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Register

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VOLUME 2, NUMBER 29

January 23, 1978

State Register

Notice of *State Register* Format Changes

Beginning with *State Register* Vol. 2, issue No. 26, dated January 2, 1978, the Office of the State Register will be making the following enhancements in the *State Register* format:

- Highlights on the front cover will be arranged under section headings, as they appear within the *State Register*, and will include page numbers. The Highlights section will also include a notation directing readers to a more complete table of contents within the issue.
- An introductory statement will be included for each section of the *State Register*. These statements will give a brief explanation of the kinds of material contained in the section; effective lead times for notices of hearing, rules, or executive orders; and cites to applicable statutes.
- A new key using strike outs to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules will indicate changes from original language to proposed new language. Strike outs and underlining in adopted rules will indicate changes from proposed to adopted language.
- Guide rule-numbers will be printed, when applicable, at the outside top of each page to indicate the beginning rule number on the left hand pages and the ending rule number on the right hand pages.
- Chapter and rule numbers that begin the text of an adopted or proposed rule will be printed in bold face.

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The *State Register* is the official publication of the State of Minnesota. It contains all executive orders, rules and notices filed with the Office of the State Register as of noon of the second Wednesday preceding the Monday of publication. The text of documents published in the *State Register* is to be accorded the following presumptions:

- (1) The rule or order was duly adopted, issued or promulgated;
- (2) The rule or order was duly filed with the Secretary of State and available for public inspection; and
- (3) The copy of the rule or order published in the *State Register* is a true copy of the original.

Judicial notice shall be taken of material published in the *State Register*.

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The following is a cumulative listing of all proposed and adopted rules published in the *State Register* from Volume 2, Issue 1, to the present issue. The listing is arranged in the same order as is the table of contents to the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend and/or add to the rules contained in the MCAR set.

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RULES

Pursuant to the provisions of Minn. Stat. § 15.0411 to § 15.052, all rules, amendments to rules, or suspensions or repeals of rules become effective after all requirements described in Minn. Stat. § 15.0412, subd. 4 have been met and five working days after publication in the *State Register*, unless a later date is required or specified.

If the rule as adopted does not differ from the proposed rule as previously published in the *State Register*, a notice of adoption as proposed and a citation to the previous publication is considered sufficient as publication of the adopted rule, suspension or repeal.

If the rule as adopted differs from the proposed rule, the adopted rules or subdivisions thereof which differ from the proposed rule are published along with a citation to the *State Register* publication of the proposed rule.

Pursuant to Minn. Stat. § 15.0412, subd. 5, temporary rules take effect upon approval of the Attorney General. As soon as practicable, notice of the Attorney General's decision and the adopted temporary rule are published in the *State Register*, as provided for adopted rules. Temporary rules are effective for only 90 days and may be reissued for 90 days.

Livestock Sanitary Board Importation of Swine into Minnesota

The rule published at *State Register* Vol. 2, No. 5, pp. 194-196, August 8, 1977 (2 S.R. 194), is adopted and is identical in every respect to the proposed form, with the following amendment:

3 MCAR § 2.005 Importation of swine into Minnesota.

A. Swine shall not be imported into the State of Minnesota from herds or areas under quarantine for infectious diseases of swine except swine accompanied by a shipping permit sent directly to slaughtering establishments under federal inspection, or to a public stockyard for sale to a slaughtering establishment.

D. 2. Negative to the Serum Neutralization Test for pseudorabies at a ~~state or federal laboratory~~ within 30 days prior to importation ~~or originate from a herd of swine recognized as qualified pseudorabies free under a national plan approved by the United States Animal Health Association.~~

State-Federal Approved Markets for Swine

The rule published at *State Register* Vol. 2, No. 5, pp. 196, August 8, 1977 (2 S.R. 196), is adopted and is identical in every respect to its proposed form:

3 MCAR § 2.042 State-federal approved markets for swine.

KEY: Existing rules are printed in standard type face, with ~~strike outs~~ to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules indicate changes from original to proposed new language. Strike outs and underlining in adopted rules indicate changes from proposed to adopted language.

PROPOSED RULES

Pursuant to the provisions of Minn. Stat. § 15.0411 to 15.052, the *State Register* publishes notices of hearing on proposed new or amended rules, including the full text of the new or amended rules, including the full text of the new or amended rule proposed for adoption, at least 30 days before the date set for the hearing.

Pursuant to Minn. Stat. § 15.0412, subd. 4, an agency may, with approval of the chief hearing examiner, incorporate by reference into the text of a rule, provisions of federal law, or rule, or other material which are 3000 words or more in length or would require five or more pages of print in the *State Register* and which are conveniently available to interested persons.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend, or repeal a rule does not allow for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture Proposed Rules Governing the Shade Tree Program

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held at the following dates, times, and places and continuing until all persons have had an opportunity to be heard:

February 27, 1978, Minnesota Department of Transportation Building, Conference Room, Highway 52, **Rochester**, Minnesota at 10:00 a.m.

February 27, 1978, Minnesota Valley Regional Library, Auditorium, 100 East Main Street, **Mankato**, Minnesota at 7:00 p.m.

February 28, 1978, Veterans Service Building, Conference Room D, 20 West 12th Street and Columbus Avenue, **Saint Paul**, Minnesota at 10:00 a.m.

March 1, 1978, Southwest State University, Lecture Center Room 217, **Marshall**, Minnesota at 2:00 p.m.

March 2, 1978, Douglas County Courthouse, South wing basement meeting room, **Alexandria**, Minnesota at 10:00 a.m.

March 3, 1978, University of Minnesota Duluth Campus, Kirby Student Center Room 250, **Duluth**, Minnesota at 10:00 a.m.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Howard L. Kaibel, Jr., Office of Hearing Examiners, 1745 University Avenue, Room 300, Saint Paul, Minnesota 55104, Phone (612) 296-8107 either before the hearing or after the hearing until the record is closed. The record will remain open for five working days after the public hearings end, or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

The proposed rules, if adopted, would establish procedures and guidelines for administering the sanitation and reforestation programs; and would revise portions of Agr 101 through 106 dealing with the administration of the shade tree disease control program. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Agriculture, 420 State Office Building, Saint Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing. The Department's authority to promulgate the proposed rules is contained in Minn. Stat. § 18.023 (Supp., 1977). A "statement of need" explaining why the Department feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing, will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250.00 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, Phone (612) 296-5615.

Bill Walker
Commissioner of Agriculture

Rules as Proposed

Chapter Four: 3 MCAR 1.0109 Through 3 MCAR 1.0113

These rules hereby repeal previous rules and regulations AGR 101 through AGR 108.

PROPOSED RULES

3 MCAR 1.0109 General.

A. Purpose and Authority. The rules contained herein are prescribed by the Commissioner pursuant to Minn. Stat. § 18.023, as amended, to implement a program to control Dutch elm disease and oak wilt by local units of government and to include procedures and criteria for three grant-in-aid programs. The provisions of these rules are in addition to those set forth in the act itself.

B. Definitions. For purposes of these rules, the following definitions, in addition to those in the act, shall apply:

1. "Commissioner" means the Commissioner of Agriculture or his designee.

2. "Shade tree" means any oak or elm tree situated in a disease control area approved by the Commissioner.

3. "Shade tree disease" means Dutch elm disease caused by *Ceratocystis ulmi*, or oak wilt caused by *Ceratocystis fagacearum*.

4. "Town" means township as described in Minn. Stat. § 18.023 subd. 1 (1976).

5. "Tree inspector" means a person who has the necessary qualifications to properly plan, direct, and supervise all requirements for controlling shade tree disease in one or more governmental subdivisions within the limits of the Commissioner.

6. "Disease control area" means an area designated by a municipality in which it will conduct a shade tree disease control program according to these rules. The extent of this control area shall be determined by the municipality and approved by the Commissioner.

7. "Equipment" means machinery or devices which singularly or in combination are designed, constructed, or operated for the purposes of wood utilization and/or disposal, and shall include all machinery, tools, and devices ancillary to the use of such machinery or devices.

8. "Facility" means land, buildings, and other appurtenances which are necessary or useful in the operation of wood utilization or disposal equipment.

9. "The act" means Minn. Stat. § 18.023, as amended.

10. "Population" means the population of a municipi-

3 MCAR 1.0110

pality as published in the U.S. Bureau of Census, 1970 census.

3 MCAR 1.0110 Tree inspectors.

A. Tree inspector employment and qualifications.

1. A municipality shall either individually or jointly with one (1) or more other municipalities employ or retain a tree inspector, on a continuous year round basis as provided by the act.

2. Provisional appointments.

a. A municipality may provisionally appoint a tree inspector for a period of not more than six (6) months.

b. This appointment shall be dependent upon approval by the Commissioner after determining the competence of the appointee.

c. The provisional appointment shall not be extended and the appointee shall pass the tree inspector examination to become certified.

d. The provisional appointment may be withdrawn for cause by the Commissioner upon notice and hearing.

3. A tree inspector shall be able to demonstrate the following qualifications:

a. Identify all native tree species, with or without leaves, common to his/her work area, and all felled or downed trees with bark intact;

b. Know and understand the biology of oak wilt and Dutch elm disease;

c. Be familiar with the problems of elm trees and oak trees other than those of Dutch elm disease and/or oak wilt, as well as identifying symptoms characteristic of these problems that affect oak and elm trees;

d. Know the proper method of collecting samples for disease diagnosis;

e. Know the appropriate Minnesota laws and rules relative to oak wilt and Dutch elm disease;

f. Know the approved control methods for oak wilt and Dutch elm disease; and,

KEY: Existing rules are printed in standard type face, with ~~strike outs~~ to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules indicate changes from original to proposed new language. Strike outs and underlining in adopted rules indicate changes from proposed to adopted language.

PROPOSED RULES

3 MCAR 1.0110

g. Be familiar with the recommended tree species to be used in the replanting program, their planting requirements (available through the University of Minnesota Extension Service), and the care of these trees after planting.

4. If a municipality fails to appoint a tree inspector, an appointment may be made by the Commissioner pursuant to the act. Ten (10) working days prior to such appointment, the Commissioner shall notify the municipality by mail of such pending appointment. An inspector appointed by the Commissioner shall be paid by the municipality for a minimum of ninety (90) days, even though the municipality may appoint its own inspector prior to the expiration of ninety (90) days. This provision shall not apply to a municipality that has suspended or terminated the employment of a tree inspector for cause.

B. Certification of tree inspector.

1. A tree inspector shall be certified upon the passing of an examination prescribed by the Commissioner for the purpose of determining that the applicant possesses the necessary qualifications set forth in this rule. The Commissioner shall notify by mail each applicant and municipality of the time and date for such an examination. The applicant shall be notified of the results of the examination within fifteen (15) days after its administration.

2. After certification, a tree inspector shall be required to annually attend at least one (1) program of continuing education approved by the Commissioner. Failure to attend one (1) such continuing education program, or failure to meet alternative certification requirements, shall terminate certification.

C. Certification alternatives. Upon written application, the Commissioner may grant to an individual an alternative for the certification requirement and procedures set forth in this rule provided that:

1. There is good cause why the individual cannot comply with the provision of this rule;

2. The requirements and procedures provided for the alternative is equivalent to those set forth in this rule;

3. When an examination is involved, the subject matter and difficulty of the examination is equivalent to the examination for which the alternative is granted;

4. The spirit and intent of the act and these rules are not violated; and,

5. The environment of the public will not be adversely affected by the alternative requirements or procedures.

3 MCAR 1.0111 Shade tree disease control program.

A. The shade tree disease control program of all municipalities affected by these rules shall include as a minimum the following elements:

1. Control area. Each municipality shall designate an area or areas in which the municipality shall enact control procedures for Dutch elm disease and/or oak wilt. The extent of the control areas will be determined by the municipality and approved by the Commissioner.

2. Program plan. Each municipality shall prepare a shade tree disease control program plan detailing the manner in which these rules shall be fulfilled.

3. Methods of identifying diseased shade trees. Diseased shade trees shall be identified by generally accepted field symptoms such as wilting, yellowing of leaves, and/or staining of wood under the bark. Confirmation, when determined to be necessary by the certified municipal tree inspector, shall be made by the Minnesota Department of Agriculture Tree Disease Laboratory, or other laboratories approved by the Commissioner.

4. Dutch elm disease and oak wilt control.

a. Tree inventory. Each municipality shall maintain a reasonable estimate of the number of elms, oaks, and other tree species on both public and private property within the control area of the municipality as well as those regions of the municipality outside this control area. Estimates of the tree count shall be made by acceptable forest inventory procedures. These records shall be permanent and shall be filed with the Commissioner.

b. Dutch elm disease control.

(1) Sanitation. All elm bark beetles, trees affected with Dutch elm disease, and any dead or weakened elm wood arising from any cause shall be eliminated in a timely manner within the control area of the municipality. This shall include trees on private property.

(a) Prior to April 1 of each year, municipalities shall inspect all public and private properties for elm wood or logs/stumps that could serve as bark beetle breeding sites, and require by April 1, removal, or debarking, of all wood, logs, and stumps to be retained. Before making any inspection on private property within a municipality, it shall be the duty of the municipality to give notice of said inspection to all affected residents either through an individual, an oral or a written notice, or by publishing said notice in a local newspaper.

(b) Each municipality shall inspect all elm trees within a control area at *least* twice during the growing

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season (by June 15 and August 15) for Dutch elm disease symptoms. For a control program to be most effective, it is *highly recommended* that continuous inspections be initiated in those areas where the incidence of the disease is severe.

(c) Due to a summer generation of elm bark beetles emerging in late July, the municipality's tree inspector shall be responsible for:

(i) Visually identifying whether a tree infected with Dutch elm disease has extensive wilt or is only showing early symptoms of the disease; and

(ii) Categorizing trees infected with Dutch elm disease as either high risk trees or low risk trees.

(aa) High risk elm trees shall be those trees that are dead or have extensive wilt (fifty (50) percent or more of the tree is wilted). Such trees shall be identified, marked in a distinctive manner to indicate their high risk status, and removed on private and public property within twenty (20) days of notification and/or by July 15, whichever is first. Any high risk tree identified and marked after July 15 shall be removed within twenty (20) days of notification.

(bb) Low risk elm trees shall be those trees that show early stages of infection in June or subsequently during the growing season with those symptoms not progressing beyond the fifty (50) percent wilting point. Such trees shall be identified, marked, and removed before April 1 of the following year. Municipalities shall make every reasonable effort to remove all low risk trees on private and public property within twenty (20) days of notification, but in no case shall it be later than April 1 of the following year. Only methods of removal approved by the Commissioner shall be utilized.

(d) After categorization, marking, and notification by the municipality, private property owners shall remove and properly dispose of diseased or dead elm trees or any above ground parts thereof within the time limit established by the municipality, not to exceed twenty (20) days. Methods of removal shall be approved by the Commissioner and shall be consistent with applicable air quality and solid waste rules.

(e) After notification, trees or parts thereof not removed within the time limit established by the municipality, not to exceed twenty (20) days, shall be considered "high risk" and shall be removed by the municipality within twenty (20) days and the costs thereof assessed against the property.

(f) Stumps of *all* elm trees shall be removed or debarked to the ground-line to eliminate all possibilities of beetle habitation.

(g) Stockpiling of elm logs with bark intact is permitted during the period September 15 through April 1 of the following year at locations specifically approved in writing by the municipality.

(2) Root graft control. It is recommended to a municipality that all common root systems of trees growing within forty (40) to fifty (50) feet of a tree infected with Dutch elm disease should be disrupted by chemical or mechanical means as approved by the Commissioner to prevent root graft spread of Dutch elm disease. (Refer to the Agricultural Extension Service, University of Minnesota Extension Folder 211-Revised 1977, "The Dutch Elm Disease", pp. 8-12).

c. Oak wilt. Although oak wilt and Dutch elm disease are both vascular infections caused by a fungus, each infection shall be dealt with separately. Control methods prescribed for each disease are different, and again, shall be dealt with separately. Oak wilt control shall include the disruption of root grafts and the prevention of infection by insect-carried spores (overland spread).

(1) Root graft control. Since most oak trees are susceptible to the fungus through root grafts, it is recommended to a municipality that all common root systems of trees growing within forty (40) to fifty (50) feet of a diseased oak tree of the same species should be disrupted by chemical or mechanical means to prevent the root graft transmission of the oak wilt fungus as approved by the Commissioner. (Refer to Agricultural Extension Service, University of Minnesota Extension Folder 310-1975, "Oak Wilt Disease").

(2) To control the overland spread of the disease, a municipality should:

(a) Avoid pruning or other mechanical damage during the most susceptible period of May and June. A tree inspector may determine that emergency pruning by utility companies is necessary during this susceptible period if trees interfere with utility lines. If wounding is unavoidable during this period, as in the aftermath of a storm or when the tree interferes with utility lines, a tree wound dressing shall be applied.

(b) Disrupt root grafts by chemical or mechanical means if the disease fungus is likely to spread in this

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manner. Red oak trees diagnosed as having oak wilt shall be girdled as soon as they are detected in order to reduce spore production. Girdling should be done only in areas where a weakened tree will not constitute a hazard to life and/or property should it fall.

(c) Identify, mark, and remove from both private and public property by April 1 of the following year those trees in the red oak group that wilt in July and August that could have spores on them the following May or June. The trees in this group are the northern red oak (*Quercus rubra*); northern pin oak (*Quercus ellipsoidalis*); black oak (*Quercus velutina*); and scarlet oak (*Quercus coccinea*).

(d) After notification by the municipality, private property owners shall remove and properly dispose of diseased oak trees including any above ground parts thereof by April 1 using methods approved by the Commissioner and consistent with applicable air quality and solid waste rules.

(e) Trees or parts thereof not removed on or before April 1 by the property owner shall be removed by the municipality within twenty (20) days after notification and the cost thereof assessed against the property.

(f) Stumps of red oak trees removed due to oak wilt shall be removed or debarked to the ground-line to eliminate all possibilities of spore formation.

5. Records.

a. Shade tree disease program records shall be kept by each municipality and shall be made available for examination at reasonable times by the Commissioner. These records shall include, but not be limited to, the following:

(1) Monies expended on personnel, equipment, and contracts, listed separately;

(2) Man hours spent on tree inventory, sanitation, and any chemical measures;

(3) An initial inventory of trees;

(4) The number of diseased trees identified on private and public property, and the dates of identification;

(5) The number and the dates of trees removed, both diseased and other, on private and public property; and,

(6) The number of log piles found which were a hazard in the spread of a shade tree disease.

b. A yearly report containing a summation of these records shall be made to the Commissioner by December 1.

6. Program review.

a. By November 15 of each year, municipalities shall submit to the Commissioner their shade tree disease control and replanting programs for the following calendar year. The Commissioner shall review these programs to determine if the requirements of the law and the applicable rules have been met.

b. Final determination of municipal program compliance with the rules shall rest with the Commissioner.

c. The Commissioner may require that changes be made in any municipal program whenever a determination is made that such changes are needed to comply with the act or these rules.

3 MCAR 1.0112 Grants-in-aid to municipalities for sanitation and reforestation program.

A. The Commissioner may, in the name of the state and within the limits of appropriations provided, make grants-in-aid to a municipality with an approved disease control program for the partial funding of municipal sanitation and reforestation programs.

1. Sanitation grants. Grants to any municipality for sanitation shall not exceed forty-five (45) percent of the municipality's total cost for sanitation approved by the Commissioner. The total cost may include any amounts paid for sanitation by special assessments, ad valorem taxes, federal grants, or other funds. A municipality may assess to the abutting property not more than fifty (50) percent of the expense of treating with an approved method or removing diseased shade trees located on street terraces or boulevards to that abutting property.

a. Grants shall not be made to a municipality if the total cost of tree removal has been incurred solely by the individual property owner and the municipality has not reduced the cost to the property owner via direct subsidy or reduced special assessment. Provision is made for municipalities with population of less than 1,000 pursuant to Minn. Stat. sec. 18.023, subd. 3c, as amended.

2. Reforestation grants. Grants to any municipality for reforestation shall not exceed either fifty (50) percent of the cost to the municipality for reforestation, or forty (40) dollars multiplied by the number of trees planted on public lands pursuant to the reforestation program, whichever is less.

a. Reforestation grants to a municipality shall be limited in any calendar year to grants for not more than the number of trees removed from public lands in the sanitation program in the previous calendar year except during the first year of an approved disease control program. During the

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first year of an approved disease control program, there shall be no restriction upon the number of trees for which grants may be made.

b. Reforestation grants to any county with an approved disease control program may include up to ninety (90) percent of the cost of planting the first fifty (50) trees on public lands in a town not defined as a municipality and of less than 1,000 population, upon the town's application to the county and county's designation of the town as a disease control area.

c. Reforestation grants to towns *with an approved disease control program* which are defined as municipalities in the act and are less than 1,000 in population may include up to ninety (90) percent of the cost of planting the first fifty (50) trees on public lands.

3. Program eligibility. Any municipality is eligible to receive sanitation and reforestation grants upon submitting to the Commissioner by November 15 a completed program application form provided by the Commissioner, and upon receiving notice of an approved disease control program designation. Extensions may be granted for good cause shown.

a. The program application shall serve as the basis for approving the municipality's shade tree disease control program.

b. Approval shall be granted only upon the municipality's agreement to conduct its sanitation program in conformance with these rules and recommended disease control practices issued by the Commissioner.

c. Approval shall only be granted upon the municipality's agreement to conduct its reforestation program in conformance with the recommended practices issued by the Minnesota Agricultural Extension Service.

d. Program approval may be revoked upon a determination by the Commissioner that the municipality has failed to conduct its sanitation and reforestation program in conformance with the standards set forth in this rule.

e. Sanitation and reforestation grants may be terminated upon the municipality's failure to maintain an approved shade tree disease control program and upon evidence that proper record-keeping and documentation has not been maintained.

4. Program application. To receive a sanitation and

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reforestation grant, a municipality shall submit to the Commissioner by November 15 a completed program application form provided by the Commissioner.

a. A municipality's program application shall include, but not be limited to, the following information:

(1) An inventory of shade trees within the municipality's disease control area and an estimate of the distribution of these shade trees between public and private lands;

(2) A complete description of the municipality's sanitation and reforestation programs which includes, but is not limited to:

(a) The method and schedule of diseased trees surveys;

(b) The extent of disease control tree trimming activities;

(c) The policies for removal of trees on public lands;

(d) The policies for removal of trees on private lands;

(e) The method and location of disposal of tree wastes;

(f) The policies for planting new shade trees, including;

(i) The source of nursery stock;

(ii) Species planted;

(iii) Type of stock planted;

(iv) Distribution of species; and,

(v) Other relevant information;

(g) The methods of financing sanitation and reforestation programs, including:

(i) The use of funds derived from general tax levies;

(ii) Special assessments;

(iii) Federal funds;

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(iv) Other sources of funding; and,

(h) A complete description of the municipality's subsidy program, if any.

(3) A statement of planned expenditures for the sanitation and reforestation program for the calendar year.

(4) A copy of local ordinances and resolutions authorizing the local shade tree program.

b. Grants for sanitation shall be forty-five (45) percent of the applicant's planned expenditures for sanitation, unless the total planned expenditures for all applicants exceeds forty-five (45) percent of the funds designated for sanitation grants; in which case, grants shall be a pro rata allocation among the eligible applicants.

c. Grants for reforestation shall be fifty (50) percent of the applicant's planned expenditures for reforestation, unless the total of planned expenditures for all applicants exceeds fifty (50) percent of the funds designated for reforestation grants; in which case, grants shall be a pro rata allocation among the eligible applicants.

d. Grants for reforestation in eligible towns shall be ninety (90) percent of the town's planned expenditures for planting the first fifty (50) trees on public lands. Grants for planting in excess of fifty (50) trees in eligible towns shall be the lesser of fifty (50) percent of planned expenditures or forty (\$40) dollars times the number of trees in excess of fifty (50) to be planted.

5. Request for payment. A municipality receiving a sanitation and reforestation grant shall make request for payment upon forms provided by the Commissioner.

a. Payment periods shall be January 1 through March 31; April 1 through June 30; July 1 through September 30; and, October 1 through December 31 of each calendar year.

b. Requests for payment shall be due fifteen (15) days after the close of the preceding payment period.

c. Requests for payments may be for the lesser of actual costs incurred or costs not to exceed the limits established by the Commissioner during the payment period for which documentation can be produced upon request of the Commissioner. Requests may also be made for advance payments for planned expenditures for the succeeding period.

d. Request for payment shall include:

(1) The population of the municipality making the request for payment;

(2) A statement of actual sanitation and reforestation costs for the payment period;

(3) If advance payments for planned expenditures are sought by the municipality, a statement of planned expenditure for the succeeding payment period;

(4) The signature of an authorized agent of the municipality making the request for payment; and,

(5) Notorization of the agent's signature.

e. Grant payments for actual sanitation and reforestation costs incurred shall be a percentage of the actual costs stated in the municipality's request for payment; that percentage being the same percentage used to make the initial grant award.

(1) Advance grant payments for planned sanitation and reforestation expenditures shall be a percentage of the planned expenditures for the succeeding payment period stated in the municipality's request for payment; that percentage being the same percentage used to make the initial grant award.

(a) In the event that planned expenditures exceed or are less than actual costs incurred by the municipality for a payment period for which advance payment was made, the appropriate adjustments shall be made in the next request for payment submitted by the municipality.

(b) In the event that over payment is made to the municipality by the Commissioner because of an advance over payment for the last payment period of the calendar year, the municipality shall be liable to the state for the amount of over payment, and shall make payment of this amount to the state within thirty (30) days after notice of such over payment is received.

6. Eligible costs. Grants shall be based upon the total eligible cost to the municipality of its sanitation and reforestation program.

a. Sanitation activities on public and private lands which are eligible for grants shall include:

(1) Diseased tree identification and inspection;

(2) Disruption of common root systems;

(3) Trimming of elm and oak trees for purposes of disease control;

(4) Girdling of oak trees where appropriate for purposes of disease control;

(5) Removal and disposal of dead or diseased wood of elm and oak trees; and,

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(6) Subsidies for trees removed from private property pursuant to Minn. Stat. § 18.023, subd. 4. (Supp., 1977)

b. Reforestation activities on public lands which are eligible for grants shall include:

- (1) Acquisition of nursery stock; and,
- (2) Tree planting.

c. Grants shall be made only for costs incurred by the municipality in the actual and direct physical performance of sanitation and reforestation activities.

d. Grants shall be made for costs to be paid by:

- (1) Ad valorem taxes;
- (2) Special assessments pursuant to a municipal program whereby the sanitation activity is carried out by municipal employees or a contractor acting in behalf of the municipality; however, no assessment shall exceed the total of the sanitation cost less the amount of grant for such cost;
- (3) A charge through direct invoice to a property owner pursuant to a municipal program whereby the sanitation activity is carried out by municipal employees or a contractor acting in behalf of the municipality; however, no charge against a property owner shall exceed the total sanitation cost less the amount of grant for such cost;
- (4) Federal grants, except that no grant shall be made for costs paid pursuant to the Federal Comprehensive Employment and Training Act of 1973; and,
- (5) In the case of a municipality with a population of less than 1,000, documented "in kind" services or voluntary work from or by private sources.

3 MCAR 1.0113 grants-in-aid for wood utilization and disposal systems.

A. The Commissioner may, within the monies appropriated, make grants-in-aid to eligible applicants for the cost of facilities, equipment, and systems for the disposal or utilization of diseased shade trees. Such grants-in-aid may be made to:

1. Any home rule charter or statutory city of more than 40,000 population in the metropolitan area or a combination of such cities with a combined population of 40,000 under a

joint powers agreement pursuant to Minn. Stat. § 471.59 (1976);

2. Any home rule charter or statutory city of more than 20,000 population outside the metropolitan area or a combination of such cities with a combined population of 20,000 under a joint powers agreement pursuant to Minn. Stat. § 471.59 (1976);

3. Any special purpose park and recreation board organized under a charter of a city of the first class;

4. Any non-profit corporation serving a city of the first class; or,

5. Any county.

B. Such grants shall be made with the following provisions:

1. The city (cities) or county has an approved shade tree disease control program as described in the act or these rules;

2. Grants-in-aid may be less than but shall not exceed fifty (50) percent of the cost of such facility, equipment, or system;

3. Grants-in-aid shall not be made for costs of operating such facility, equipment, or system;

4. Grants-in-aid for site acquisitions shall be made only for land used in the actual operational site;

5. Grants-in-aid shall not be made by the Commissioner until he receives certified evidence of the actual cost of the equipment or site; and,

6. Allowable cost shall be determined by the Commissioner.

C. Criteria for administration of grants-in-aid:

1. Grants-in-aid to eligible applicants may be made by the Commissioner provided that such wood disposal utilization system meets the following criteria:

a. It aids in the control of shade tree diseases;

b. It aids in the recovery of material or energy from wood;

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c. It is located to accomplish the above with maximum efficiency and use of available facilities;

d. It is available to all parties, public and private;

e. It is able to render wood pest-risk free within five (5) days of delivery to the site unless an extension of time has been granted by the Commissioner based on existing circumstances of the disposal/utilization site.

f. It includes adequate manpower to operate and service equipment; and,

g. It provides for proper handling and the timely removal of processed wood from the site.

2. In addition to the general criteria under C. 1. above, the Commissioner, as appropriate, may consider other specific criteria including, but not limited to, the following in evaluating grant payment requests:

a. Site for wood disposal systems:

(1) Shall be selected on the basis of anticipated volumes of wood and/or the need for a wood disposal system;

(2) Shall be accessible by roadways that permit year-round truck traffic;

(3) Shall have adequate storage areas for both processed wood and equipment;

(4) Shall have protective enclosures, adequate control, and supervision to prevent entry of unwanted materials and unauthorized persons;

(5) Shall be in compliance with all applicable federal and state statutes, rules, and regulations; and,

(6) Shall be in conformance with regional solid waste management plans and requirements.

b. Equipment for wood disposal systems:

(1) Shall, where feasible, be portable so that it can be used for servicing more than one site;

(2) Shall be stationary only when the anticipated volume over a five-year period will fully utilize the facility;

(3) Shall be capable of processing large-diameter logs; and,

(4) Shall include auxiliary units and equipment necessary to the operation of the system.

3. Requests for grant-in-aid payments shall be made on forms provided by the Commissioner. Contingent upon the availability of funds, the timelines of applications and other administrative considerations, the Commissioner may set deadlines for consideration of requests which shall be published in the *State Register* at least thirty (30) days prior to the deadline. Requests for payments shall include the following:

a. An itemized list of the applicant's proposed expenditures for qualifying equipment and/or site, and the total amount of these expenditures; and,

b. Additional documents or other information deemed relevant by the Commissioner.

4. Records.

a. Applicants receiving grants-in-aid under this rule shall keep detailed records concerning the operation of the wood disposal and utilization system and shall make these records available to the Commissioner at any reasonable time. Such records shall include, but not be limited to:

(1) Hours of operation;

(2) Clientele served;

(3) Volume of wood handled; and,

(4) Any other information deemed relevant by the Commissioner.

b. A yearly report containing a summation of these records shall be made to the Commissioner by December 1.

Department of Education Board of Education Temporary Rules Governing Instructional Materials for Pupils Attending Nonpublic Schools

Notice of Opportunity for Public Comment

The State Board of Education has proposed the following temporary rules in response to the United States District Court Order (MCLU v Casmey), directing that the Minnesota Department of Education shall adopt such temporary rules pursuant to Laws of 1977, ch. 443, § 2, subd. 5, as are necessary to incorporate the terms of that Order. The temporary rule in the *State Register*, October 3, 1977, Vol. 1, Number 13, page 693 is superseded.

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All interested persons are hereby afforded the opportunity to submit data and views for 20 days after publication of this material in the *State Register* on the proposed temporary rules by writing to Catherine Stehly, Assistant to the Commissioner of Education or David Noennig, Consultant, Nonpublic Pupil Aid, Minnesota State Department of Education, 703 Capitol Square Building, 550 Cedar Street, St. Paul, MN. 55101.

Any written material received by the agency shall become part of the hearing record in the final adoption of the temporary rule.

Temporary Rules as Proposed

Chapter Thirty-Seven: Instructional Materials for Pupils attending Nonpublic Schools

5 MCAR § 1.0741 EDU 741 Instructional materials available to pupils attending nonpublic, nonsectarian schools.

A. ~~Eligible instructional materials.~~

~~+~~ The term shall be limited to "textbooks," "school library and audiovisual materials," and "instructional supplies" as those terms or their equivalent are described or designated in the manual of instructions for uniform accounting for Minnesota school districts.

1. ~~a-~~ Textbooks include elementary and secondary textbooks furnished free to public school pupils including supplementary textbooks, and dictionaries. Textbooks are primarily for use in certain classes or grades rather than for general school use.

2. ~~b-~~ School library and audiovisual materials, include materials such as ~~include~~ school library books and pamphlets available for ~~use by~~ individual use by students; maps and globes for individual use; periodicals and newspapers for individual use; audiovisual materials used in the instructional program such as films, filmstrips, recordings, exhibits, models, and television and radio teaching materials exclusive of equipment.

3. ~~e-~~ Instructional supplies are consumable items such as tests, chalk, paper, test tubes, ink, pencils, paint, paint brushes, crayons, chemicals, shop supplies for vocational education, oils, cleaners, instructional farming supplies, supplies for the operation of equipment used in the teaching-learning process, workbooks, physical education supplies,

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printing of individual materials, and magazines or periodicals for ~~classroom~~ individual use.

B. ~~2-~~ Instructional materials must be secular, neutral, and nonideological such as the materials normally provided for pupils in public schools.

C. ~~B-~~ Ineligible instructional materials.

Items such as unabridged dictionaries, encyclopedias, and other major reference works are classified as equipment and are therefore ineligible instructional materials.

§ 1.0742 Instructional materials available to pupils attending nonpublic, sectarian schools.

A. The term shall be limited to any book or book substitute which a pupil uses as a text or text substitute in a particular class or program in the school he regularly attends. Which book or book substitute shall be limited to books, workbooks, or manuals, whether bound or in looseleaf form, intended for a given class or group of students, a copy of which is expected to be available for individual use of each pupil in such class or group. In addition, pupils attending nonpublic schools may be supplied with such standardized tests as are in use in the public schools of the state.

B. Instructional materials must be secular, neutral, and nonideological such that material contained therein is not regarded as religious, spiritual, or sacred, and presents events, facts and theories that relate or pertain to religion or religious doctrine in an impartial manner.

§ 1.0743 EDU 742 General administration.

A. The department of education shall administer funds allocated for the purchase of instructional materials to be loaned or provided to nonpublic school pupils.

B. The department of education, in cooperation with the state auditor's office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records for the acquisition of instructional materials to be loaned or provided to nonpublic school pupils.

C. The department of education's administrative costs shall not exceed two percent of the state allocation for in-

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structional materials to be loaned or provided to nonpublic school pupils.

§1. 0744 ~~EDU 743~~ Local administration.

A. An application for instructional materials to be loaned or provided shall be made by or on behalf of each participating nonpublic school pupil through the nonpublic school to the public school district in which the nonpublic school is located. For the 1975-76 year the application shall be made within 30 days of the effective date of these regulations. For the following school year it shall be made on or before September 15. The applications shall be on a form prescribed by the commissioner. Application forms shall be available in the office of the public school superintendent on the effective date of these regulations.

B. The department of education shall determine the allocations of aid for instructional materials pupils attending nonpublic, nonsectarian schools and pupils attending nonpublic, sectarian schools.

C. The local school district shall purchase and transmit the instructional materials to the nonpublic schools in the district for distribution to the pupil applicants.

D. Instructional materials loaned to pupils in nonpublic schools shall be maintained on inventory by the local school district except in cases of consumable or nonreusable instructional materials.

E. The local school district may declare loaned school books unusable after five years and remove them from the inventory.

F. The nonpublic school shall maintain on file all applications for instructional materials loaned or provided to nonpublic school pupils. The applications shall be available for inspection by the department of education.

G. Upon completion of the distribution of the instructional materials each local school district may claim from the department of education (1) the cost of the instructional materials and (2) a sum for the actual cost of administration which shall not exceed five percent of the cost of the instructional materials distributed. The administrative costs shall be in addition to the allocation for the nonpublic school. Handling and shipping charges by the supplier shall be included in the allocation for each nonpublic school.

H. Nonpublic schools requesting recognition as being nonsectarian must be prepared to demonstrate to the local school district that they are not church related, controlled by a church or devoted to promoting a particular religious faith.

I. Prior to authorizing reimbursement to the local school districts, the department of education shall require a certificate of compliance from the local school district that all materials have been reviewed prior to the expenditure of public funds and are in accordance with the limitations set forth in 5 MCAR § 1.0741 and § 1.0742.

J. The department of education, prior to authorizing reimbursement, shall receive from the local school district a list of the materials actually purchased, which list will indicate the publisher of those materials.

§ 1.0745 ~~EDU-744~~ Availability of funds.

A. The allocation for instructional materials shall be the total expenditure for instructional materials by all public school districts in the state divided by the total number of pupil units based on an unduplicated count of pupils enrolled in the districts during the same fiscal year.

B. Kindergarten pupils shall be counted as one-half unit; elementary pupils (grades 1-6) shall be counted as one pupil unit and secondary pupils (grades 7-12) shall be counted as 1.4 units notwithstanding the local nonpublic school organization.

C. For the 1975-76 school year, the allocation shall not exceed \$45.43 per nonpublic pupil unit. Future allocations will be based upon the most recent data available.

Department of Public Welfare Bureau of Community Services Proposed Rules Governing the Reimbursement for Mentally Ill Patients Relocated to Community Placement by the Closing of Hastings State Hospital

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Department of Natural Resources Conference Room, 3rd Floor, Centennial Office Building, 658 Cedar Avenue, St. Paul, Minnesota, 55155, on February 23, 1978, commencing at 9:00 A.M.

PROPOSED RULES

and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to George Beck, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8108, either before the hearing or within five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

DPW Rule 17 governs the expenditure of \$300,000 appropriated for the biennium ending June 30, 1979, to be expended in Ramsey, Washington and Dakota Counties for the cost of care of mentally ill persons who were in-patients of Hastings State Hospital on May 20, 1977, who may be placed in community facilities as a result of the closing of Hastings State Hospital. It provides for standards for awarding grants, conditions regarding eligible patients, descriptions of eligible services, and conditions for reimbursement.

Copies of the proposed rule are now available and one free copy may be obtained by writing to James T. Sarazin, Director, Mental Health Program Division, Department of Public Welfare, Fourth Floor, Centennial Office Building, St. Paul, Minnesota, 55155, (612) 296-2710. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rule is contained in Minn. Stat. ch. 453, § 21. A "statement of need" explaining why the agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, phone number (612) 296-5615.

Edward J. Dirkswager, Jr.
Commissioner

DPW #17

DPW #17 Reimbursement for mentally ill patients relocated to community placement by the closing of Hastings State Hospital.

A. Introduction

1. This rule governs state financing for costs of care for mentally ill persons who were in-patients at the Hastings State Hospital on May 20, 1977 and are placed in community facilities pursuant to Minn. Stat. ch. 453, Section 21 (laws of 1977). This rule will be effective only as long as funds specifically appropriated by the Legislature are available for this purpose.

2. Definitions.

a. County welfare board: single or multi-county boards established under the authority of Minn. Stat. ch. 393.

b. Human service board: Single or multi-county boards established under the authority of Minn. Stat. ch. 402, as amended.

c. Community mental health board: Single or multi-political subdivision boards organized under the authority of Minn. Stat. § 245.61-245.69 to provide local mental health programs and services.

d. Mentally ill person: A person defined by Minn. Stat. § 253A.02, Subd. 3.

e. Discharge treatment plan: A written plan, based on an assessment of each individual patient's strengths and disabilities, which includes specific goals appropriate to the individual, states how the goals will be met, and by what means and who will carry out the plan.

f. Residential care program: A living unit established primarily for the accommodation and treatment of mentally ill persons which is licensed, or eligible to be licensed, under DPW Rule 36.

g. Social and rehabilitative services: Those activities provided to carry out the individualized treatment plan for each mentally ill person.

h. State agency: Department of Public Welfare.

i. County of financial responsibility: Defined by Minn. Stat. § 256D.18.

KEY: Existing rules are printed in standard type face, with ~~strike outs~~ to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules indicate changes from original to proposed new language. Strike outs and underlining in adopted rules indicate changes from proposed to adopted language.

PROPOSED RULES

DPW #17

B. Standards for the awarding of grants.

1. The state agency will reimburse quarterly the county welfare board, or human service board, of the county of financial responsibility for the county's shares of expenditures incurred in caring for those persons described in A.1. in accord with individual discharge treatment plans.

2. As a condition of qualifying for this reimbursement, the aforementioned county welfare boards or human service boards shall first make use of all available public income maintenance programs, Medical Assistance (Title XIX) and private insurance coverage for which patients are eligible.

3. An initial advance shall be available upon request of the responsible county, equivalent to the anticipated expenditure, based on a spending plan which has the prior approval of the State Agency.

4. Reimbursement will be available for eligible persons who are placed in the most suitable available community program if:

a. The program is located within Ramsey, Washington, or Dakota County, or;

b. Ramsey, Washington or Dakota County is the county of financial responsibility, and;

c. Suitability is determined by the legally responsible county as that program deemed most able to carry out the individual's discharge treatment plan.

5. In order to be eligible, a person must:

a. have a current primary diagnosis of mental illness, and;

b. have been a patient of the Hastings State Hospital on May 20, 1977, and;

c. be discharged as a result of the closing of the Hastings State Hospital, and;

d. be placed within Ramsey, Washington or Dakota County, or;

e. if placed in a county other than those in B.4.d. above, then Ramsey, Washington or Dakota County must be the county of financial responsibility.

C. Eligible for inclusion in individual discharge treatment plans and for reimbursement

1. Services eligible for reimbursement under this rule include, but are not limited to:

a. Day programming (day activity, work and pre-work training, recreation and education).

b. Twenty-four hour crisis intervention aimed primarily at aiding medical and nonmedical crises of persons eligible under B.5. of this rule.

c. Independent living training unit which assists individuals or groups who need preparation and/or support in finding and maintaining housing, finding and keeping a job, managing money, developing suitable recreational activities and other related services needed, in order to increase their ability to function independently and responsibly.

d. Drop-in centers for socialization and recreation where people with a history of mental illness may go for semi-structured activities and social support from others with similar backgrounds.

e. Residential maintenance (board and care) living costs not reimbursable from other sources, including Supplemental Security Income, Minnesota Supplemental Aid, Medicaid, and applicable group health insurance.

f. Program costs (excluding room and board) provided for residents of residential care programs in accordance with the individual program plans of eligible persons. If an individual is able to move to independent living and qualifies for any available income maintenance or medical assistance program for which the county of financial responsibility would have some share of financial responsibility, that amount is reimbursable from this appropriation.

g. Outpatient therapy, either on an individual or group basis.

D. Conditions for reimbursement

1. Each county welfare or human service board having financial responsibility for one or more eligible patients of the Hastings State Hospital shall, before the actual termination of the direct care services of the hospital, determine with the state agency and the hospital which individual patients are potentially eligible. They shall determine, with the appropriate assistance of the community mental health board which serves the county of financial responsibility, the individual discharge-treatment plans for each eligible patient, subject to the final approval of the state agency.

2. The responsible agencies, as stated in D.1. shall have the responsibility of reviewing the individual treatment plans at least quarterly. Expenditures incurred as a result of changes in the individual treatment plans will also be eligible for reimbursement within the terms and conditions of this rule.

3. The financially responsible county welfare or

PROPOSED RULES

human service board shall certify quarterly to the state agency the costs eligible for reimbursement, by eligible persons.

4. The county welfare boards or human service boards may apply to the State Agency for an advance to provide, purchase, or initiate the services necessary to carry out the individual treatment plans for eligible persons, under the terms of B.3. of this rule.

E. Miscellaneous

DPW #17

1. Subordination of rule to state and federal laws. Any provision of this rule which is inconsistent with any state or federal law is superseded thereby.

2. Severability. The provisions of this rule shall be severable and if any clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and the applicability thereof, to any agency, person or circumstance shall not be affected thereby.

KEY: Existing rules are printed in standard type face, with ~~strike outs~~ to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules indicate changes from original to proposed new language. Strike outs and underlining in adopted rules indicate changes from proposed to adopted language.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, when, in preparing to propose rules, an agency seeks to obtain information or opinion from sources outside of the agency, a notice of intent to solicit such information or opinion is published in the *State Register* and interested persons are afforded an opportunity to submit data and views on the subject.

The *State Register* also contains any other official notice requested to be published by an agency, pursuant to Laws of 1977, ch. 305 § 3.

Department of Commerce Banking Division Bulletin No. 1840

Maximum Lawful Rate of Interest for Mortgages for the Month of February, 1978

Notice is hereby given that the Banking Division, Department of Commerce, State of Minnesota, pursuant to Minnesota Statutes, § 47.20, the Conventional Home Loan Assistance and Protection Act, as amended by Minnesota Laws 1977, ch. 350, hereby determines that the maximum lawful rate of interest for home mortgages for the month of February, 1978, is nine and one-quarter (9.25) percent.

Robert A. Mampel
Commissioner of Banks
January 13, 1978

Department of Human Rights

Settlement Agreements, Predetermination Agreements, Hearing Examiner's Orders and Hearing Notices from October 27, 1977 through November 25, 1977

Settlement Agreements

In addition to specific remedies, standard agreements reached prior to a hearing contain the following stipulations:

1. The agreement does not constitute an admission by the respondent of a violation of Minn. Stat. ch. 363.
2. The respondent agrees to abide by the provisions of Minn. Stat., ch. 363.

Department of Human Rights, Complainant, vs. Ozark Air Lines, Inc., E2020.

Charge.

A person (hereinafter "charging party") filed a charge alleging that Ozark Air Lines, Inc. (hereinafter "respondent") had discriminated against him on the basis of his sex by refusing to hire him as a flight attendant. Following an investigation the Commissioner of Human Rights found probable cause to credit the charging party's allegation.

Settlement.

The charging party and the respondent agreed to settle the matter in the following manner:

1. The respondent and its agents and employees agreed not to discriminate in any manner against any persons because of sex with respect to the rights secured for such individuals by the Minnesota Human Rights Act.
2. The respondent agreed to pay the charging party \$300.00 in settlement of the matter.

Department of Human Rights, Complainant, vs. M and L Motor Supply, Respondent, E3345.

Charge.

A person (hereinafter "charging party") filed a charge alleging that her employer, M and L Motor Supply (hereinafter "respondent"), had discriminated against her on the basis of her sex by terminating her because she was pregnant. The charging party alleged that she was terminated one week after notifying her employer that she was pregnant. Following an investigation, the Commissioner of Human Rights found probable cause to credit the allegation.

Settlement.

The charging party and the respondent agreed to settle the matter as follows:

1. The respondent agreed to pay the charging party the sum of one thousand five hundred dollars (\$1,500).
2. The respondent agreed to eliminate from the charging party's employment records all documents and entries relating to the facts and circumstances which led to the filing of the charge of discrimination.
3. The respondent agreed to give only the length and nature of the charging party's employment if potential future employers inquire about the charging party's service.

Department of Human Rights, Complainant, vs. Wendell's Inc., Respondent, E1657.

Charge.

A person (hereinafter "charging party") filed a class action charge alleging that her employer, Wendell's Inc. (hereinafter "respondent") discriminated against her and

OFFICIAL NOTICES

other employees similarly situated because of their sex in violation of the Minnesota Human Rights Act. The charging party alleged that employees who were unable to work because of pregnancy did not receive the same benefits that other employees who were absent because of illness received. Following an investigation, the Commissioner of Human Rights found that probable cause existed to credit the charging party's allegation.

Settlement.

The charging party and the respondent agreed to settle the matter as follows:

1. The respondent agreed that, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, it will treat women affected by pregnancy, childbirth or disabilities arising from pregnancy or childbirth, the same as other persons who are not so affected but are similar in their ability or inability to work.

2. The respondent agreed to pay the charging party the sum of seven hundred dollars (\$700) in settlement of the matter.

Pre-Determination Agreements

A pre-determination agreement is an agreement reached prior to the Commissioner's finding of probable or no probable cause to credit the allegation(s) contained in a charge of discrimination. It is signed by the charging party, the respondent, and the Commissioner. A pre-determination agreement may be reached through a departmental procedure called the 30-Day Waiver Process. Prior to a formal investigation by the department, a charging party and a respondent may mutually agree to request that the department waive investigation of a charge for 30 days while the parties attempt to settle the matter.

Sharon Knowler, Charging Party, vs. Sperry Rand, Univac, Respondent, E4423.

Charge.

Sharon Knowler (hereinafter "charging party") filed a charge alleging that her employer, Sperry Rand Univac (hereinafter "respondent"), discriminated against her because of her sex by promoting a male employee with less seniority than she had to a position that she was qualified to fill. Prior to a formal investigation by the department, the two parties reached an agreement which was approved by the department.

Agreement.

The two parties settled the matter in the following manner:

1. The respondent and the charging party met and discussed the charging party's relationship and potential with the company. The charging party was reassigned to the position for which she was qualified.

William L. Wilson, Commissioner, State Department of Human Rights vs. Minnesota State High School League, Respondent ED132.

Charge.

William L. Wilson issued a Commissioner's complaint alleging that the Minnesota State High School League (hereinafter "respondent") enforced rules that did not permit disabled persons to participate in high school football if those persons had an artificial limb. The Commissioner alleged that such rules violated Minn. Stat. ch. 363.03 subd. 5 (1) because the rules did not permit individual consideration of each disabled student's ability to participate safely in the sport. An agreement was reached prior to a formal investigation.

Agreement.

The department and the respondent agreed to settle the matter as follows:

1. The respondent agreed to adopt and implement the following rule governing the eligibility of participants who have artificial limbs:

"Artificial limbs which, in the judgment of the rules administering officials, are no more dangerous to players than the corresponding human limbs, and do not place an opponent at a disadvantage, may be permitted.

2. The respondent agreed that no person will be denied the opportunity to participate in high school football solely because of that person's disability or handicap unless the person's physician determines that such participation would pose a serious threat to the health and safety of that person or unless the above mentioned rule would prohibit participation.

3. The respondent agreed to distribute news of this agreement to affiliates and other interested parties.

Elaine Perez, Charging Party, vs. Minnesota Mutual Life Insurance Co., RP161.

Charge.

Elaine Perez filed a charge alleging that her employer, Minnesota Mutual Life Insurance Co. (hereinafter "respondent"), discriminated against her in the terms of her employment because of her association with a person of a different race. Prior to a formal investigation, the matter was resolved.

Agreement.

The charging party and the respondent agreed to settle the matter in the following manner:

1. The respondent agreed to make the opportunity available for the charging party to transfer from her present position to a comparable position in another unit of the company.

2. The respondent agreed to restore four vacation days

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used by the charging party for illness because she had exhausted her sick leave and grant her a retroactive leave without pay.

3. The respondent agreed to schedule the charging party's present supervisor for supervisory training including equal employment opportunity training.

Hearing Examiner's Orders

A case that is not settled through conciliation is scheduled for hearing before a state hearing examiner following a complaint issued by the Commissioner and a notice and order for hearing. Based upon evidence, testimony, and exhibits, a hearing examiner makes findings of fact, and conclusions of law and issues an order.

Department of Human Rights, Complainant, vs. Independent School District No. 191 and the Minnesota State High School League, A8, ED120.

Charge.

Persons (hereinafter "charging parties") filed a charge on behalf of their daughter alleging that Independent School District No. 191 violated the Minnesota Human Rights Act by excluding and expelling their daughter from membership on the boys swimming team of Burnsville Senior High School because of her sex. The school board restricted membership on the boy's swimming team to boys only to comply with a rule of the Minnesota State High School League about separate teams. The charging parties also filed a charge against the Minnesota State High School League alleging that the League's rule on separate teams compelled and coerced the school district to segregate its varsity swimming teams on the basis of sex. Following an investigation, the Commissioner of Human Rights found probable cause to credit the charging parties allegation's. Efforts to conciliate the matter were unsuccessful. A complaint was issued and the matter was scheduled for hearing.

Conclusions of Law.

The hearing examiner made, in part, the following Conclusions of Law:

1. The respondent school district failed to show that their restriction of membership on the boys' swimming team to boys only was necessary to provide members of each sex an equal opportunity to participate in the athletic program.

2. The respondent school district was in violation of the Minnesota Human Rights Act and that the district excluded the charging parties' daughter from the boy's swimming team because of her sex.

3. The respondent League's rules on separate teams conflicted with and violated the law.

4. The respondent League committed an unfair discriminatory practice within the meaning of the Minnesota Human Rights Act in that the League aided and abetted the

school district's commission of an unfair discriminatory practice.

5. The respondent school district violated the law, Minn. Stat. § 126.21, subd. 1(2), since it failed to treat the girls' and boys' swimming teams in a substantially equal manner in that the coaching of the two teams is not substantially equal and in that the two teams do not have the same opportunity for practice time.

Order.

The hearing examiner issued the following order:

1. The school district allow the charging parties' daughter and any other girl within the school district who so desires to participate as a member on the boys' swim team.

2. The school district cease and desist from enforcing the provisions of the State High School League's rules on separate teams.

Hearing Notices

Department of Human Rights, Complainant, vs. General Tractor and Equipment Co., Kenneth V. Olson, Respondents, February 16, 1978, 9:00 a.m., Hennepin County Government Center, Room D, Minneapolis, Minnesota.

Department of Human Rights, Complainant, vs. Fabri-Tek, Incorporated, Respondent, March 15, 1978, 9:00 a.m., Hennepin County Government Center, Room E, Minneapolis, Minnesota.

Department of Human Rights, Complainant, vs. Independent School District No. 391, Respondent, February 22, 1978, 10:00 a.m., Le Sueur County Courthouse, Commissioners Room, Le Center, Minnesota 56057.

Department of Human Rights, Complainant, vs. Northwest Publications, Inc., Duluth-Herald News Tribune Division, and Dale Larson, Respondents, March 30, 1978, 9:00 a.m., Duluth City Hall Chambers, Duluth, Minnesota.

Department of Human Rights, Complainant, vs. Independent School District No. 877. Respondent, February 27, 1978, 9:30 a.m., St. Cloud City Hall, Council Chambers, 20 Fourth Avenue South, St. Cloud, Minnesota 56301.

Department of Public Welfare

Notice of Intent to Solicit Outside Opinion

Notice is hereby given that the Department of Public Welfare is considering proposed amendments to DPW Rule 9, Administration of Child Care Facilities Act Grant-in-Aid.

This rule, last revised on January 17, 1974, is again being revised to concur with changes in the statute that governs

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this service and to update it for changes made in the grant application process. The revisions include:

1. Establishment and maintenance of local Child Care Advisory Committees (CCAC's).
2. The role of the CCAC's in the Child Care Facilities Act (CCFA) grant-in-aid process.
3. The relationship of the CCAC to local county social service agencies.
4. The role of the Minnesota Child Care Advisory Committee (MCCDAC) in the planning of day care service and resource development including the distribution of CCFA grant-in-aid.
5. The allocation formula for distribution of CCFA funds to geographic areas.
6. Eligibility and purposes for grant-in-aid applications.
7. The plan for establishing procedures for application and distribution of the CCFA grant-in-aid.
8. Policy for repayment of grants.
9. Equal employment opportunities.

The Department of Public Welfare is also considering the adoption of proposed DPW Rule 209, Day Care Services — Children.

This proposed rule will establish standards for the administration of day care services for local public social service agencies. The rule will include standards for:

1. Review of family day care and group family day care homes to determine their compliance with licensing standards.
 - a. Responsibility of the agency staff.
 - b. Rights of the applicant.
2. Certification of family day care and group family day care homes to serve children whose day care is paid with federal monies.
3. Certification of in-home day care providers.
 - a. Standards for the providers.
 - b. Standards for the agency.
4. Development of day care resources including the establishment and maintenance of the local child care advisory committees (CCAC).
5. Placement of children in day care resources.
 - a. Responsibility of the agency.

- b. Rights of parents and children in the day care placement of process.

All interested or affected persons or groups are requested to participate. Statements of information and comment concerning either rule may be made orally or in writing. Written statements of information and comment may be addressed to:

Estelle Griffen
Department of Public Welfare
4th Floor, Centennial Office Building
St. Paul, Minnesota 55155

Oral statements of information and comment concerning either rule will be received during regular business hours over the telephone at (612) 296-3910.

All statements of information and comment must be received by February 7, 1978. Any written material received by the Department shall become part of the hearing record.

Ethical Practices Board

Notice of Intent to Solicit Outside Opinion

The State Ethical Practices Board solicits opinions of any individual or association regarding the following request for an advisory opinion prior to review for approval of an advisory opinion on February 3, 1978.

January 10, 1978

Mr. B. Allen Clutter
Minnesota State Ethical Practices Board
41 State Office Building
St. Paul, Minnesota 55155

Dear Mr. Clutter:

I would like an opinion on why Local Wood City Local 158 has to submit a State Ethics report. We do not donate to any political candidates. We pay per capita tax to the Cloquet Central Labor Union, AFL-CIO Minnesota State Federation of Labor and to United Paperworkers International Union. Apparently they set aside money for a political fund and report that.

Sincerely yours,

Robert O. Milberger
Financial Secretary
Local Wood City, Local 158
1403 Avenue C.
Cloquet, Minnesota 55720

OFFICIAL NOTICES

Ethical Practices Board Preliminary Agenda for Meeting on Friday, February 3, 1978, 1:30 p.m., Room 14, State Office Building

1. Minutes (January 5, 1978)
2. Report of Chairperson
 - a) Legislative Report
3. Advisory Opinion Requested by Ethel Schaeen
4. Advisory Opinion Requested by Robert O. Milberger
5. Proposed Lobbyist Rules
6. Executive Director Report
 - a) Financial Report
7. Executive Session Pursuant to Minn. Stat. § 10A.02, Subd. 10.

B. Allen Clutter
Executive Director

Health Department Notice of Availability of Funds for Health Facilities

Notice is hereby given pursuant to the provision of Title VI of the Public Health Service Act, 42 U.S.C. §§ 291 ff., that the Department of Health will be accepting letters of intent from nonprofit and/or public community health centers and hospitals which wish to expand, remodel or renovate their outpatient health services.

Letters of intent shall be in the Department of Health by February 9, 1978.

For further information, contact Colodia Owens, Department of Health (612) 296-5564.

Pollution Control Agency Notice of Continuation of Hearing on Identification, Labeling, Classification, Storage, Collection, Transportation and Disposal of Hazardous Waste

Notice is hereby given that the public hearing on the above-captioned rules and amendments will resume on February 1, 1978 at 9:30 A.M. in the Agency Boardroom, 1935 W. County Road B2, Roseville, Minnesota and will continue until all persons have had an opportunity to be heard.

The original notice of hearing and rules as proposed is found in *State Register*, Volume 2, September 19, 1977, page 521.

The hearing officer is:

William Seltzer
Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota 55104
(612) 296-8105

In addition to appearing at and submitting statements at the hearing, any person may submit written comments by mail to the hearing officer within 20 days after the close of the hearing.

Members of the Pollution Control Agency staff will be meeting with various members of the public while the public hearing is adjourned to discuss the regulations and possible amendments to the regulations as proposed. Any members of the public interested in participating in these discussions are encouraged to do so. For further information, contact Mr. Michael Kanner of the Pollution Control Agency staff at (612) 296-7352.

Sandra S. Gardebring
Minnesota Pollution Control
Agency Executive Director

Water Planning Board Notice of Hearing

Notice is hereby given that the Water Planning Board will hold a meeting on Tuesday, January 31, 1978 at 10:00 a.m. in the Department of Natural Resources conference room, third floor, Centennial Office Building, 658 Cedar Street. An agenda for the meeting may be obtained one week prior to the meeting by contacting the undersigned at 600 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

Thomas Kalitowski
Chairman

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