one of the major findings in a state nonhazardous industrial waste report approved by the Waste Management Board (WMB) at its regular monthly meeting. A state agency since May 1980, the WMB works with Minnesotans to encourage waste reduction, recycling, reuse and treatment of all types of wastes instead of landfilling them. Nonhazardous industrial waste is defined as refuse material that should not be mixed with normal household garbage and/or sewage sludge. An 18-member task force from the industrial, generator, environmental and governmental communities worked with WMB personnel for a year to prepare the detailed report. Among other major findings: a) the existing waste management system is changing and needs some updating to more efficiently and effectively deal with such wastes, and b) some specific materials like infectious hospital wastes and solid waste incinerator ash will need special attention to overcome management problems. In Minnesota, nearly 600,000 tons of nonhazardous industrial waste are produced each year, according to limited available regulatory data. It's estimated the actual annual total is at least double that figure. Nearly 30 different types of those wastes exist in the state. Most of them currently are being landfilled, while others like used oil and spent lead-acid batteries are separately collected and recycled or otherwise reused. Board members also took the following action: a) approved a \$95,115 grant for a test burn at the Western Lake Superior Sanitary District co-incinerator facility. That facility has been burning refuse derived fuel (RDF) and sewage sludge since it opened in 1982, and b) approved a request to publish new rules for its Waste Tire Recycling Grant and Loan Program. WMB has been responsible for the statewide waste tire program since last July. In addition to the waste tire program, the WMB is responsible for statewide planning for both hazardous and solid wastes, a voluntary site location process for a stabilization and containment facility, solid waste planning and technical assistance for 80 non-metropolitan counties, and various waste education and grant/loan programs.

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