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STATE REGISTER



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DECEMBER 25, 1978

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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices.	Issue Date
SCHEDULE FOR VOLUME 3			
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27	Friday Dec 22	Friday Dec 29	Monday Jan 8
28	Tuesday Jan 2	Monday Jan 8	Monday Jan 15
29	Monday Jan 8	Monday Jan 15	Monday Jan 22

*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 are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

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CONTENTS

MCAR AMENDMENTS AND ADDITIONS 1324

RULES

Cable Communications Board

Adopted Rules Governing Board Meetings,
Franchising Procedures, Franchise Standards,
and Cable Service Territories 1325

Department of Education

State Board of Education and Commissioner of Education (State Board for Vocational Education)

Adopted Rules for Nursing Assistants Programs 1325

Department of Public Safety Driver and Vehicle Services Division

Adopted Rules Regarding Administration of
Driver Licensing Laws Pertaining to
Alcohol-related Revocations 1326

Board of Teaching

Adopted Rules Governing Requirements for
Issuance of All Licenses, Human Relations,
Middle Schools, Science, Social Studies,
Physical Education and Family Planning 1330

SUPREME COURT

**Decisions Filed Friday, December
15, 1978** 1332

Orders Filed December 5, 1978 1332

STATE CONTRACTS

Department of Economic Development Area and Community Development Division

Notice of Request for Proposals for Study of
Proposed Glass Fiber Blowing Insulation
Plant in Northeastern Minnesota 1334

Department of Health

Emergency Medical Services Section

Notice of Request for Proposals Regarding
Computer Programming 1334

Minnesota State Retirement System

Notice of Availability of Contract for
Investigation and Evaluation of a Computer
Based Data System Presently under
Development 1335

Department of Natural Resources Forestry Division

Notice of Availability of Contracts for
Incentives Programs (Forestry) 1335

OFFICIAL NOTICES

Department of Commerce Insurance Division

Notice of Meeting 1336

Department of Commerce Banking Division

Bulletin No. 2000 Regarding Maximum Lawful
Rate of Interest for Mortgages for the Month
of January 1978 1336

Energy Agency

Minnesota Power & Light Company and United
Power Association Application for a Certificate
of Need for a Large Electric Generating
Facility 1337

Energy Agency

Notice of Intent to Solicit Outside Information
Regarding Proposed Rules Governing Outdoor
Display Lighting 1337

Metropolitan Council

Public Hearing on the Proposed 208 Areawide
Plan/Development Guide for Water Quality
Management 1338

Office of the Secretary of State Administration Division

Open Appointment Process: Notice of
Openings on State Agencies —
Application Procedures 1339

Department of Administration Office of the Commissioner

Notice of Position Change 1339

MCAR AMENDMENTS AND ADDITIONS

The following is a listing of all proposed and adopted rules published in this issue of the *State Register*. The listing is arranged in the same order as the table of contents of the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend the rules contained in the MCAR set. Both proposed temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short term nature of their legal effectiveness. During the term of their legal effectiveness, however, adopted temporary rules do amend the MCAR. A cumulative listing of all proposed and adopted rules in Volume 3 of the *State Register* will be published on a quarterly basis and at the end of the volume year.

TITLE 4 COMMERCE

Part 4 Cable Communication Board

4 MCAR §§ 4.026, 4.111, 4.121, 4.221-4.225
(adopted) 1325

TITLE 5 EDUCATION

Part 1 Education Department

Board of Education
5 MCAR § 1.0113 (adopted) 1325

TITLE 5 EDUCATION

Part 3 Board of Teaching

5 MCAR §§ 3.001, 3.003-3.005, 3.020, 3.041,
3.052-3.054, 3.065, 3.068, 3.072-3.074, 3.085-3.086
(adopted) 1330

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety Department

Driver & Vehicle Services Division
DrivLic 81-87, 89-90 (adopted) 1326

RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *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 as proposed 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 strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Cable Communications Board

Adopted Rules Governing Board Meetings, Franchising Procedures, Franchise Standards, and Cable Service Territories

The rules published at *State Register*, Volume 3, Number 8, pages 296-309 (3 S.R. 296) as proposed rules are adopted and are identical to their proposed form.



French Canadian canoeers known as voyageurs (travelers) learned their craft from the Indians and were the backbone of Minnesota fur trade. There were two classes of voyageurs — "porkeaters" who took trade goods to exchange posts in early summer and returned to Montreal with furs, and "winterers" who spent the cold months at interior posts exchanging trade goods for the Indians' furs. This painting by Mrs. Samuel B. Abbe shows a typical winterer in red stocking cap and hooded capote smoking one of the small clay pipes traders offered in exchange for furs. (Courtesy of Minnesota Historical Society)

Department of Education State Board of Education and Commissioner of Education (State Board for Vocational Education)

Adopted Rules for Nursing Assistants Programs

The rule 5 MCAR § 1.0113 as proposed and published at *State Register*, Volume 3, Number 5, page 177, August 7,

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language. **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."

1978 (3 S.R. 177) is adopted as proposed with the following amendments:

5 MCAR § 1.0113 Nursing assistant programs. Nursing assistant education programs shall use the curriculum developed by the Commissioner of Education as reviewed and evaluated by the board of nursing. The program shall include an individual written/oral test and performance evaluation, which shall be administered on a monthly basis by the department of education, through public area vocational technical institutes, and shall be 30 hours of planned learning activities, exclusive of the evaluation.

A. 3. Completion of the program — successful completion of ~~individual~~ shall be defined as the obtainment of 70 percent on the oral/written test and 70 percent on the performance evaluation.

C. 2. Nursing assistants who have successfully completed, since January 1, 1976, a training program for nursing assistant employed in nursing homes, which utilized a program endorsed by the State Department of Education, unless employment has been interrupted for greater than ~~two~~ five consecutive years.

C. 3. Nursing assistants who have successfully completed a state approved nursing education program which prepares an individual for licensure as a registered nurse or licensed practical nurse if completion occurred no more than ~~two~~ (2) five calendar years prior to employment.

C. 6. Nursing assistants who began employment in a supplemental nursing service on or before December 31, 1978 and who continue employment in that same nursing service in which they were employed on or before December 31, 1978, and who have worked a minimum of twelve (12) hours per week for that same supplemental nursing service in a nursing home prior to December 31, 1978. Supplemental nursing services shall provide to the State Department of Health by January 15, 1979, a list of all nursing assistants employed by the supplemental nursing services who have worked 12 hours in a nursing home on or before December 31, 1978.

Department of Public Safety Driver and Vehicle Services Division

Adopted Rules Regarding Administration of Driver Licensing Laws Pertaining to Alcohol-related Revocations

Due to the unique provisions of the enabling legislation, Minn. Stat. §§ 169.121, 169.123 and other related statutes, in response to the enactment of Minn. Stat. § 169.128 (Laws of 1978, Ch. 727, § 8), these rules are being published for the first time in this issue of the *State Register*. They became effective October 2, 1978.

Chapter Eight: Standards for Administration of Driver Licensing Laws Pertaining to Alcohol-Related Revocations

DrivLic 81 Purpose and scope.

A. The purpose of this chapter is to establish standards for effective administration of the driver licensing laws governing the revocation of license and related suspension periods, issuance of limited licenses, reinstatement of driving privileges and other actions taken with respect to alcohol-related or controlled-substance-related incidents under Minnesota Statutes, Sections 169.121, 169.123 and other related statutes, in response to the enactment of Minn. Stat. § 169.128 (Laws of 1978, ch. 727, § 8).

B. The scope of these rules is intended to be confined within the framework of and consistent with the provisions of Chapters 169 and 171 of Minnesota Statutes.

DrivLic 82 D.W.I. Revocations.

A. Basic rule. Where there has been a conviction under Minn. Stat. §§ 169.121, 169.129 or 171.245, the license shall be revoked, and suspended for a period of time as indicated below, under authority of Minn. Stat. § 169.121 or 171.17:

1. First offense. Revoked and suspended until 30 days after surrender of the license certificate to the Commissioner.

2. Second offense within three years. Revoked and suspended until 90 days after surrender of the license certificate to the Commissioner.

3. Third or subsequent offense within five years. Re-

RULES

voked and suspended until one year after surrender of the license certificate to the Commissioner; and also denied under authority of Minn. Stat. § 171.04 (8) until such time as the person demonstrates rehabilitation to the Commissioner's satisfaction.

The first time, evidence of rehabilitation shall include not less than six months of total abstinence verified as may be prescribed by the Commissioner, and successful completion of a chemical dependency treatment program acceptable to the Commissioner or such alternative evidence as may be approved by the Commissioner in the individual case, before any license or limited license is issued.

If a person has filed evidence of rehabilitation once and has resumed the use of alcohol or controlled substance, the evidence of rehabilitation required shall be as indicated above, except that one year of verified total abstinence shall be required before any license or limited license is issued.

In any subsequent situation, rehabilitation shall be established as prescribed by the Commissioner on a case-by-case basis.

Nothing in this Rule shall be deemed to preclude the exercise of the Commissioner's discretionary authority under Minn. Stat. § 171.04 (8) in such other cases as may be appropriate under the circumstances.

4. Third offense on record in more than five years. The license shall be revoked and the matter referred to the Chief Driver Evaluator for special review and a determination as to whatever additional action may be appropriate.

5. Fourth or subsequent offense on record. The license shall be revoked and suspended until one year after surrender of the license certificate to the Commissioner; and also denied under Minn. Stat. § 171.04 (8) until such time as rehabilitation has been established in accordance with DrivLic 82 (a) (3), above.

B. Additional suspension time in certain cases:

1. If the offense involved an accident resulting in great bodily harm, an additional 60 days of suspension time shall be imposed and added to the basic period set forth above, subject to a maximum period of one year.

For the purposes of this Rule, "great bodily harm," as defined in Minn. Stat. § 609.02, subd. 8, means "bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a

permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm."

2. If the offense results in death to another person, an additional five months shall be added to the basic period set forth above, subject to a maximum period of one year. For the purposes of this Rule, the presence of an accident report or other sufficient evidence in the files of the Department shall be deemed sufficient to make this paragraph applicable.

3. If the person has had a prior suspension or revocation on the record within five years, the suspension period imposed on the last prior suspension or revocation may be added to the basic period set forth above, subject to a maximum period of one year.

DrivLic 83 Court-issued revocation notice form.

A. When issued. Where a person is convicted of violating Minn. Stat. § 169.121, the Court will serve notice of the coming revocation upon the person, under authority of Minn. Stat. § 169.121, subd. 7. Where a revocation proposed under Minn. Stat. § 169.123 has been sustained by the Court, the Court will likewise serve notice of the coming revocation upon the person, under authority of Minn. Stat. § 169.123, subd. 6. This notice shall be given by use of a form prescribed by the Commissioner.

B. Contents of notice form. While the wording and format of the notice form shall be subject to revision from time to time, the notice form shall contain the following:

1. Space in which to fill in the date on which the notice form is issued.

2. Space to fill in the first, middle and last name of the person; the person's current residential address, including city, state and ZIP Code; date of birth; driver license number, traffic ticket or case number; the person's height and weight; the class of license certificate held; and the restrictions listed on the license, if any.

3. A notice of revocation. Separate boxes may be used to indicate whether the revocation is under Minn. Stat. § 169.121 or § 169.123. The notice of revocation under Minn. Stat. § 169.123 shall indicate that the revocation will take effect 30 days from the date on which the notice form is issued, and may contain boxes to indicate whether the revocation is for six months for refusing testing or ninety days for failing the test.

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4. An order of revocation. The form shall advise that upon the expiration of either ten or thirty days as indicated in Paragraph (3), the same form will be the actual revocation order. The form shall also advise that if proof of filing an appeal has been filed with the Commissioner within the time specified, the revocation will be postponed until a final determination adverse to the person.

5. The form shall advise that the Court is required to take all license certificates in the person's possession, but that if the person has a valid license, the Court may issue a temporary license effective for either the ten-day or thirty-day periods indicated in Paragraph (3).

6. Temporary license. The entire form shall be valid as a temporary license, and a temporary license portion of the form shall indicate whether the temporary license is valid for ten days or thirty days. A space shall be provided for the Court to indicate that no temporary license has been issued because the person did not have a valid license.

7. Affidavit for lost license. The form shall include space for a person to sign a statement that the license has been lost or destroyed for use in cases where the driver is unable to surrender the license.

8. Space for the signature of the issuing judge of County Court or Municipal Court, together with the date of issuance.

9. Any additional information the Commissioner may deem appropriate.

C. Forwarding to Commissioner. The issuing Court shall forward the Department's copy of the notice of revocation form to the Commissioner within five days, together with any license certificate or certificates surrendered by the licensee.

DrivLic 84. Departmental temporary license form.

A. When issued. In cases where a person has filed with the Commissioner proof that a timely appeal has been filed from a conviction on a charge of violating Minn. Stat. § 169.121, a temporary license may be issued to the person unless the driving privileges of that person are already suspended, revoked, cancelled or denied, upon application by the person. In cases where the person has filed with the Commissioner proof that a timely appeal has been filed from an order sustaining a proposed revocation under Minn. Stat. § 169.123, a temporary license may be similarly issued.

B. Contents of temporary license form. While the wording and format of the temporary license form shall be subject to revision from time to time, the form shall contain the following:

1. A serial number and space for the date of issuance.
2. Full name and address of the person, including residential address, city, state and ZIP Code.
3. Driver license number and date of birth.
4. Height and weight.
5. Restrictions, if any.
6. Traffic ticket number of case number of the matter during pendency of which the temporary license is issued.
7. Space for the signature of the Driver Evaluator issuing the temporary license.
8. The form shall contain a notice that it is valid for a period of 180 days or until the related judicial proceeding has been decided, whichever comes first.

C. Renewal of temporary license. In the event that the related judicial proceeding is not concluded within 180 days, additional temporary licenses may be issued upon application.

DrivLic 85. Police-issued revocation notice form.

A. When issued. Where a person has refused to submit to testing when required to do so pursuant to Minn. Stat. § 169.123 by a peace officer, or when the person has submitted to a test which has disclosed an alcohol concentration of .10 or more, the peace officer shall serve notice of the proposed revocation under authority of Minn. Stat. § 169.123 upon the person, as authorized by Minn. Stat. § 169.123, subd. 5a.

B. Contents of notice form. While the wording and format of the notice form shall be subject to revision from time to time, the notice form shall contain the following:

1. Date of issuance and name of law enforcement agency issuing the notice.
2. Traffic ticket or case number and the name of the court in which the related traffic charges, if any, are pending.
3. Full name and date of birth.
4. Driver license number, height and weight.
5. Full address, including residential address, city, state and ZIP Code.
6. Notice of proposed revocation under Minn. Stat. § 169.123. The notice portion of the form shall indicate

RULES

whether the proposed revocation is to be for six months for refusing testing or 90 days for failing the test; and advise that the revocation will take effect 30 days after the date of issuance unless there has been a prior demand for hearing.

7. Information as to how a hearing must be requested.

8. An Order of Revocation. The form shall advise that if there has been no receipt of a request for hearing within the 30-day period indicated in Paragraph (6), the same form will constitute a revocation order, and that if there has been a timely request for hearing, the revocation will be postponed until a final judicial determination adverse to the person.

9. The form shall inform the person that the officer is required to take all license certificates in the person's possession and, if the person has a valid license, to issue a temporary license effective for the 30 day period indicated in Paragraph (6).

10. Temporary license. The entire form shall be valid as a temporary license, and shall indicate what class license the person holds, as well as all restrictions noted on the license. A space shall be provided for the peace officer to indicate that no temporary license has been issued because the person did not have a valid license.

11. Affidavit for lost license. The form shall include space for a person to sign a statement that the license has been lost or destroyed for use in cases where the driver is unable to surrender the license.

12. Space for the signature of the peace officer issuing the notice of revocation form, together with the business telephone number of the peace officer.

13. Any additional information which the Commissioner may deem appropriate.

C. Forwarding to Commissioner. The issuing peace officer shall forward the Department's copy of the notice of revocation form to the Commissioner on the same or next business day, together with any license certificate or certificates surrendered by the person, copies of the Implied Consent Law Peace Officer's Certificate and other reports pertaining to the incident.

DrivLic 86. Departmental notice of proposed revocation.

A. When issued. In cases where a peace officer has not served notice of a proposed revocation as provided in

DrivLic 85, the Commissioner will give notice of the proposed revocation of the person's driving privileges under authority of Minn. Stat. § 169.123 upon receipt of an Implied Consent Law Peace Officer's Certificate indicating that the person is subject to the sanctions of the statute.

B. Contents of notice. The notice shall advise the person whether the proposed revocation is for six months for refusing to submit to testing or for 90 days for failing the test. It shall advise the person that the revocation order will take effect thirty days after delivery of the notice of proposed revocation unless the person has filed a written request with the Commissioner within that period. It shall advise the person as to the procedure for demanding a hearing, and may contain such additional information as the Commissioner may deem advisable. The wording and format of the notice shall be subject to revision from time to time.

C. How given. The notice of proposed revocation shall be sent by certified mail to the last known address. If returned as undeliverable for any reason, notice shall be sent by first class mail to the last known address, and shall be deemed to have been delivered on the third day after mailing.

DrivLic 87. Hearing requests — timeliness. A demand for hearing under Minn. Stat. § 169.123 shall not be considered timely unless actually delivered to the Commissioner and received by him within 30 days after notice of the proposed revocation has been given as provided by DrivLic 85 or DrivLic 86.

A. When issued. In cases where the driving privileges of a non-resident are revoked under authority of Minn. Stat. § 169.121, 169.123 or 171.17, the Commissioner shall forward a report of the action taken to the licensing authority of the non-resident's home jurisdiction and of any other state in which the person is known to hold a license.

DrivLic 89. Limited licenses.

A. Revocations under Minn. Stat. § 169.121 and Minn. Stat. § 171.17 (2). Limited licenses may be issued to qualified applicants under authority of Minn. Stat. § 171.30. Such licenses shall be issued only for employment purposes (driving to and from an existing remunerative job or on the job), and for attendance at chemical dependency treatment or counseling programs. Before a limited license may be issued, the person must pass the complete driver license examination, paying the fee required therefor; make application for a new license, paying the fee required for the class of license involved; and complete an alcohol problem

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RULES

assessment interview, either through the Court or the Department.

B. Revocations under Minn. Stat. § 169.123.

1. Limited licenses may be issued to qualified applicants under authority of Minn. Stat. § 169.123, subd. 9. Such licenses may be issued for employment purposes and for chemical dependency treatment or counseling programs as indicated in Paragraph a. In addition, other types of driving may be authorized upon approval of the Chief Driver Evaluator. Before a limited license may be issued the person must complete an alcohol problem assessment interview, either through the Court or the Department; must pass the complete driver license examination; and must make application for a new license, paying the fee required for the class of license involved. A re-examination fee will not be required.

2. If the revocation relates to the third or subsequent violation within three years, no limited license may be issued. All driving privileges shall be denied under authority of Minn. Stat. § 171.04 (8) until such time as rehabilitation has been established as provided in DrivLic 82 (2) (3).

3. If the revocation relates to the fourth or subsequent violation on the licensee's record, no limited license may be issued. All driving privileges shall be denied under authority of Minn. Stat. § 171.04 (8) until such time as rehabilitation has been established as provided in DrivLic 82 (2) (3).

DrivLic 90. Early reinstatement. Any person applying for early reinstatement pursuant to Minn. Stat. § 169.123, subd. 10, must provide written documentation satisfactory to the Commissioner that the treatment or counseling program was recommended by the counselor conducting the alcohol problem assessment interview, and that the person has successfully completed the program.

Effective October 2, 1978

Board of Teaching

Adopted Rules Governing Requirements for Issuance of All Licenses, Human Relations, Middle Schools, Science, Social Studies, Physical Education and Family Planning

The following rules were proposed and published at *State Register*, Volume 2, Number 8, p. 311, August 29, 1977, and are now adopted with the following amendments:

Rules as Adopted

5 MCAR § 3.001 Requirements for the issuance and renewal of all licenses.

A. Licenses to teach in Minnesota ~~may~~ shall be granted to persons who otherwise meet all requirements of applicable statutes and rules and who complete approved programs leading to teacher licensure in Minnesota institutions which are approved by the Minnesota Board of Teaching to prepare persons for teacher licensure.

B. An applicant must qualify separately for each licensure area for which application is made and provide evidence of satisfactory completion of a program in each such licensure area ~~and provide evidence of satisfactory completion of a program in each licensure area~~ which has been approved by the Minnesota Board of Teaching.

C. The initial license which ~~may~~ shall be issued in any licensure area is an entrance license, valid for two years.

D. There are three exceptions to the requirement that the initial license which ~~may~~ shall be issued in any licensure area must be an entrance license. For these three exceptions, a continuing license for each licensure area ~~may~~ shall be granted to:

E. When one year of teaching experience is not completed prior to the expiration of an entrance license, another entrance license in that licensure area ~~may~~ shall be issued upon application. If an entrance license in any licensure area is allowed to lapse, it ~~may~~ shall be renewed, upon application, until the applicant has had one year of teaching experience in that licensure area after which time an applicant must qualify for a continuing license.

F. A continuing license, valid for five years, ~~may~~ shall be issued to an applicant who has completed at least one year of teaching experience in a licensure area while holding an entrance license, as verified by the local continuing education committee. When a licensure area is added to a continuing license already in force, the expiration date becomes that already established for the continuing license in force.

H. If a continuing license in any area is allowed to lapse, one of the following ~~may~~ shall be issued:

I. Continuing licenses, valid for five years, ~~may~~ shall be renewed upon application according to the rules of the board of teaching pertaining to continuing education.

J. 2. Short call substitute licenses to teach, valid for five years, ~~may~~ shall be issued to a previously licensed applicant which shall authorize teaching on a day-to-day basis not to exceed 15 consecutive days in a single classroom or teaching assignment. A short call substitute license may be renewed upon application.

RULES

5 MCAR § 3.041 Human relations components in all programs leading to licensure in education.

C. Programs ~~may~~ shall be approved which vary in curricular design provided that program components meet the requirements in A. and B., above, and that these components provide education personnel who are recommended for licensure with the knowledge, skills, and understandings specified in rules for each licensure area. When the term competency is used, it is understood that other appropriate terms which refer to learning outcomes may be substituted. Examples of such terms are: knowledge, skills, and understandings.

5 MCAR § 3.054 Teachers in middle schools.

E. Persons holding a valid Minnesota elementary or secondary classroom entrance teaching license ~~may~~ shall be issued an entrance middle school teaching license upon the completion of the requirements of A.1. or 2. of this rule.

F. Persons holding a valid Minnesota elementary or secondary classroom continuing or life teaching license ~~may~~ shall be issued a continuing middle school teaching license upon the completion of the requirements of A.1. or 2. of this rule.

G. The first and subsequent continuing middle school teaching licenses ~~may~~ shall be issued to persons who have completed the requirements of A.1. or 2. of this rule and who meet the requirements of the Board of Teaching for the issuance of the first and/or subsequent Minnesota elementary or secondary classroom continuing teaching licenses.

I. ~~Provision H. of this rule shall be effective July 1, 1978. Except for provision H., all other provisions shall become effective July 1, 1983.~~

5 MCAR § 3.065 Science for grades 5-9 and grades 7-12.

H. Programs ~~may~~ shall be approved which vary in curricular design provided that program components meet the requirements in A., B., C., D., E., F., and G., above, and

that these components provide education personnel who are recommended for licensure with the knowledge, skills, and understandings specified in rules for each licensure area. When the term competency is used, it is understood that other appropriate terms which refer to learning outcomes may be substituted. Examples of such terms are: knowledge, skills, and understandings.

5 MCAR § 3.068 Social studies in secondary schools.

E. Programs ~~may~~ shall be approved which vary in curricular design provided that program components meet the requirements in A., B., C., and D., above, and that these components provide education personnel who are recommended for licensure with the knowledge, skills, and understandings specified in rules for each licensure area. When the term competency is used, it is understood that other appropriate terms which refer to learning outcomes may be substituted. Examples of such terms are: knowledge, skills, and understandings.

5 MCAR § 3.072 Qualifications, physical education and health teachers.

A. Student teaching. ~~Public~~ School instructional experience at both elementary (K-6) and secondary (7-12) school levels shall be included.

5 MCAR § 3.085 Teachers of family life education.

D. 2. The continuing license ~~may~~ shall be renewed according to rules of the Minnesota board of teaching pertaining to continuing education.

F. Programs ~~may~~ shall be approved which vary in curricular design provided that program components meet the requirements in C., above, and that these components provide education personnel who are recommended for licensure with the knowledge, skills, and understandings specified in rules for each licensure area. When the term competency is used, it is understood that other appropriate terms which refer to learning outcomes may be substituted. Examples of such terms are: knowledge, skills, and understandings.

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SUPREME COURT

Decisions Filed Friday, December 15, 1978

Compiled by John McCarthy, Clerk

48138/289 Cynthia Raleigh, a Minor, by Her Mother and Natural Guardian, Lauretta Raleigh, et al, vs. Independent School District No. 625, Appellant, Orpheum-St. Paul Cinema Corporation. Ramsey County.

The finding by a jury that a school district's negligent supervision and organization of students at a school-sponsored showing of a documentary film caused plaintiff's injuries will not be set aside under the facts of this case.

The trial court properly exercised its discretion in admitting evidence of similar, but unrelated, incident which occurred at about the same time as the assault which was the subject matter of this action.

Affirmed. Todd, J. Took no part, Otis, J.

48258/363 State of Minnesota vs. Ellis Edsel Bellfield, Appellant. Clay County.

In this appeal from a conviction for soliciting prostitution and conspiracy to solicit prostitution, there is no merit to defendant's claims that the trial court erred in denying a motion for a change of venue, that the trial court erred in admitting tape recordings of telephone conversations between defendant and the informant, that the trial court erred in admitting certain Spreigl evidence, that the conduct of the police in obtaining evidence of his guilt was so outrageous as to violate due process, and that his arrest was illegal.

Affirmed. Todd, J.

47522/62 Warren V. Bigelow, et al, Brent Bigelow, et al, vs. Dr. Charles Galway, Appellant. Hennepin County.

Proof of actual fraud in the conveyance of real property requires evidence establishing that there was an actual intent to hinder, delay, or defraud creditors. Minn. St. § 513.26. Upon implementation of this standard, the trial court erred in permitting plaintiff's un rebutted testimony to the effect that defendant's underlying judgment was invalid. Admission of these irrelevant statements was so highly prejudicial as to require a new trial.

Affirmed in part, reversed in part, and remanded for a new trial.

Wahl, J. Took no part, Otis, J.

47782/184 State of Minnesota vs. Rodney Roy Ray, Appellant. Hennepin County.

Where a criminal defense attorney undertook to represent defendant and the prosecutor offered defendant a negotiated plea involving a 10-year prison term in exchange for defendant's turning state's evidence against the co-defendant, the defense counsel had a clear conflict of interest which prevented him from advising defendant to accept the offer; because of this, defendant, who subsequently was convicted and sentenced to consecutive terms of 10 and 20 years, is entitled to relief from the 20-year sentence if he can show in a post-conviction proceeding that he could and would have accepted the plea offer if his counsel had advised him to do so.

Affirmed. Wahl, J.

48931/270 In the Matter of the Application for the Discipline of Roger Allen Nurnberger an Attorney at Law of the State of Minnesota. Supreme Court.

An attorney who fully accounted to his clients for funds improperly converted to his own use and who voluntarily entered a treatment program for his alcoholism is placed on supervised probation for five years.

Probation in accordance with this opinion ordered. Per Curiam.

48609/362 State of Minnesota, Appellant vs. Donnie LeRoy Myers. Winona County.

A convicted defendant is entitled to at least one state correction process, either by direct appeal or postconviction proceeding, to review a claimed violation of the United States or Minnesota Constitution or state law, but not both.

An appellant may not claim that the issue of prejudice was not before an appellate court because, by appealing in a criminal case that certain evidence was erroneously admitted, he is implicitly arguing that its admission prejudiced his case.

Reversed. Per Curiam.

Orders Filed December 5, 1978

47861/443 In re Application for the Discipline of Stephen George Scholle, an Attorney at Law of the State of Minnesota. Supreme Court.

SUPREME COURT

It is hereby ordered and directed, that the stipulation is approved:

Stephen George Scholle shall be suspended from the practice of law until June 13, 1979, at which date he shall be reinstated in the bar;

Stephen George Scholle shall be on supervised probation after his reinstatement until June 13, 1980, subject to such terms and conditions as are acceptable to the Administrative Director;

Beginning immediately Stephen George Scholle shall be supervised, in any work of a paralegal nature he may perform, by Mr. R. Bertram Greener, a member of the bar of the State of Minnesota, who has agreed to function in this

capacity, who shall examine and oversee such activities and make such reports upon Mr. Scholle as may be requested by the Administrative Director.

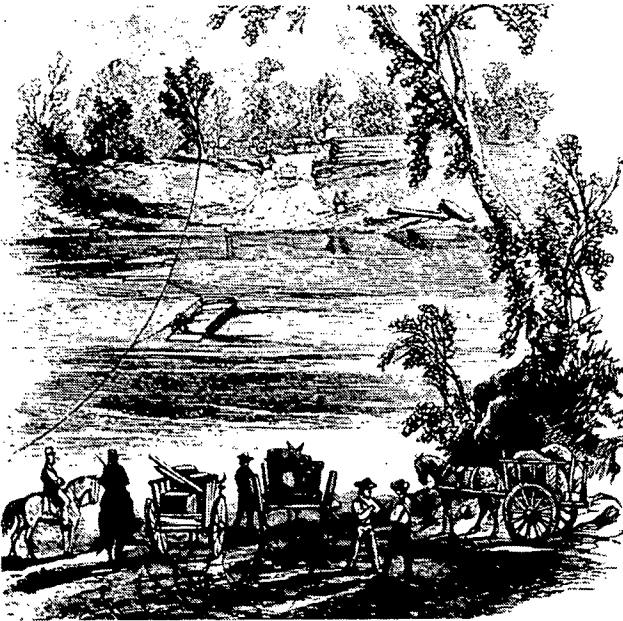
Suspended. Sheran, C. J.

49462/Sp. In the Matter of the Application for the Discipline of Harold James Iverson, an Attorney at Law of the State of Minnesota. Supreme Court.

It is ordered that Harold James Iverson be and hereby is suspended from the practice of law in the State of Minnesota pending a final disposition in these disciplinary proceedings.

Suspended. Otis, J.

STATE CONTRACTS



Because bridges were difficult and expensive to build, pioneers used ferries to transport passengers, wagons, horses and supplies across the state's many rivers. This one crossing the Rum River at Anoka was pictured in *Harper's Magazine*, August 1860. (Courtesy of Minnesota Historical Society)

Department of Economic Development Area and Community Development Division

Notice of Request for Proposals for Study of Proposed Glass Fiber Blowing Insulation Plant in Northeastern Minnesota

The Minnesota Department of Economic Development, 480 Cedar Street, Saint Paul, Minnesota 55101, Field Specialist Victoria Kostohryz, is requesting proposals for a study of a proposed glass fiber insulation plant to be located in Northeastern Minnesota.

The Department is interested in a feasibility study of a glass fiber blowing insulation plant that will use taconite tailings as a partial source of raw material. The study shall include a preliminary market analysis, technical and business feasibility analysis of the proposed plant.

The Department estimates the cost of such a study to be \$12,000.

Proposals must be submitted no later than 4:00 p.m., January 19, 1979. Further information is available from Field Specialist Victoria Kostohryz by writing or calling (612) 296-3977.

Department of Health Emergency Medical Services Section

Notice of Request for Proposals Regarding Computer Programming

The Minnesota Department of Health is issuing a Request for Proposal to select an appropriate contractor to:

- (1) Review the basic ambulance service output form layout as already created by the EMS Section of the Department of Health.
- (2) Design and develop computer procedures that will operationalize a quarterly ambulance service output form in a most cost-effective way by no later than March 15, 1979.
- (3) To test and debug the computer program mentioned above.
- (4) To design and develop all computer procedures necessary to produce an annual ambulance service output form in a most cost-effective way.
- (5) To test and debug the computer program mentioned above.

Pursuant to the provisions of Laws of 1978, ch. 480, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

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

STATE CONTRACTS

(6) To design and develop an edit report that would indicate to the Minnesota Department of Health key report errors made by services that need to be corrected.

(7) To test and debug the computer program mentioned above.

Prospective responders who have any questions regarding this Request for Proposal may call or write:

Robert Manske
Assistant to the Director
Health Systems Division
Minnesota Department of Health
717 Delaware Street S.E.
Minneapolis, Minnesota 55440
(612) 296-5442

Please Note: Department personnel are not allowed to discuss the project prior to receipt of the proposal.

The Department has estimated that the cost of this project should not exceed \$10,000 for all professional services and expenses.

All proposals must be sent to and received by Mr. Manske at the above address not later than 4:00 p.m., January 4, 1979.

Minnesota State Retirement System

Notice of Availability of Contract for Investigation and Evaluation of a Computer Based Data System Presently Under Development

The Minnesota State Retirement System intends to engage the services of a qualified consultant knowledgeable and experienced in the field of public employee retirement systems to analyze and evaluate a computer based data system presently being developed to determine the appropriateness of the scope of the project, review the effort to date and determine the costs, timing and alternatives.

The estimated cost of the proposal is \$35,000 to \$45,000.

The deadline for proposals is January 15, 1979.

To obtain a copy of the formal Request for Proposal document, contact,

Paul L. Groschen
Executive Director
Minnesota State Retirement System
529 Jackson, St. Paul, Minnesota 55101

Department of Natural Resources Forestry Division

Notice of Availability of Contracts for Incentives Programs (Forestry)

The Department of Natural Resources is seeking forestry consultants to perform special forestry contractual services to help implement the Incentives Programs.

Technical assistance includes:

- (1) Promotion and development of grouping arrangements.
- (2) Special management assistance in practice lay-out and supervision.
- (3) Comprehensive plan preparation.

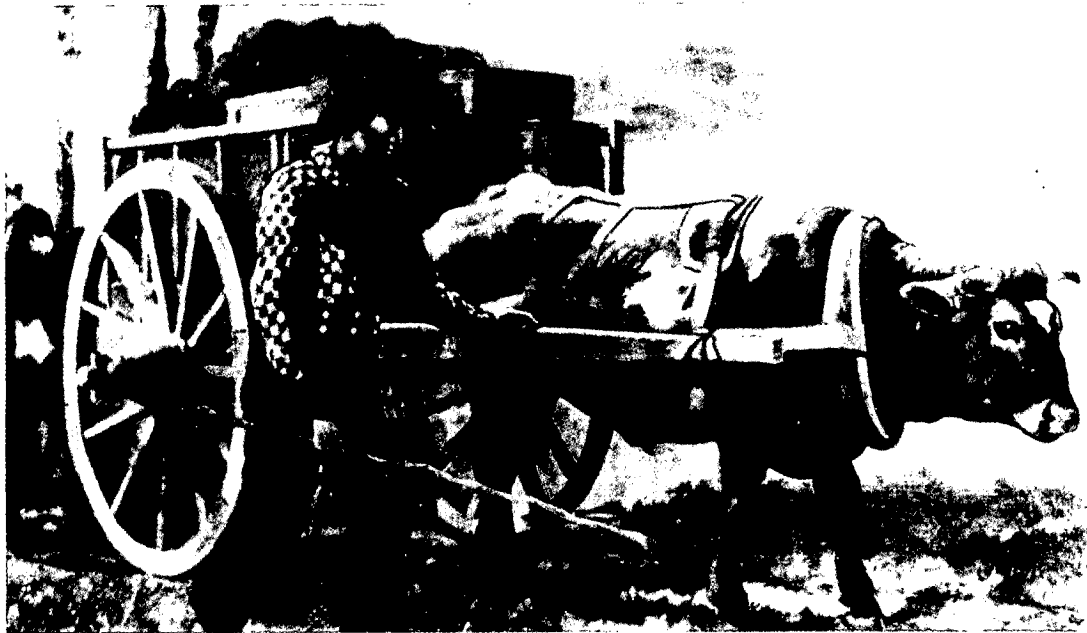
The estimated amount of contracts is \$16,000.

Applications from qualified forestry consultants will be accepted for 20 days following the publishing of this notice.

General inquiries and applications should be submitted to:

Mr. Rod Sando, Director
Division of Forestry
Department of Natural Resources
658 Cedar Street
St. Paul, MN 55155

OFFICIAL NOTICES



Rough oxcart trails were Minnesota's first roads. Teams of the carts loaded with furs took thirty to forty days to travel 500 miles from the Red River settlements to St. Paul, then returned with liquor and other supplies. One 1858 train consisted of 600 carts, and one in 1859 carried \$150,000 worth of skins to St. Paul. (Oil painting by Francis L. Jacques, courtesy of Minnesota Historical Society)

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

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

Department of Commerce Insurance Division

Notice of Meeting

Notice of Meeting
Board of Directors
Minnesota Comprehensive Health Association
Wednesday, January 24, 1978
11:00 a.m.
Northwestern National Life Insurance Company
20 Washington Avenue South
Minneapolis, Minnesota

Department of Commerce Banking Division

Bulletin No. 2000 Regarding Maximum Lawful Rate of Interest for Mortgages for the Month of January, 1979

Notice is hereby given that the Banking Division, Department of Commerce, State of Minnesota, pursuant to Minn. Stat. § 47.20, subd. 4, the Conventional Home Loan Assistance and Protection Act, hereby determines that the maximum lawful rate of interest for home mortgages for the month of January, 1979, is ten and one-quarter (10.25) percent.

December 12, 1978

Robert A. Mampel
Commissioner of Banks

OFFICIAL NOTICES

Energy Agency

Minnesota Power & Light Company and United Power Association Application for a Certificate of Need for a Large Electric Generating Facility

Order and Notice of Reconvened Hearing

It is hereby ordered and notice is hereby given that the contested case hearing concerning the above-entitled matter, originally scheduled for December 11, 1978, but postponed, will reconvene at 9:30 a.m. on January 29, 1979, in Courtroom No. 2, Fourth Floor, Federal Building, 515 West First Street, Duluth, Minnesota

December 15, 1978

John P. Millhone

Energy Agency

Notice of Intent to Solicit Outside Information Regarding Proposed Rules Governing Outdoor Display Lighting

Notice is hereby given that the Minnesota Energy Agency is seeking information, or opinions and comments, from sources outside the Agency in preparing rules governing the permissible hours of operation, the quantity and the efficiency of outdoor lighting. The Agency is developing the rules pursuant to Minn. Stat. § 116H.12, subd. 1a. The Agency has solicited outside information on two prior occasions. Using its own research and the information received, the Agency has drafted a set of rules on which it seeks comment. They appear below. If the draft rules are too strong or too weak, or if they indicate too many exemptions or too few, or if they have other weaknesses, please write the Agency, with the reasons for your belief. Your written comments should be addressed to:

Richard A. Wallen
980 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

The comments should be received by January 15, 1979. The Agency will use the comments on the draft rules to prepare the rules which it will propose for adoption. Com-

ments received will become part of the hearing record of the rulemaking proceeding.

December 11, 1978

Richard A. Wallen, Manager
Policy Analysis Activity

Energy Agency Draft Rules Governing the Permissible Hours of Operation, the Quantity and the Efficiency of Outdoor Display Lighting

Chapter 21: EA 2101-2120

EA 2101 Purpose of Rules.

The purpose of these rules is to define outdoor display lighting, to specify permissible hours of operation of outdoor display lighting, and to establish quantity and efficiency standards for outdoor display lighting pursuant to Minn. Stat. § 116H.12, subd. 1b.

EA 2102 Applicability of Rules.

A. Beginning July 1, 1979, no person shall use outdoor display lighting during hours other than those specified by these rules.

B. Beginning July 1, 1980, no person shall install outdoor display lighting in a quantity that exceeds, or at an efficiency less than, that provided by these rules.

C. Beginning July 1, 1984, no person shall operate outdoor display lighting which does not comply with rules EA 2115 (efficiency) and EA 2120 B. (quantity).

D. Exceptions.

1. These rules shall not apply to temporary or seasonal outdoor display lighting;

2. These rules shall not apply to outdoor display lighting which provides information as to the time of day, temperature, weather conditions, or other matters concerning the public health, safety and welfare;

3. These rules shall not apply to penal institutions;

4. These rules shall not apply to airplane obstruction lighting as defined by the Federal Aviation Administration.

EA 2104 Definitions. For purposes of these rules, the following definitions shall apply:

OFFICIAL NOTICES

A. "Business day" means that portion of a 24 hour period when an establishment is open for business;

B. "Ballast" means a device used with an electric discharge lamp to obtain the necessary circuit conditions for starting and operating;

C. "Daytime hours" means the time between one half hour after sunrise and one half hour before sunset when the ambient light level is greater than one foot candle;

D. "Establishment" means a place of business or a public or private institution;

E. "Foot candle" means a standard measure of light intensity;

F. "Luminous sign tubing" means lights commonly known as neon lighting;

G. "Lumens per watt" means a standard unit of measure of lighting efficiency;

H. "Outdoor display lighting" means any outdoor building facade lighting, any outdoor decorative lighting, any illuminated off-premise advertising, and any on-premise outdoor lighting including security lighting;

I. "Security lighting" means a type of outdoor display lighting located on, or around the exterior or perimeter of a building, structure, fence, lot, or other outdoor area, the purpose of which is to protect persons or property against the threat or occurrence of harm;

J. "Standardized Outdoor Display Sign" means off-premise outdoor display advertising commonly known as billboards;

K. "Temporary or seasonal display lighting" means display lighting that, on at least 300 consecutive days in any 12-month period, is not illuminated.

EA 2110 Permissible hours of outdoor display lighting.

A. Standardized outdoor display signs may not be artificially illuminated during daytime hours.

B. Standardized outdoor display signs may not be artificially illuminated during the period between midnight and one half hour after sunrise except hours during the period in which the establishment(s) being advertised is open for business.

C. Outdoor display lighting that is used to illuminate a historical landmark as defined in Minn. Stat. ch. 138 or § 4.077 may be operated between one half hour before sunset and 10 p.m.

D. All other outdoor display lighting except security lighting may be operated from one half hour before sunset until one hour after the close of a business day and from the beginning of a business day until one half hour after sunrise.

E. Security lighting may not be operated during daytime hours.

EA 2115 Permissible efficiency.

A. No person shall install or use outdoor display lighting in which the light source produces light at an initial efficiency, including ballast if required, of less than 40 lumens per watt.

B. Exceptions.

1. Rule 2115 A. shall not apply to Luminous sign tubing.

EA 2120 Permissible quantity.

A. Beginning July 1, 1979, no person shall operate security lighting that exceeds .05 watts per square foot for the area lighted for security purposes.

B. No person shall operate any outdoor display lighting that exceeds the recommended minimum standards set forth in the "IES Lighting Handbook" published by the Illuminating Engineering Society by more than 20 percent.

Metropolitan Council

Public Hearing on the Proposed 208 Areawide Plan/Development Guide for Water Quality Management

The Metropolitan Council will hold a public hearing on Thursday, January 25, 1979 at 2 p.m., reconvening at 7 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, 7th and Robert Sts., St. Paul, Minnesota 55101, for the purpose of receiving public comments on the Council's 208 Areawide Plan/Development Guide for Water Quality Management. This plan/development guide when adopted will supersede the current Waste Management Development Guide/Policy Plan and will fulfill federal requirements as the Region's water quality plan under Section 208 of Public Law 92-500. All interested persons are encouraged to attend the hearing and offer comments on the proposed plan/development guide. Persons wishing to speak at the hearing may register in advance by contacting the Council's public hearing coordinator at 291-6482. Those who register first will be scheduled to speak first. Written

OFFICIAL NOTICES

comments may also be submitted until February 2, 1979. Copies of the proposed plan/development guide may be obtained free of charge from the Council's Public Information Office at the above address, telephone 291-6464.

John Boland
Chairman

Office of the Secretary of State Administration Division

Open Appointment Process: Notice of Openings on State Agencies — Application Procedures

Pursuant to Laws of 1978, ch. 592, the legislature has implemented an Open Appointment process by which the public is informed of openings on state multi-member agencies (boards, commissions, councils) created by statute and having statewide jurisdiction.

Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul, MN 55155, (612) 296-3266. Contact the Secretary of State for the Open Appointment Process information brochure and specific agency related information. Application deadline is January 16, 1979.

INDIAN SCHOLARSHIP COMMITTEE: One vacancy for a St. Paul representative to assist in reviewing scholarship applications. Term expires in July, 1981.

Department of Administration Office of the Commissioner Notice of Position Change

Notice is hereby given that Richard L. Brubacher resigned his position as Commissioner of the Department of Administration at the close of business on December 1, 1978. In accordance with Minn. Stat. § 15.06, subd. 3 and subd. 5 (1977 Supp.), William G. Strusinski, the Deputy Commissioner of the Department of Administration, assumed the office as Temporary Commissioner beginning December 2, 1978, until a Commissioner is appointed.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
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St. Paul, Minnesota 55102
(612) 296-8239

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