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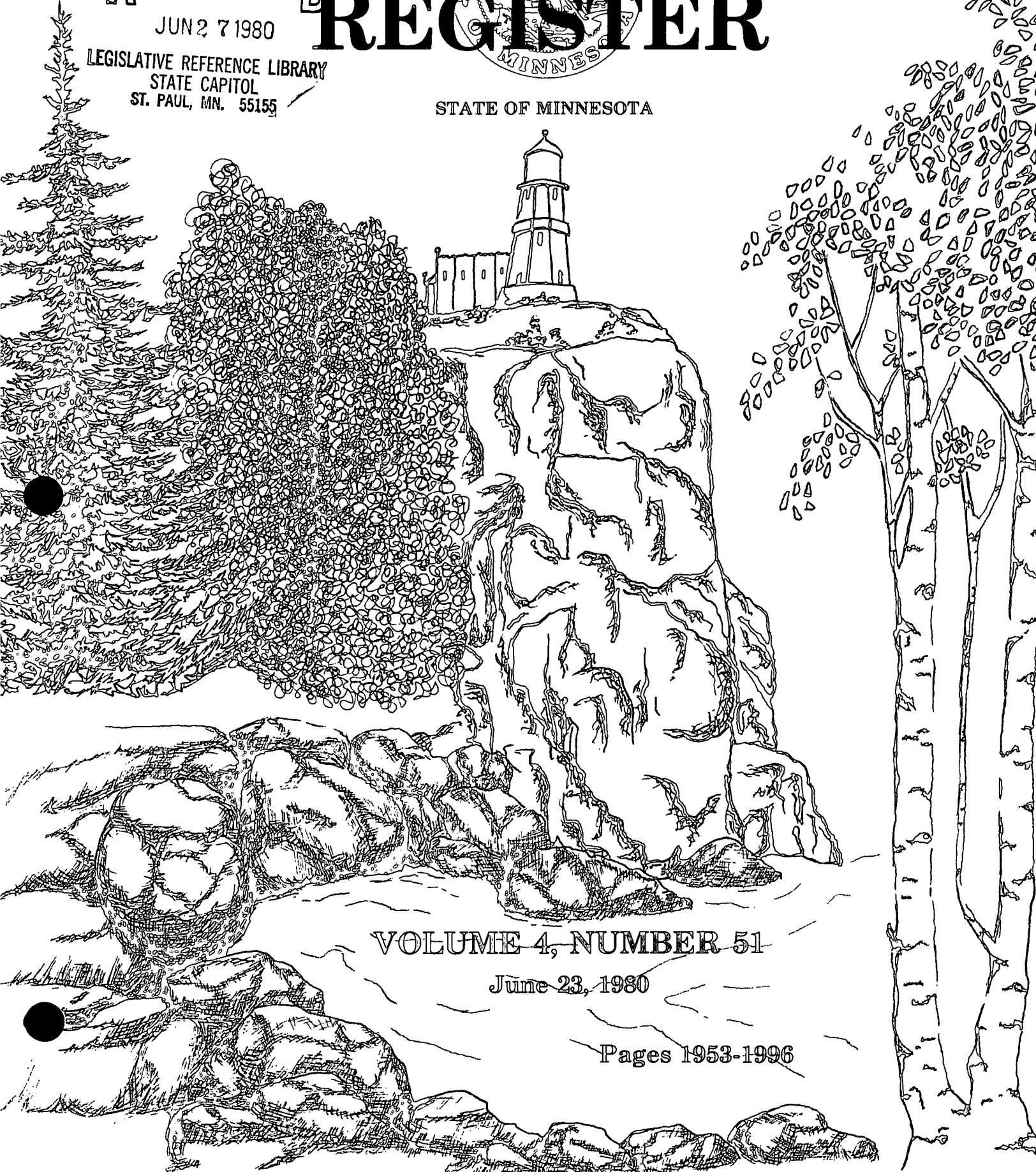
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STATE OF MINNESOTA



VOLUME 4, NUMBER 51

June 23, 1980

Pages 1953-1996



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 4			
52	Monday June 16	Monday June 23	Monday June 30
SCHEDULE FOR VOLUME 5			
1	Monday June 23	Monday June 30	Monday July 7
2	Monday June 30	Monday July 7	Monday July 14
3	Monday July 7	Monday July 14	Monday July 21

*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.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$118 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$2.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Proposed new rules (including Notice of Hearing).
Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
Notice of adoption of temporary rules.
Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the State Register but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The State Register publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue range and Issue number. Includes: Issues 1-13, inclusive; Issues 14-25, inclusive; Issue 26, cumulative for 1-26; Issue 27-38, inclusive; Issue 39, cumulative for 1-39; Issues 40-51, inclusive; Issue 52, cumulative for 1-52.

The listings are arranged in the same order as the table of contents of the MCAR.

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ZEBRA SIDE VIEW—Water color by David Benke, 12th Grade, Mayo High School, Rochester, MN

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

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 time 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 Commerce Insurance Division

Notice of Withdrawal of Proposed Rules Governing Minimum Anticipated Loss Ratios for Accident and Health Insurance Policies INS-79-006-NG

The above entitled matter came on for hearing on May 16, 1979, and the Hearing Examiner, Natalie L. Gaull, issued her report on July 25, 1979.

After review of the record herein, the commissioner hereby orders that the Proposed Rules Governing Minimum Anticipated Loss Ratios for Accident and Health Insurance Policies (4 MCAR §§ 1.3275 through 1.3282) are withdrawn.

June 5, 1980

Michael D. Markman
Commissioner of Insurance

Board of Education (State Board for Vocational Education) Department of Education Vocational-Technical Division

Proposed Rules Governing the Distribution of Post-Secondary Vocational Education Aids (5 MCAR §§ 1.01041-1.01047) and Proposed Repeal of 5 MCAR §§ 1.0104, 1.0105, and 1.0107

Notice of Hearing

A public hearing concerning the proposed rule will be held in Conference Room A, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, on Tuesday, August 5, 1980, commencing at 9:00 a.m. The proposed rule may be

Public Hearings on Agency Rules June 30-July 4, 1980

Date	Agency and Rule Matter	Time & Place
July 3	Administration Dept., Building Code Div. Energy Conservation Standards for Existing Residences, and Certifica- tion of Evaluators for Energy Disclosure Program Hearing Examiner: Richard Luis	9:00 a.m., Conference Rm., 408 Metro Square Bldg., St. Paul, MN.

modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Peter Erickson, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-8118 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

The agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing.

The board's statutory authority to promulgate the proposed rules is provided by Minn. Stat. § 121.21 as amended.

The board estimates that there will be no cost to local bodies in the state to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to Robert M. Madson, 541 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rule, contact Robert M. Madson (612) 296-3387.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the board may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the board. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the board, in the case of the board's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

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

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

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

May 12, 1980

Howard B. Casmey, Secretary
Board of Education

Rules as Proposed (all new material)

Chapter Six: Post-Secondary Vocational-Technical Education

5 MCAR § 1.01041 Definition. The term allocation or preliminary allocation means the level of funding recommended to the State Board for Vocational Education by the Division of Vocational-Technical Education.

5 MCAR § 1.01042 Instructional aid. Instructional aid shall be allocated to the area vocational-technical institutes in accordance with the formula prescribed in Minn. Stat. § 124.5621.

5 MCAR § 1.01043 Post-secondary vocational supply aid.

A. Post-secondary vocational supply aid shall be allocated to each AVTI for those items of expenditure enumerated in Minn. Stat. § 124.5622, subd. 4.

B. Supply aid allocation.

1. The Division of Vocational-Technical Education shall review each instructional and support services program budget submitted by the AVTI. The budget shall be reviewed and approved, modified or reduced giving consideration to such factors as:

a. The historical average of per student supply costs for the program.

b. The average per student cost of supplies for all similar programs in all AVTIs offering such programs.

c. Continued operation of the physical plant.

2. The Division of Vocational-Technical Education shall annually establish inflationary factors which will govern increases in the various categories of supplies. These inflationary factors will be a two year forecast from the base year which is the fiscal year immediately preceding the deadline for the submission of budgets to the Division of Vocational-Technical Education by the AVTIs. The Division of Vocational-Technical Education shall obtain estimates of cost for the types of items most commonly purchased by the AVTIs over the two year span of time in determining the inflationary factors from the State Economist, Department of Finance.

a. Separate factors shall be established to determine allowable increases for petroleum related supplies and non-petroleum related supplies.

(1) For petroleum related supplies, the following indexes shall be utilized:

(a) Wholesale price index—refined petroleum products.

(b) Wholesale price index—rubber and plastic products.

(2) For non-petroleum related supplies, the following indexes shall be utilized:

(a) Wholesale price index—lumber and wood products.

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."

PROPOSED RULES

(b) Wholesale price index—chemicals and allied products.

(c) Wholesale price index—metals and metal products.

b. These inflationary factors shall be transmitted to the AVTIs not less than 60 days prior to the deadline by which the AVTIs must submit budget requests to the Division of Vocational-Technical Education.

3. Each school board which has established an AVTI shall implement policies to recover the cost of supplies purchased for resale to students and the public.

a. For instructional programs in the food service area, such rates of recovery shall be established in consultation with the Division of Vocational-Technical Education. Each food service instructional program will be compared to similar programs offered in other AVTIs to annually adjust the rate of recovery by considering the following factors:

(1) To provide maximum instructional benefits to students.

(2) To minimize the net cost to the program.

b. For all other instructional programs, the rate of cost recovery shall ensure that the total revenue from the resale of supplies shall not be less than the cost of acquisition of supplies purchased for resale.

4. Each AVTI that submits a program budget wherein the increased cost of supplies exceeds the two year forecast of inflationary factors established in B.2. above shall justify such increases in writing. This justification shall be submitted to the Division of Vocational-Technical Education with the budget requests to receive consideration.

5. In the event that the total request for supply aid for an individual AVTI does not exceed the base year expenditure plus the inflationary factors established in B.2. above, the Division of Vocational-Technical Education shall give preliminary approval to the request subject to the later necessity of prorated reductions applied to all AVTIs subject to the following:

a. When the total requests for supply aid are equal to or less than 105 percent of the funds appropriated for this purpose, each AVTI shall have their request reduced by an equal percentage so that the allocations make maximum use of but do not exceed the funds appropriated for this purpose.

b. When the total requests by all AVTIs for supply aid exceed 105 percent of the funds appropriated for this purpose, an AVTI which requests supply aid in excess of its base year expenditures as adjusted by the inflationary factors established in B.2. above may have its request reduced to an amount equal to the base year amount. This reduction shall be accomplished on a program by program basis by the Division of Vocational-Technical Education in consultation with the AVTI Director. In effecting such reductions, consideration shall be given to the factors enumerated in B.1.a.-c. above.

5 MCAR § 1.01044 Post-secondary vocational capital expenditure aid.

A. Post-secondary vocational capital expenditure aid shall be allocated to each AVTI for those items of expenditure enumerated in Minn. Stat. § 124.5624, subd. 3.

B. Capital equipment aid allocation.

1. Each AVTI shall establish an order of priority for its capital aid requests. In establishing the order of priority, the AVTI shall give consideration to the enhancement of the safety of the students and staff and the replacement of technologically obsolete and/or worn out equipment.

2. All requests for the purchase of equipment which have a unit cost of \$1,000 or more shall be justified in writing as a part of the documentation supporting the program budget request. The Division of Vocational-Technical Education shall review such requests giving consideration to the needs of the program as compared to similar programs offered in other AVTIs.

3. All projected capital expenditures which have a unit cost of \$4,000 or more are subject to approval by the Commissioner of Education prior to purchase. This includes remodeling and site improvement projects with a cost of \$4,000 to \$50,000. These items shall be included in the appropriate program budget. Such approval shall be sought and given separately from the budget review in accordance with Minn. Stat. § 124.5264, subd. 5 (Supp. 1979).

a. These requests shall have the specific authorization of the school board which governs the AVTI.

b. The Division of Vocational-Technical Education shall review and approve, modify or reduce the request giving consideration to the following factors:

(1) The historical pattern of capital and/or equipment expenditures for that AVTI.

(2) A comparison with similar programs offered in other AVTIs.

(3) Current practices for facilities or types of equipment utilized in industry.

C. Preliminary allocations of post-secondary vocational capital expenditure aid for items not exceeding a unit cost of \$50,000.

1. When the total requests for capital expenditure aid are equal to or less than 105 percent of the funds appropriated for this purpose, each AVTI's request shall be reduced by an equal percentage so that the allocations make maximum use of but do not exceed the funds appropriated for this purpose.

2. If the total request for capital expenditure aid exceeds 105 percent of the funds appropriated for this purpose, each AVTI's budgets shall be reviewed by the Division of Vocational-Technical Education. The Division of Vocational-Technical Education shall contact the Director of the AVTI for the purpose of effecting reductions in the request giving consideration to the factors set forth in B.1.-3. above prior to the sched-

uled budget review with the Division of Vocational-Technical Education. The AVTI Director shall be notified in writing as to the amount of the reduction.

D. Remodeling and construction requests. Requests for remodeling or construction with an estimated cost in excess of \$50,000 but not exceeding \$150,000 are subject to prior approval by the State Board for Vocational Education in accordance with Minn. Stat. § 121.912 (Supp. 1979).

1. The State Board for Vocational Education shall review such requests giving consideration to the following factors:

a. The specific authorization of the request by the school board which governs the AVTI.

b. The remodeling or construction of facilities requested will provide adequate space for existing programs presently housed within district buildings or as a replacement for unsuitable rented space.

c. Construction requests for facilities identified in b. above shall be reviewed giving consideration to:

(1) A comparison with the facilities for similar programs offered in other AVTIs on a per student basis.

(2) Requirement to meet Occupational Safety and Health Act standards.

2. The State Board for Vocational Education shall review and approve, modify or reduce any requests for remodeling or construction and shall allocate available funds to meet the most critical needs as determined through the review of the factors set forth in D.1.a.-c. above.

5 MCAR § 1.01045 Post-secondary vocational support services aid.

A. Post-secondary vocational support services aid shall be allocated to each AVTI for those items of expenditure enumerated in Minn. Stat. § 124.5623, subd. 4.

B. Support services aid allocation.

1. The Division of Vocational-Technical Education shall review and approve, modify or reduce the support services budgets submitted by the AVTIs. This review shall include such factors as:

a. The historical expenditures for such items by the individual AVTI.

b. A comparison of support services expenditures on a per student basis for other AVTIs of an essentially similar enrollment for similar areas of expenditures.

c. Expenditures necessary to meet minimum requirements set forth in 5 MCAR § 1.0103.

2. Each AVTI shall justify in writing, as a part of the

budget request, the addition of any new support services or the creation of new staff positions based upon the criteria set forth in B.1.a.-c. above.

C. Preliminary allocations of post-secondary vocational support services aid.

1. In the event that the aggregated requests for support services aid from the AVTIs exceed the funds appropriated for this purpose, continued operation of the physical plant shall be given first priority for funds. Then the AVTIs shall be allocated support services aid in the following manner:

a. When the total requests for support services aid are equal to or less than 105 percent of the funds appropriated for this purpose, each AVTI's request shall be reduced by an equal percentage so that the allocations make maximum use of but do not exceed the funds appropriated for this purpose.

b. If the total requests for support services aid exceed 105 percent of the funds appropriated for this purpose, each AVTI's budget shall be reviewed by the Division of Vocational-Technical Education. The Division of Vocational-Technical Education shall contact the Director of the AVTI for the purpose of effecting reductions in the request giving consideration to the factors set forth in B.1. & 2. above prior to the scheduled budget review with the Division of Vocational-Technical Education.

c. Upon completion of the budget review sessions, if the requests for support services aid exceed but are equal to or less than 105 percent of the funds available for this aid, the reduction shall be effected in accordance with C.1.a. above.

d. If the requests for support services aid exceed 105 percent of the funds available for this purpose at the completion of the budget review sessions, each AVTI will be allocated support services aid through the application of the following procedures:

(1) The AVTIs will be ranked by the cost per projected ADM for support services aid in descending order from the highest cost AVTI to the lowest cost AVTI.

(2) The plant operations component of the support services aid shall be removed and the remainder of the support services aid request shall be factored by a percentage which provides for the highest cost-per-ADM AVTI receiving the lowest percentage of its request and the lowest cost-per-ADM AVTI receiving the greatest percentage of its request. Upon the completion of this process, the plant operations component shall be added to the amount calculated through this process to form the support services aid allocation to each AVTI.

2. The AVTI Director shall be notified in writing as to the amount of the reduction.

5 MCAR § 1.01046 Final allocations shall be made by the

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."

PROPOSED RULES

State Board for Vocational Education pursuant to Minn. Stat. § 124.561, subd. 3a (Supp. 1979).

5 MCAR § 1.01047 Local responsibility and authority for fund expenditures. Following the final approval of all budget categories, the school board governing an AVTI has the responsibility and authority for expenditure of these categorized aids within the legal constraints of the appropriate statutes.

Rules as Proposed (repeal)

~~5 MCAR § 1.0104 Foundation aid.~~

~~A. A school district operating an area vocational-technical institute shall be eligible to receive post-secondary vocational foundation aid for all students attending approved post-secondary vocational-technical programs.~~

~~B. Average daily membership estimates shall be included in the annual budget request. These estimates shall be derived from uniform student accounting reports and that shall be the basis for beginning foundation aid payments. Adjustments to estimated average daily membership shall be reported by each AVTI to the Division of Vocational Technical Education by the first of September, December, March and June.~~

~~C. Changes in estimates as authorized in Minn. Stat. § 124.11 shall be approved by the commissioner of education before payment is authorized by the department.~~

~~D. Final adjustment data shall be submitted by August 15 of each year.~~

~~E. Only days in which school is open and students are under the supervision and guidance of teachers and for educational purposes are eligible for foundation aids. Snow days are not to be counted.~~

~~F. Tuition and fees.~~

~~1. Deductible fees shall include all charges that are uniformly assessed all students. Charges for materials or equipment that become the property of the student shall not be considered a fee.~~

~~2. No tuition shall be charged to handicapped/disadvantaged students for the additional hours of instruction received beyond the approved program length as established by Minn. Stat. § 124.562, subd. 2, as amended by Laws of 1979, ch. 334, art. V, § 10.~~

~~3. Students shall have their tuition prorated for less than or more than the regular instructional schedule. Tuition shall be prorated for part-time or extended time programs, for quarters more or less than 60 days and for programs utilizing individual instruction. Daily tuition shall be prorated by dividing the quarterly tuition by 60, (the standard number of days in the quarter), and rounded downward to the nearest cent. Hourly tuition shall be prorated by dividing the daily rate by 6, (the standard number of hours in a school day), and rounded downward to the nearest cent. This formula for prorating tuition shall apply to resident and nonresident tuition.~~

~~4. Collection of tuition shall be on the basis of four~~

~~periods per year as determined by the local calendar. No single period shall exceed 65 school days. Tuition may not be demanded more than 15 consecutive school days in advance of the time period but a student may pay in advance. Tuition may be delayed only upon initial application for tuition subsidy in any given year or guaranteed receipt from an agency.~~

~~5. A late penalty may be charged not to exceed \$10.00 per period established pursuant to F.4. of this rule. Penalty payments shall be deducted from foundation aid. The penalty assessment period is the period of time between the date tuition was demanded and the commencement of classes.~~

~~6. The total amount of tuition deducted from foundation aid shall be calculated on the total number of ADM's in the fiscal year. This calculation shall be made at the time of the final foundation aid adjustment, with tuition deficits being charged to local funds. Tuition loss due to deferment during student application for tuition subsidy shall not be deducted from foundation aid. Students shall not apply for a tuition subsidy more than once during a collection period.~~

~~7. Students on internships shall pay tuition for the time period claimed for foundation aid. Daily hours shall not exceed six unless the students are fully supervised under personnel provided by the institute.~~

~~8. Each district shall have an attendance policy. Students who notify the school of their withdrawal shall be dropped from the roll upon date of notification. Students absent for 15 consecutive school days shall be classified as withdrawn.~~

~~9. Students in continuous enrollment programs may be maintained on the roll for a vacation or a personal leave not to exceed 15 consecutive school days.~~

~~G. Upon prior approval of the commissioner of education, a district may add additional hours for membership not to exceed ten percent of the approved hours of the program for disadvantaged or handicapped students. Handicapped students are those who are mentally retarded, hard of hearing, deaf, speech-impaired, visually impaired, orthopedically impaired, or persons with specific learning disabilities, who by reason thereof require special education and related services, and who, because of their handicapping condition, cannot succeed in the regular vocational-educational program without special education assistance or who require a modified vocational education program. Disadvantaged students are those who have academic or economic handicaps and who require special services and assistance in order to enable them to succeed in vocational education programs.~~

~~H. Unless otherwise exempt from tuition, students who begin during the quarter shall pay tuition as of the date of entry based upon the prorated formula established in 5 MCAR § 1.0104 F.3. For such students the 15 day refund established by Minn. Stat. § 124.565, subd. 3, as amended by Laws of 1979, ch. 334, art. V, § 20 shall commence with the date of scheduled entry.~~

5 MCAR § 1.0105 Capital expenditure aid.

A. Districts shall be eligible for capital expenditure aid when foundation aid, tuition, and fees, are insufficient to provide for capital purchases.

B. All equipment not approved in the budget review, purchases at a cost in excess of \$4,000.00 must be preapproved by the commissioner of education.

C. All equipment shall be accounted for by the standard inventory control system.

D. Repairs on facility, equipment, or improvement of grounds that exceed \$4,000.00 and not included in the budget review shall be included in B. for approval.

5 MCAR § 1.0107 Categorical aid. Categorical aid shall be allocated on the following criteria for districts operating high cost programs which require expenditures in excess of funding available through foundation aid and capital expenditure aid:

- A. Preservation of the present plant and equipment.
- B. Development of programs for emerging business and industry.
- C. Unique programs designed to serve special populations.
- D. Educational services for special populations.
- E. High operating costs.
- F. Rules and regulations imposed by other regulatory bodies which may affect the student teacher ratio as well as operating equipment costs.

**Department of Health
Environmental Health
Division**

**Proposed Temporary Rule
Governing the Level of
Formaldehyde in Residential
Units**

Request for Public Comment

Notice is hereby given that the Department of Health has proposed the following temporary rule for the purpose of implementing provisions of Laws of 1980, ch. 594, §§ 1, 2 and 12, relating to formaldehyde.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register*

by writing to Pauline Bouchard, Division of Environmental Health, Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440. The temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rule.

Since temporary rules can remain in effect by law, for no more than 180 days from their effective date, permanent rules will be proposed and a public hearing will be held on the proposed permanent rules at some time in the fall of 1980. A formal Notice of Hearing will appear at the appropriate time in the *State Register*.

June 9, 1980

George R. Pettersen, M.D.
Commissioner of Health

Temporary Rule as Proposed

7 MCAR § 1.234 Formaldehyde levels in residential units.

A. Any newly-constructed residential unit which is sold, rented or leased after the effective date of this rule, shall not contain more than 0.50 parts of formaldehyde per million parts of ambient air.

B. For the purpose of determining compliance with this rule,

1. "Newly constructed" means that the unit has not been previously occupied;

2. "Residential unit" means any mobile home, single-family residence or living unit in a multi-unit structure, regardless of type of ownership.

C. Measurements for formaldehyde shall be made under normal living conditions of temperature, which is defined as 68 degrees Fahrenheit to 75 degrees Fahrenheit; and of relative humidity, which is defined as 40% to 60%.

D. Formaldehyde shall be measured according to NIOSH Manual of Analytical Methods, 2nd Edition, NIOSH 77-157-A, 1977, Method P&CAM 125, as follows:

Formaldehyde in Air—Analytical Method

1. Principle of the method.

a. Formaldehyde reacts with chromotropic acid-sulfuric acid solution to form a purple monocationic chromogen. The absorbance of the colored solution is read in a spectrophotometer at 580 nm and is proportional to the quantity of formaldehyde in the solution (References 11.b, 11.f).

b. The chemistry of this color reaction is not known with certainty (Reference 11.c).

2. Range and sensitivity.

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."

PROPOSED RULES

a. From 0.1 $\mu\text{g}/\text{ml}$ to 2.0 $\mu\text{g}/\text{ml}$ of formaldehyde can be measured in the color developed solution.

b. A concentration of 0.1 ppm of formaldehyde can be determined in a 25 liter air sample based on an aliquot of 4 ml from 20 ml of absorbing solution and a difference of 0.05 absorbance unit from the blank.

3. Interferences.

a. The chromotropic acid procedure has very little interference from other aldehydes. Saturated aldehydes give less than 0.01 percent positive interference, and the unsaturated aldehyde acrolein results in a few percent positive interference. Ethanol and higher molecular weight alcohols and olefins in mixtures with formaldehyde are negative interferences. However, concentrations of alcohols in air are usually much lower than formaldehyde concentrations and, therefore, are not a serious interference.

b. Phenols result in a 10 to 20 percent negative interference when present at an 8:1 excess over formaldehyde. They are, however, ordinarily present in the atmosphere at lesser concentrations than formaldehyde and, therefore, are not a serious interference.

c. Ethylene and propylene in a 10:1 excess over formaldehyde result in a 5 to 10 percent negative interference and 2-methyl-1,3-butadiene in a 15:1 excess over formaldehyde showed a 15 percent negative interference. Aromatic hydrocarbons also constitute a negative interference (Reference 11f). It has recently been found that cyclohexanone causes a bleaching of the final color (Reference 11.d).

4. Precision and accuracy. The method was checked for reproducibility by having three different analysts in three different laboratories analyze standard formaldehyde samples. The results listed in Table 1 agreed within ± 5 percent.

TABLE 1

Comparison of Formaldehyde Results from Three Laboratories

Micrograms Formaldehyde	Absorbance		
	Lab. 1	Lab. 2	Lab. 3
1	0.057	0.063	0.061
3	0.183	0.175	0.189
5	0.269	0.279	0.262
7	0.398	0.381	0.392
10	0.566	0.547	0.537
20	1.02	0.980	1.07

5. Advantages and disadvantages.

a. Effect of storage—disadvantage.

(1) The absorbance of the reaction product increases slowly on standing. An increase of 3 percent in absorbance was noted after one day standing and an increase of 10 percent after eight days standing (11.f).

(2) No information is available on the effect of storage on the collected air sample.

b. Precision—advantage. Results checked for reproducibility agreed within ± 5 percent (see Table 1).

6. Apparatus.

a. Sampling equipment. The sampling unit for the impinger collection method consists of the following components:

(1) A graduated midjet impinger containing the absorbing solution or reagent.

(2) A pump suitable for delivering flow rates of 1 liter per minute for 24 hours. The sampling pump is protected from splashover or water condensation by an adsorption tube loosely packed with a plug of glass wool and inserted between the exit arm of the impinger and the pump.

(3) An integrating volume meter such as a dry gas or wet test meter.

(4) Thermometer.

(5) Manometer.

(6) Stopwatch.

b. Spectrophotometer or colorimeter. An instrument capable of measuring the absorbance of the color developed solution at 580 nm.

c. Associated laboratory glassware.

7. Reagents.

a. Chromotropic acid reagent. Dissolve 0.10 g of 4,5-dihydroxy-2,7-naphthalenedisulfonic acid disodium salt (Eastman Kodak Company, Rochester, New York, Cat. No. P230) in water and dilute to 10ml. Filter if necessary and store in a brown bottle. Make up fresh weekly.

b. Concentrated sulfuric acid.

c. Formaldehyde standard solution "A" (1 mg/ml). Dilute 2.7 ml of 37 percent formalin solution to 1 liter with distilled water. This solution must be standardized as described in Section 9.1. The solution is stable for at least a 3-month period. Alternatively sodium formaldehyde bisulfite (Eastman Kodak Company, Cat. No. P6450) can be used as a primary standard (Reference 11d). Dissolve 4.4703 g in distilled water and dilute to 1 liter.

d. Formaldehyde standard solution "B" (10 $\mu\text{g}/\text{ml}$). Dilute 1 ml of standard solution "A" to 100 ml with distilled water. Make up fresh daily.

e. Iodine, 0.1 N (approximate). Dissolve 25 g of potassium iodide in about 25 ml of water, add 12.7 g of iodine and dilute to 1 liter.

f. Iodine, 0.01 N. Dilute 100 ml of the 0.1 N iodine solution to 1 liter. Standardize against sodium thiosulfate.

g. Starch solution, 1 Percent. Make a paste of 1 g of soluble starch and 2 ml of water and slowly add the paste to 100 ml of boiling water. Cool, add several ml of chloroform as a preservative, and store in a stoppered bottle. Discard when a mold growth is noticeable.

h. Sodium carbonate buffer solution. Dissolve 80 g of anhydrous sodium carbonate in about 500 ml of water. Slowly add 20 ml of glacial acetic acid and dilute to 1 liter.

i. Sodium bisulfite, 1 Percent. Dissolve 1 g of sodium bisulfite in 100 ml of water. It is best to prepare a fresh solution weekly.

8. Procedure.

a. Cleaning of equipment. Care must be exercised to ensure the absence of probable contaminants like organic materials that can be charred by concentrated sulfuric acid. Soaking glassware for one hour in a 1:1 mixture of nitric and sulfuric acids, followed by thorough rinsing with double-deionized water will remove all possible organic contaminants.

b. Collection and shipping of samples.

(1) Pour 20 ml of the absorbing solution (distilled water) into each graduated midget impinger.

(2) Connect two impingers in series to the vacuum pump (via the absorption tube) and the prefilter assembly (if needed) with short pieces of flexible tubing. The minimum amount of tubing necessary to make the joint between the prefilter and impingers should be used. The air being sampled should not be passed through any other tubing or other equipment before entering the impingers.

(3) It has been recommended that two impingers must be used in series because under conditions of sampling, the collection efficiency of only one impinger is approximately 80 percent. With two impingers in series the total collection efficiency is approximately 95 percent. The contents of each impinger should be analyzed separately.

(4) Turn on pump to begin sample collection. Care should be taken to measure the flow rate, time and/or volume as accurately as possible. The sample should be taken at a flow rate of 1 lpm for one hour. (References 11.a, 11.e). These conditions give a total of 60 liters of air that is drawn through the system. However, a shorter sampling time can be used providing enough formaldehyde is collected to be above the lower limit of sensitivity of the method.

(5) After sampling, the impinger stem can be removed and cleaned. Tap the stem gently against the inside wall of the impinger bottle to recover as much of the sampling solution as possible. Wash the stem with a small amount (1-2 ml) of unused absorbing solution and add the wash to the impinger. Then the impinger is sealed with a hard- non-reactive stopper (preferably Teflon). Do not seal with rubber. The stoppers on the impingers should be tightly sealed to prevent leakage during shipping. If it is preferred to ship the impingers with the stems in, the outlets of the stem should be sealed with Parafilm or other non-rubber covers, and the ground glass joints should be sealed (i.e., taped) to secure the top tightly.

(6) Care should be taken to minimize spillage or loss by evaporation at all times. Refrigerate samples if analysis cannot be done within a day.

(7) Whenever possible, hand delivery of the samples is recommended. Otherwise, special impinger shipping cases designed by NIOSH should be used to ship the samples.

(8) A "blank" impinger should be handled as the other samples (fill, seal and transport) except that no air is sampled through this impinger.

c. Analysis.

(1) Transfer the sample from each impinger to either a 25 ml- or 50 ml-graduate. Note the volume of each solution.

(2) Pipet a 4 ml aliquot from each of the sampling solutions into glass stoppered test tubes. A blank containing 4 ml of distilled water must also be run. If the formaldehyde content of the aliquot exceeds the limit of the method, a smaller aliquot diluted to 4 ml with distilled water is used.

(3) Add 0.1 ml of 1 percent chromotropic acid reagent to the solution and mix.

(4) To the solution pipette slowly and cautiously 6 ml of concentrated sulfuric acid. The solution becomes extremely hot during the addition of the sulfuric acid. If the acid is not added slowly, some loss of sample could occur due to spattering.

(5) Allow to cool to room temperature. Read at 580 nm in a suitable spectrophotometer using a 1 cm cell. No change in absorbance was noted over a 3 hour period after color development. Determine the formaldehyde content of the sampling solution from a curve previously prepared from standard formaldehyde solutions.

(6) During the analysis procedure, it is good practice to group together the two impingers from each sampling series and label them as "A" and "B." The formaldehyde content calculated in "A" is added to that calculated in "B" to give the total amount in the sampled atmosphere by the impingers in series.

9. Calibration and standards.

a. Standardization of formaldehyde solution.

(1) Pipette 1 ml of formaldehyde standard solution "A" into an iodine flask. Into another flask pipette 1 ml of distilled water. This solution serves as the blank.

(2) Add 10 ml of 1 percent sodium bisulfite and 1 ml of 1 percent starch solution.

(3) Titrate with 0.1 N iodine to a dark blue color.

(4) Destroy the excess iodine with 0.05 N sodium thiosulfate.

(5) Add 0.01 N iodine until a faint blue end point is reached.

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PROPOSED RULES

(6) The excess inorganic bisulfite is now completely oxidized to sulfate, and the solution is ready for the assay of the formaldehyde bisulfite addition product.

(7) Chill the flask in an ice bath and add 25 ml of chilled sodium carbonate buffer. Titrate the liberated sulfite with 0.01 N iodine, using a micro-burette, to a faint blue end point. The amount of iodine added in this step must be accurately measured and recorded.

(8) One ml of 0.0100 N iodine is equivalent to 0.15 mg of formaldehyde. Therefore, since 1 ml of formaldehyde standard solution was titrated, the ml of 0.01 N iodine used in the final titration multiplied by the factor, 0.15, gives the formaldehyde concentration of the standard solution in mg/ml.

(9) The factor, 0.15, must be adjusted or determined accordingly on the basis of the exact normality of the iodine solution.

b. Preparation of standard curve.

(1) Pipet 0, 0.1, 0.3, 0.5, 0.7, 1.0, and 2.0 ml of standard solution "B" into glass stoppered test tubes.

(2) Dilute each standard to 4 ml with distilled water.

(3) Develop the color as described in the analysis procedure (Section 8c).

(4) Plot absorbance against micrograms of formaldehyde in the color developed solution. Note that the microgram concentration of the formaldehyde is determined based on the standardization value of solution A.

10. Calculations.

a. Convert the volume of air sampled (V) to the volume of air at standard conditions (V_3) of 760 mm of mercury and 25°C, using the correction formula:

$$V_3 = V \times \frac{P}{760} \times \frac{298}{(T + 273)}$$

where:

- V_3 = volume of air in liters at standard conditions
- V = volume of air sampled in liters
- P = barometric pressure in mm of mercury
- T = temperature of sample air, °C

b. Determine the total concentration (C_t) of formaldehyde present in the two sample impingers in series, A and B.

$$C_t = C_A \times F_A + C_B \times F_B$$

where:

- C_t = total μg of formaldehyde in the sample
- C_A and C_B = respective formaldehyde concentration in μg of the sample aliquots taken from impingers A and B as determined from the calibration curve

$$F_A \text{ and } F_B = \text{respective aliquot factor; } \frac{\text{sampling soln. vol in ml}}{\text{ml aliquot used}}$$

c. The concentration of formaldehyde in the sampled atmosphere may be calculated by using the following equation, assuming standard conditions are taken as 760 mm of mercury and 25°C:

$$\text{ppm (volume)} = \frac{C_t \times 24.47}{V_s \times \text{M.W.}}$$

where:

- V_s = Liters of air sampled at standard conditions
- M.W. = molecular weight of formaldehyde (30.03)
- 24.47 = μl of formaldehyde gas in one micromole at 760 mm Hg and 25°C.

11. References.

- a. Altshuller, A. P.; L. J. Leng; and A. F. Wartburg, "Source and Atmospheric Analyses for Formaldehyde by Chromotropic Acid Procedure," *Int. J. Air Wat. Poll.*, 6, 381 (1962).
- b. Eegriwe, E., "Reaktionen and Reagenzien zum Nachweis Organischer Verbindungen IV," *Z Anal Chem*, 110, 22 (1937).
- c. Feigl, F., *Spot Tests in Organic Analysis*, Seventh Ed., American Elsevier Publishing Company, New York, 434, (1966).
- d. Feldstein, M. (Bay Area Air Pollution Control District) Personal Communication, March 1968.
- e. MacDonald, W. E., "Formaldehyde in Air—A Specific Field Test," *Amer Ind Hyg Assoc Quarterly*, 15, 217 (1954).
- f. Sleva, S. F., "Determination of Formaldehyde: Chromotropic Acid Method. Selected Methods for the Measurement of Air Pollutants," Public Health Service Publication No. 999-AP-11, H-1, 1965.
- g. Treadwell and Hall, *Analytical Chemistry*, Vol. II, Ninth English Edition. John Wiley & Sons, Inc., New York, p. 590, 1951.
- h. Treadwell and Hall, *Analytical Chemistry*, Vol. II, Ninth English Edition. John Wiley & Sons, Inc., New York, p. 588, 1951.

Minnesota Higher Education Coordinating Board Office of the Executive Director

Proposed Amendments to the Rules Governing the Scholarship and Grants-in-aid; Private College Contract; State Work-study; Minnesota Medical and Osteopathic Loan; Minnesota Foreign Student Assistance; Veterans' Dependents Student Assistance; Part-time Student Grant; Private Institution Registration; and Area Vocational-Technical Institute Tuition Subsidy Programs

Notice of Hearing

Notice is hereby given that a public hearing in the above-titled matter will be held in Conference Room A, Capitol Square Building, 550 Cedar St., St. Paul, Minnesota 55101 on July 28, 1980, commencing at 8:30 a.m.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written materials may be submitted by mail to: Peter C. Erickson, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8118. Unless a longer period not to exceed twenty calendar days is ordered by the hearing examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The hearing shall be conducted in accordance with the rules of the Office of Hearing Examiners, 9 MCAR § 2.101 et seq., Minn. Stat. §§ 15.411-15.0417 and 15.052.

The proposed amendments, if adopted, would bring the rules relevant to the programs listed in the caption into conformance with statutory changes made during the 1979 Legislative Session and would clarify certain rules which have led to confusion heretofore.

Copies of the proposed amendments are now available and

one free copy may be obtained by writing to Mary Samoszuk, Minnesota Higher Education Coordinating Board, Suite 400 Capitol Square, 550 Cedar Street, St. Paul, Minnesota 55101.

The statutory authority to promulgate the amendments is contained in Minn. Stat. §§ 136A.111, 136A.16, 136A.21, 136A.234, 136A.236, 136A.70 (1978).

Notice: The proposed rules are subject to change as a result of the rules hearing process. The agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the hearing process.

Please be advised that pursuant to Minn. Stat. § 10A.03, subd. 1 (1978), as amended by Laws of 1979, § 3, lobbyists must register with the State Ethical Practices Board within five (5) days after becoming lobbyists.

“Lobbyist” means any individual:

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

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

“Lobbyist” does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony;

(f) Stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over \$250, excluding *his own* travel expenses, in any year in communicating with public officials; or

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.”

PROPOSED RULES

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5615.

Notice is hereby given that 25 days prior to a hearing, a Statement of Need and Reasonableness will be available for review at the Minnesota Higher Education Coordinating Board office and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the Minnesota Higher Education Coordinating Board at the hearing justifying the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Minnesota Higher Education Coordinating Board may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Minnesota Higher Education Coordinating Board. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report), or to the Minnesota Higher Education Coordinating Board, (in the case of the agency's submission or resubmission to the Attorney General).

Clyde R. Ingle, Executive Director
Minnesota Higher Education
Coordinating Board

Amendments as Proposed

Chapter One: 5 MCAR §§ 2.0101-2.0108

5 MCAR § 2.0102 Definitions.

F. "BEOG" or the Basic Educational Opportunity Grant is the major federal grant available to post-secondary students.

G. "Undergraduate" shall be any full-time post-secondary student enrolled for a maximum of eight semesters or 12 quarters, or their equivalent, for the completion of a baccalaureate degree. For purposes of the Minnesota Scholarship and Grants-in-Aid Program, a student is no longer an "undergraduate" after obtaining a baccalaureate degree or after completing the number of semesters or quarters herein specified, whichever occurs first.

H. "Uniform methodology" is a nationally recognized standard, established by the United States Department of Education, which provides educational institutions with a uniform and systematic method of determining an applicant's need for financial assistance from various financial aid programs.

5 MCAR § 2.0103 Definition of eligible applicants.

A. Applicants eligible for initial scholarship awards as provided for in statutes shall include:

1. Those who will enter an eligible institution as beginning full-time first-year students ~~notwithstanding~~ without any previous post-secondary education.

B. Applicants eligible for initial grant-in-aid awards as provided for in statutes shall include:

~~2. Those who will attend an eligible institution as full-time second year students who did not receive a scholarship or grant-in-aid for their first year of post-secondary education.~~

~~3. Those students who will have completed at least one academic year of study in an eligible community or junior institution at the time of transfer to an eligible senior institution as full-time students and who have not previously received a scholarship or a grant-in-aid.~~

1. Any full-time undergraduate student who will attend an eligible institution and has not previously received a scholarship or grant-in-aid.

2. 4. Those who will be enrolled in an eligible institution in a nursing education program leading to licensure as a registered nurse or a licensed practical nurse, as defined in Minn. Stat., § 148.171 et. seq. (1976).

~~C.B.~~ Applicants eligible for renewals as provided for in statutes shall include those who have previously qualified for and been acknowledged by the eligible institution as having received a scholarship or grant-in-aid.

5 MCAR § 2.0104 Determination of financial need. The determination of financial need shall take into account educational costs and ~~shall be made by the American College Testing Program, Iowa City, Iowa,~~ expected parental and student contribution, as determined by a uniform methodology needs analysis, subject to the review and approval of the board.

5 MCAR § 2.0105 Determination of residency requirements.

A. Applicants who reside with, receive support from, or are claimed as tax exemptions by their parents or guardians in the years prior to, or during, ~~or following~~ the academic year for which application is made shall be considered to be domiciled with such parents or guardians and a resident of the state where so domiciled.

5 MCAR § 2.0106 B. All grant-in-aid candidates shall be ranked according to their available financial resources, or their ability to pay for necessary expenses incurred in pursuing full-time study at an eligible institution on the basis of information provided to the Board ~~by the American College Testing Program,~~ through use of a uniform methodology needs analysis. Stipends in amounts so determined ~~by the financial needs analysis described in 5 MCAR § 2.0104~~ shall be assigned to candidates on the grant-in-aid list in ascending order of their available financial resources or their ability to pay for education costs until available funds are exhausted.

5 MCAR § 2.0107 Nature of scholarship and grants-in-aid.

A. Financial stipends accompanying scholarship and grant-in-aid awards shall be those prescribed by Statutes, ranging from a minimum of \$100 to a maximum of ~~\$1,100~~ \$1,250 in the 1980-81 school year and \$1,400 in the 1981-82 school year and subsequent school years but shall not exceed one-half of the applicant's demonstrated financial need. In those cases where the combination of the Basic Educational Opportunity Grant for which an applicant is eligible and the state scholarship or grant-in-aid for which the applicant is eligible exceeds 75% of the applicant's demonstrated financial need, the state scholarship or grant-in-aid shall be reduced so that the combination of the two awards does not exceed 75% of the applicant's demonstrated financial need. The state scholarship or grant-in-aid will be further reduced if additional gift assistance, in combination with the Basic Educational Opportunity Grant and the state scholarship or grant-in-aid, exceeds 100% of the applicant's demonstrated financial need.

Chapter Two: 5 MCAR §§ 2.0201-2.0300

5 MCAR § 2.0202 Definitions.

B. "Program of studies" as set forth in § 136A.19, subd. 5, means:

1. a program leading to an associate, bachelor, master, specialist, or first professional degree or to a diploma;
2. ~~+~~ a program of at least one academic year in duration; and
3. ~~+~~ a program which, although it may provide for the scholarly study of religion as a discipline of knowledge in a manner similar to that provided for any field of study, does not require a student
 - a. to take courses based upon a particular set of religious beliefs,
 - b. to receive instruction intended to propagate or promote any religious beliefs,
 - c. to participate in religious activities,
 - d. to maintain affiliation with a particular church or religious organization, or
 - e. to attest to any particular religious beliefs.

C. "Full-time student" as set forth in § 136A.20, shall be a full-time student as defined by the institution and shall be enrolled during the fall term in an approved program of studies for at least 12 credit hours or its equivalent in an associate, baccalaureate, or first professional degree programs and in or diploma programs of two or more years or for 9 credit hours or its equivalent in a master's and/or specialist's degree programs.

D. "First professional degree" shall be the first degree required of professionals, as defined in Minn. Stat. § 319A.02, subd. 3 (1978), and of those entering professional services, as defined in Minn. Stat. § 319A.02, subd. 2, (1978).

5 MCAR § 2.0207 Certification of the number of eligible students. The chief executive officer of each institution contracting with the board under the terms of §§ 136A.18 to 136A.22 shall certify as of the tenth class day of the fall term the exact number of Minnesota residents then enrolled in approved programs. specifying The Executive Director of the board shall specify which Minnesota residents are grant-in-aid recipients and which Minnesota residents are not grant-in-aid recipients. Each institution shall provide such accounting information used in determining eligible students as may from time to time be required by the board.

Chapter Three: 5 MCAR §§ 2.0301-2.0310

5 MCAR § 2.0302 Definitions.

E. "Financial need" shall be the amount of monetary assistance necessary for the student to meet post-secondary education costs but in no event shall exceed ~~an amount equal to the amount of loan on which the student would be eligible to receive interest benefits from the Guaranteed Student Loan Program as determined by the school of attendance~~ the amount of financial need calculated through use of a uniform methodology by the educational institution, plus an amount to replace expected family contributions. Written documentation supporting the decision of the financial aid officer to replace any portion of the family contribution with a state work-study award must appear in the student's file maintained by the financial aid officer at the educational institution.

J. "Minnesota resident" shall be defined as a person who either:

1. is dependent upon the financial support of his parents or guardians who reside in and are legal residents of the State of Minnesota at the time of his application for a loan, or
2. is independent of his parental or guardians' financial support and has resided in Minnesota for not less than twelve consecutive months immediately prior to his application for work-study.

K. "Uniform methodology" is a nationally recognized standard, established by the United States Department of Education, which provides educational institutions with a uniform and systematic method of determining an applicant's need for financial assistance from various financial aid programs.

Chapter Four: 5 MCAR §§ 2.0401-2.0407

5 MCAR § 2.0404 Delegation of authority. The Executive Director of the board is hereby delegated the authority and

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PROPOSED RULES

responsibility for administration of the Minnesota Medical and Osteopathy Loan Program in accordance with these rules and state laws, for issuance of public information, designing of application forms, prescribing of procedures for submission of applications for loans and for the selection of qualified recipients of loans provided by the terms of this act.

5 MCAR § 2.0405 E. After the recipient of a loan provided by this act has been certified by the State Board of Medical Examiners as qualified to practice medicine or osteopathy in Minnesota, he may, upon proper application to the ~~board~~ Executive Director, be granted deferment of his obligation for a period not exceeding four (4) years for the purpose of advanced specialized study or for service in the armed forces of the United States.

Chapter Six: 5 MCAR §§ 2.0601-2.0607

5 MCAR § 2.0604 A. Each ~~eligible~~ eligible institution shall be authorized and be responsible for informing any foreign student who receives funds or residency status pursuant to the program that the funds are provided initially as a loan and will not be converted to a grant until the student submits evidence that the student has returned to his home country within one year of completion of the student's education and has not returned to the United States for five years as a permanent resident.

5 MCAR § 2.0604 E. Any loan and interest amounts collected by any institution under 5 MCAR § 2.0603 B. of the Program shall revert back to the board.

Chapter Seven: 5 MCAR §§ 2.0701-2.0800

5 MCAR § 2.0701 Purpose. The purpose of the chapter is to augment ~~laws of 1974, ch. 496, §2, subd. 2 and 3,~~ Minn. Stat. §§ 197.09-197.11 establishing a state program of financial assistance for dependents of Prisoners of War and Persons Missing in Action by providing standards, criteria, rules and regulations therefor.

5 MCAR § 2.0702 A. "Minnesota Veterans' Dependents Student Assistance Program" is the state program of financial assistance for post-secondary students as defined in ~~Laws of 1974, ch. 496, §2, subd. 2 and 3,~~ Minn. Stat. §§ 197.09-197.11, hereinafter referred to as the program.

D. "Private Minnesota institution" shall be defined as any Minnesota institution of higher education or any Minnesota technical or vocational school which is eligible under the State Student Loan Program as defined in ~~Laws of 1973, ch. 605,~~ Minn. Stat. § 136.15, and which is not included under 5 MCAR § 2.0702 C.

F. "Dependent" (as defined used in ~~Laws of 1974, ch. 496,~~ Minn. Stat. §§ 197.07-197.11.) shall be the spouse of a P.O.W. or P.M.I.A., or any child born before or during the period of time his parent served as a P.O.W. or was declared a P.M.I.A., or any child legally adopted or in the legal custody of the parent prior to or during the time the parent served as P.O.W. or was declared to be a P.M.I.A. Once a person qualifies as a dependent under the terms and provisions of ~~Laws of 1974, ch. 496,~~ Minn. Stat. §§ 197.07-197.11, there shall be no situation such

as the return of the father or the reported death of the father that will remove the dependent from provisions or benefits of this law.

Chapter Eight: 5 MCAR §§ 2.0801-2.0806

5 MCAR § 2.0801 Purpose. The purpose of this chapter is to augment ~~Laws of 1977, ch. 384, §17 and 18, as amended,~~ to be codified as Minn. Stat. §§ 136A.132 *et. seq.*, establishing a state program of part-time student grants by providing standards, criteria, rules and regulations therefor.

5 MCAR § 2.0802 B.1.a. Applicants who reside with, receive support from, or are claimed as tax exemptions by their parents or guardians in the years prior to, or during, or following the academic year for which application is made shall be considered to be domiciled with such parents or guardian and a resident of the state where so domiciled.

5 MCAR § 2.0803 Determination of financial need. ~~Each~~ Annually each eligible institution shall be required to solicit demographic, educational and financial data from eligible students requesting funds under this program as specified by the Board prior to each academic year for the purpose of determining financial need. Annually, all eligible institutions shall make available upon request of the Board reports of all such data collected. Determination of financial need shall be based on base year income. In the following circumstances, estimated year income may provide the basis for determination of financial need if:

5 MCAR § 2.0803 D. A parent or an eligible student has become separated or divorced during the estimated year; or

Chapter Nine: 5 MCAR §§ 2.0901-2.1000

5 MCAR § 2.0901 Purpose. The purpose of this chapter is to provide for the registration of private and non-Minnesota public post-secondary institutions and the approval of degrees to be granted and names to be used under Minn. Stat. §§ 136A.61-136A.71.

5 MCAR § 2.0902 C. "School" means: any individual, partnership, company, firm, society, trust, association, corporation or any combination thereof operating or doing business in Minnesota which (1) is, owns or operates a private, non-profit post-secondary education institution, (2) provides a post-secondary instructional program or course leading to a degree whether or not for profit, (3) is, owns or operates a private post-secondary education institution which uses the term "academy", "college", "institute", or "university" in its name or advertising or (4) operates for profit and provides programs or courses which are intended to allow an individual to fulfill in part or totally the requirements necessary to maintain a license to practice an occupation. "School" shall also mean any public post-secondary educational institution located in another state or country outside Minnesota which offers or makes available to a Minnesota resident any course, programs or educational activity which does not require the leaving of the state for its completion; courses within Minnesota;

5 MCAR § 2.0902 D. "Schools located outside Minnesota which offer programs or courses within Minnesota" in Minn. Stat. § 136A.63 means: schools located outside Minnesota which offer any ~~course~~, program or educational activity which is available to residents of Minnesota and which does not require them to leave the state for the ~~completion~~ major portion of such;

Chapter Ten: 5 MCAR §§ 2.1001-2.1008

5 MCAR § 2.1001 Purpose. The purpose of this chapter is to augment ~~Laws of 1977, ch. 447, Article 5, § 11, to be codified as Minn. Stat. § 136A.236~~, establishing a state program of tuition subsidies for students in attendance at Minnesota area vocational-technical institutes by providing standards, criteria, rules, and regulations therefor.

5 MCAR § 2.1002 B. "Eligible student" shall be any student:

1. who is granted admission to and enrolled in good standing or accepted for enrollment in an eligible institution at the time of application to the tuition subsidy program;

2. ~~who is under 21 years of age at the time of application to the tuition subsidy program;~~

3. ~~who is under 21 years of age for some portion of the fiscal year during which the tuition subsidy will be utilized;~~

2.4. who qualifies for payment of resident tuition at the eligible institution pursuant to the then-current State Board of Education rules pertaining to vocational-technical education (those qualifying for resident tuition reciprocity agreements are not eligible) and,

3.5. ~~who is not receiving~~ who has not been awarded a Minnesota State Scholarship or Grant-in-Aid for the period of attendance for which the tuition subsidy has been awarded.

5 MCAR § 2.1002 C. "Educational costs" shall include tuition and ~~processing~~ required fees, room and board, books and miscellaneous expenses as applicable for each educational program as approved by the Board in an annual budget survey of all eligible institutions, defined on a nine month basis in 5 MCAR § 2.0102 E., prorated on a monthly basis for the actual number of months in the student's academic program for the fiscal year.

K. "Uniform methodology" is a nationally recognized standard, established by the United States Department of Education, which provides educational institutions with a uniform and systematic method of determining an applicant's need for financial assistance from various financial aid programs.

5 MCAR § 2.1003 F. Payment of tuition may be deferred The student may defer tuition payment during the application process. Applicants receiving tuition subsidy shall be responsible, upon notification of such subsidies, for all tuition which accrued during the application process and which is not subsidized by the subsidy. Applicants not receiving tuition subsidies may, upon

notification of denial, promptly withdraw from the eligible institution and be forgiven all tuition which accrued during the application process. Applicants not receiving tuition subsidies who choose not to withdraw from the eligible institution shall be responsible for all tuition which accrued during the application process.

G. Recipients of tuition subsidies who subsequently receive payment of a Minnesota State Scholarship or Grant in Aid award for the same period of attendance for which the tuition subsidy was awarded shall be responsible for reimbursing the eligible institution for all tuition subsidized through the tuition subsidy program. Recipients of a Minnesota State Scholarship or Grant-in-Aid are eligible for tuition subsidies only for enrollment periods in their educational programs which do not coincide or overlap with the period for which they have been awarded a Minnesota State Scholarship or Grant-in-Aid.

5 MCAR § 2.1004 A. The determination of family contribution shall be made, subject to review and approval of the board, by a nationally recognized student financial assistance service utilizing ~~either a uniform methodology, including that approved by the United States Office of Education, or the Basic Educational Opportunity Grant needs analysis.~~

Peace Officer Standards and Training Board

Proposed Amendments to Rules Relating to the Licensing of Peace Officers, Part-time Officers and Constables

Notice of Hearing

A public hearing concerning the proposed rule amendments will be held at the State Office Building, 435 Park Street, Room 83, Saint Paul, Minnesota, on Thursday, July 24, 1980, commencing at 9:00 a.m. The proposed rule amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments, you are urged to participate in the rule hearing process.

Following the presentation of the Peace Officer Standards and Training Board (POST) at the hearing, all interested (or affected) persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or materials may be submitted to Jon Lunde, Office of the Hearing Examiners, 1745 University Avenue, Room 300, Saint Paul,

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Minnesota 55104, (612) 296-6910, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the POST Board and at the Office of the Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The proposed rule amendments would eliminate the prelicense probationary period for peace officers and would allow provisional licenses to be issued to part-time officers and constables.

The POST Board's authority to promulgate the proposed rule amendments is contained in Minn. Stat. §§ 626.84 to 626.855 (1980).

The agency estimates that there will be no cost to local public bodies in the state to implement the amendments immediately following their adoption, within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the proposed rule amendments are now available, and one free copy may be obtained by writing POST Board, 500 Metro Square Building, Saint Paul, Minnesota 55101, telephone (612) 296-2620. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendments, contact the POST Board.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spend more than five hours in any month or more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or

administrative action by communicating or urging others to communicate with public officials; or

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

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

June 3, 1980

Mark K. Shields
Executive Director

Amendments as Proposed

4 MCAR § 13.002 Construction of terms.

A. Definitions. For the purpose of these rules the words, terms and phrases shall have the meanings hereafter given them, unless another intention clearly appears.

22. Part-time officer: as defined in Minn. Stat. § 626.84, Subd. 1 (f).

4 MCAR § 13.006 Licensing of peace officers.

E. Students shall furnish the board proof of successful completion of one of the following approved first aid courses:

1. Red Cross advanced first aid;
2. Crash Injury Management (CIM); or
3. Emergency Medical Technician (EMT).

The first aid course shall be successfully completed prior to ~~termination of the prelicense probationary period.~~ the issuing of the license.

I. Upon successful completion of both portions of the peace officer licensing examination, a student shall be certified eligible for employment as a peace officer for a period of not more than one year. Any student who obtains employment as a peace officer shall be issued a license upon successful completion of a one-year probationary period with a single agency. ~~Notification of successful completion of the probationary period shall be furnished to the board by the appropriate appointing authority.~~

J. ~~Any unlicensed peace officer who successfully completes a basic course pursuant to these rules and who successfully completed a one-year probationary period with a single agency calculated from the date of successful completion of the basic course, shall be licensed as a peace officer by the board provided that the peace officer successfully completes the licensing examination within that period of time.~~

J. An individual elected or appointed to the position of peace officer in the State of Minnesota shall be granted a license upon successful completion of a basic course and successful completion of the peace officer licensing examination.

M. Any peace officer who is certified and employed in good

standing in another state shall be eligible for licensing in Minnesota provided that he:

1. successfully completes a peace officer licensing examination pursuant to 4 MCAR § 13.006 K.; and
2. is employed within the State of Minnesota and complies with the provisions of 4 MCAR 13.020 B.; and
3. ~~successfully completes a probationary period with a single agency of not less than one year.~~

4 MCAR § 13.014 Provisional part-time officer/constable license.

A. An individual elected or appointed to the position of part-time officer or constable by a political subdivision shall be granted a provisional part-time officer/constable license.

B. Provisional license granted upon appointment:

1. Will expire six months after date of appointment unless the board receives notice of compliance with Minn. Stat. 626.8463 (a).
2. Will expire in 12 months unless the board receives notice of compliance with Minn. Stat. 626.8463 (b).
3. Will expire in 24 months unless the board receives notice of compliance with Minn. Stat. 626.8463 (c).
4. Upon receipt of notice of compliance with Minn. Stat. 626.8463 (a) to (c), the board shall issue a permanent part-time officer license to the part-time officer or shall issue a license to a constable valid for the constable's present and successive terms of office.

Department of Public Welfare

Mental Retardation Division

Proposed Amendments to Rule 12 MCAR § 2.185 which Governs the Planning and Provision of Services to Mentally Retarded People by Community Mental Health, County Welfare and Human Service Boards

Notice of Hearing

A public hearing concerning the proposed amendments to 12 MCAR § 2.185 will be held at Conference Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue,

St. Paul, Minnesota, on Monday, July 28, 1980, commencing at 9:00 a.m. The proposed amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Richard Luis, Hearing Examiner, 1745 University Avenue, Room 300, St. Paul, MN 55104 (612) 296-8114, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed and amended rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The provisions of the current rule establish standards for the planning and provision of services to mentally retarded people by Community Mental Health, County Welfare and Human Service Boards in Minnesota. Financial resources available to these local agencies shall be expended in accordance with Rule 185 (12 MCAR § 2.185) standards, but the rule does not require expenditure of money not available to the agencies for mental retardation (MR) services.

The rule includes a section which defines terms used in the rule, establishes standards for the provision of services that includes normalizing life experiences, placement in the least restrictive alternatives, provision of developmental opportunities. Standards also include the development of an individual service plan based on assessment of need, provision of support services in the home and community. When placement in a residential facility is needed to accomplish individual goals, placement in a state hospital is authorized when the person cannot be served at home or in a community residential facility.

The rule assigns certain responsibilities to local social service agencies (County Welfare or Human Service Boards), and community mental health agencies (Community Mental Health Boards or Human Service Boards):

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PROPOSED RULES

1) Local social service agencies (LSSAs) are responsible for case management of all clients who are or may be mentally retarded. Case management includes diagnosis (and periodic review of diagnosis), assessment of client needs and development of individual services plans in cooperation with client and parent or guardian. Provision is made for implementing the individual service plan, periodic evaluation and payment for services. When placement is made, it must be for the purpose of carrying out the individual plan, and acceptance of a client by a service provider constitutes agreement that the goals of the plan can be carried out. When such placement is made in another county, arrangements must be made with the LSSA in that county.

Counseling is provided as needed to the client, his parents or guardian. The responsible LSSA may request assistance of the local mental health center in providing counseling and psychological and psychiatric diagnostic evaluation of mentally retarded clients.

2) Community mental health (CMH) boards are responsible for the planning and development of services to the mental retardation population in the area served by the CMH board. The mental health boards shall involve local community groups in identifying available services, and in establishing priority for the development of those services needed but not available. The CMH board is required, under Minn. Stat. § 245.68 (1979 Supp.), to appoint an advisory committee in mental retardation, and to submit a letter of recommendation to the commissioner prior to determination of need, location and program for programs and services to be licensed by the commissioner. The provisions of the proposed amendments to Rule 185 (12 MCAR § 2.185) are intended to:

1) Designate the county boards of commissioners or human service boards (county boards) as the responsible local board for adherence to the rule. Such changes in responsibility are legislatively mandated under provisions of the recently enacted Community Social Services Act (CSSA), Chapter 324, Laws of 1979. The CSSA allows the county boards to make certain grants for the provision of community social services to mentally retarded persons. When grants are made by the county board, the recipient is subject to standards of the rule.

2) Designate certain need determination responsibilities to:

a) The County Board. The County Board is required to submit need assessment data and recommendation concerning local needs of the MR population to the commissioner.

b) The Commissioner of Public Welfare, who makes the final determination of need as provided in Minn. Stat. § 252.28 (1978). The criteria for such determination includes information and recommendation from the county board, and also the standards for provision of services contained in the rule. Other considerations concern size and costs of the proposed facility or service.

3) Consider other changes, including wording changes, to accomplish the purposes of the CSSA and to clarify the rule. Additionally, the definition of persons who may be mentally retarded has been expanded.

4) Paragraph E. of the current rule regarding service categories has been eliminated in favor of a single standard definition of community social services. This is intended to combine mental retardation services categories with other disability groups and Title XX Social Service definitions.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. §§ 245.61 to 245.69 (1979 Supp.), 252A.01 to 252A.21 (1978), 253A.01 to 253A.21 (1978 and 1979 Supp.), 256E.01 to 256E.12 (1979 Supp.), 252.28, Subd. 1 (1978), 393.07 (1978 and 1979 Supp.), and Minn. Stat. §§ 245.781 to 245.812 (1978 and 1979 Supp.).

The agency estimates that costs to local public bodies in the state to implement the rule will not exceed \$100,000 in either of the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, Subd. 7 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ardo Wrobel, Mental Retardation Division, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-2682. Additional copies will be available at the hearing. If you have any questions on the content of the proposed amendments, contact Mr. Wrobel.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 (1979 Supp.), as any individual:

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

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

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

June 3, 1980

Arthur E. Noot
Commissioner of Public Welfare

Amendments as Proposed

DPW 185 12 MCAR 2.185 Community Mental Health Board and County Board Welfare or Human Service Board Responsibilities to Individuals Who Are or May Be Mentally Retarded.

A. Introduction.

1. This rule is promulgated pursuant to Minn. Stat. §§ 245.61 to 245.69, 252A.01 to 252A.21, 253A.01 to 253A.21, 256E.01 to 256E.12, 252.28, 393.07, and Minn. Stat. §§ 245.781 to 245.812.

2. This rule governs the planning and provision of services to all individuals who are or may be mentally retarded. In addition, provisions of Minn. Stat. § 252A.01 to Minn. Stat. § 252A.21, Mental Retardation Protection Act, are applicable to those mentally retarded persons under guardianship or conservatorship of the commissioner. All financial resources available to agencies affected by this rule for the mentally retarded shall be expended in accordance with this rule. This rule shall not be construed as requiring expenditures of money that is not made available by the county board for mental retardation services.

3. The purpose of this rule is to establish minimum service standards for county boards and human service boards in the provision of case management and the planning, coordination and development of services for all individuals who are or may be mentally retarded.

4. Definitions

a. Case management: The provision of direct services to and with the involvement of the client, which includes diagnosis, assessment of client needs and development of an individual service plan, implementation of the individual service plan, evaluation and payment for services when the individual, or parent of a child under 18 years of age, is unable or not required to pay. When the client is a ward of the commissioner, the provisions of Minn. Stat. §§ 252A.01 to 252A.21 are also applicable.

b. Client: A child or adult who is or may be mentally retarded and in need of services as provided in this rule.

c. Commissioner: The Commissioner of Public Welfare and includes any duly authorized representative of the commissioner.

d. Community mental health board: ~~Local area board or human service board which receives grant-in-aid from the state agency, to plan for and facilitate programs in mental retardation and assure delivery of services.~~

The local board established under Minn. Stat. § 245.66 and authorized by the county board to facilitate and implement mental retardation programs and services. If no such board is

established by the county board, then the county board itself shall assume the responsibilities of a community mental health board.

e. County board: That body of duly elected officials responsible for the governance of its county under the authority of Minn. Stat. §§ 375.02 to 375.55. Where a human service board has been established under Minn. Stat. §§ 402.02-402.10, it shall be considered to be the county board, for purposes of this rule.

f. Day facility: ~~Placement less than 24 hours per day outside the home which provides~~ Out-of-home setting licensed to provide training in self-care, remedial, developmental, or social skills-, on a regular basis for periods of less than 24 hours per day.

g. Local social service agency: ~~A local local agency under the authority of the county welfare board designated and authorized by the County Board or human service board which is, the Human Service Board, responsible for social services and income maintenance.~~ to be responsible for providing social services.

h. Mentally retarded person: A mentally retarded person refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and manifested during the developmental period.

(1) Intellectual functioning shall be assessed by one or more of the professionally recognized standardized tests developed for that purpose: significantly subaverage refers to performance which is approximately two or more standard deviations from the mean or average of the tests.

(2) Adaptive behavior shall be determined through the use of published scales, or by a combination of pertinent test data, professional observations, and the utilization of all available sources of information regarding the person's behavior which indicates the effectiveness or degree with which the individual meets the standards of personal independence and social responsibilities expected of his/her age and peer cultural group.

i. Person who may be mentally retarded:

(1) A child under 18 years of age whose behavior demonstrates significant deficits in adaptive behavior concurrently with subaverage intellectual functioning, who is in the process of diagnosis, or for various reasons, a diagnosis cannot be determined or for who a diagnosis may not be advisable because of age.

(2) An adult 18 years of age or older who has not been diagnosed as mentally retarded during the developmental period of his life, and who, for reasons of physical condition or

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trauma, has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior such as to require supervision and protection for his welfare.

j. Program: A formal continuum of care that is a culturally relevant and coordinated combination of services, with clear goals and measurable objectives. A program is directed toward meeting the needs of one specified disability group and the individuals within that group, allowing for ready movement of clients among appropriate services.

k. Service: A specific, identifiable, goal-related activity designed to carry out a program.

1. Residential facility: A setting ~~out~~ ~~of family~~ the client's home ~~setting providing~~ licensed to provide care, food, lodging, and provide training in self-care, remedial, developmental or social skills.

(1) Private facility: Profit and nonprofit licensed facilities for mentally retarded clients.

(2) Public facility: Licensed state hospitals (also known as institutions) for mentally retarded clients.

m. State agency: Minnesota Department of Public Welfare.

n. Individual service plan: An analysis by the local social service agency, ~~for~~ of services needed by the client, including identification of the type of residential placement, if needed and the general type of program required by the client to meet the assessed needs within a specified period of time.

o. Individual program plan: A detailed plan of the service provider setting forth both short-term and long-term goals with detailed methods for achieving movement toward the individual service plan of the local social service agency. (~~Rule 34 standards and ICF/MR regulations govern this in specific detail.~~)

p. Community social services: Those services as authorized under Minn. Stat. § 256E.03, subd. 2.

q. Need determination: The determination by the commissioner of need, location and program of public and private residential and day care facilities and services for mentally retarded children and adults (§ 252.28, subd. 1).

B. Standards for The following standards shall be applicable in the planning and provision of services to individuals who are mentally retarded.

Services to individuals who are mentally retarded shall be based on the following standards:

1. To provide the person who is mentally retarded client with a normal existence. If this is not possible, to provide the mentally retarded person with the alternative which is least restrictive. This includes making available to him/her the client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

2. To provide the person who is mentally re-

arded client with an individual service plan which is designed to acquire new and progressively difficult skills. Such plan must take into consideration the presentation of learning and developmental experience appropriate to his/her client adaptive behavior levels, physical condition and degenerative status.

3. The individual service plan for the mentally retarded person must be based on a comprehensive assessment of needs, and annual evaluations to determine appropriateness and effectiveness of the individual service plan.

(+) a. Providing assistance and appropriate support services to enable him/her the client to live in his/her the person's home.

(2) b. Providing a community-based private residential facility with appropriate services when the mentally retarded person must leave his/her home for a specified purpose and period of time.

(3) c. Providing placement in a state hospital public residential facility when the mentally retarded person cannot be served at home or in the community for a specified purpose and period of time.

C. Responsibilities of the local social service agency. Responsibilities of the county board for case management services to mentally retarded individuals. These responsibilities may be delegated to the local social service agency pursuant to Minn. Stat. § 256E.08, subds. 2 and 4. Since it is a universal practice for the county board to delegate these responsibilities to the local social service agency, paragraph C. will refer to "local social service agency" in place of "county board".

1. Diagnosis of mental retardation.

a. The local social service agency has the primary responsibility for insuring prompt diagnosis of mental retardation, utilizing professionally qualified staff, and professional information and assistance from other sources, to secure diagnostic information.

b. The local social service agency shall determine whether the individual is ~~make determination regarding the finding of mental retardation in the individual client or a finding that the person or may be mentally retarded. based upon interdisciplinary procedures identified in other sections of this rule.~~ Such determination may be appealed to the commissioner of Public Welfare, pursuant to Minn. Stat. § 256.045 as a social service appeal.

c. The following information is required for diagnosis of mental retardation:

(1) ~~Diagnosis Determination~~ of intellectual functioning by one through or more of the standardized tests developed for that purpose (and administered by a psychologist who is qualified in the diagnosis and treatment of mental retardation). (~~In parenthesis, from MR Protection Act.~~)

(2) ~~Diagnosis Determination~~ of adaptive behavior on the basis of a combination of pertinent test data which measure aspects of behavior, professional observation, and uti-

lization of all available sources of information regarding the person's everyday behavior.

(3) Medical examination prepared under the direction of a licensed physician, ~~and which directs attention to including, but not limited to~~ sight, hearing, seizure problems, ~~etc.~~ and physical disabilities.

(4) Report by a social worker experienced in working with mentally retarded persons on the client's social history and adjustment.

d. Diagnostic review shall be completed ~~made~~ when significant changes in behavior or functional levels occur, and at intervals not exceeding two years' duration. Exception ~~can~~ may be made ~~in the case of~~ when adults who have been in a service plan for a period of ten or more years, and the original diagnosis has been twice conformed. In such cases if there has been no significant change in behavior or functional level, diagnostic review ~~can~~ shall be accomplished completed at intervals not exceeding four years' duration.

2. Assessment of client needs and development of individual service plan.

a. The local social service agency shall assist any person needing help who is or may be mentally retarded by assessing that person's needs and subsequently planning to meet those needs with the cooperation and involvement of the client, parents, relatives or guardian.

b. The following information, ~~when appropriate,~~ in addition to the ~~diagnosis~~ diagnostic information, is required shall be considered ~~in order to determine~~ determining the individual service plan. If any of this information does not exist, that fact shall be documented in the individual service plan:

- (1) Family history.
- (2) Medical, prenatal, and birth history.
- (3) Early development history.
- (4) School reports indicating behavior and functional levels.
- (5) Psychiatric evaluation, if indicated by the other reports.
- (6) Vocational evaluation reports.
- (7) Observations and interviews about family and the environment.

c. The local social service agency shall, in cooperation with the client and parents and/or guardian, develop an individual service plan which shall include:

(1) The Minnesota Developmental Programming System, or other instrument of comparable validity and reliability, shall be used to provide a standardized behavioral assessment prior to development of an individual service plan.

(2) Services to be provided shall be specifically individualized to meet the client's needs. ~~Daytime activity Developmental Achievement Center services,~~ shall be provided ~~for preschool children who are mentally retarded or in the process of diagnosis, and adults,~~ when determined appropriate in the individual service plan, if such services can be obtained within reasonable travel distance.

(3) Provision for implementation of the individual service plan and arrangement for appropriate services.

(4) Provision for ensuring the delivery of service as provided in the individual service plan.

(5) Evaluation, with the assistance of qualified individuals, of the client's progress as described in the client's individual service plan.

(6) Payment for services when the ~~individual,~~ eligible client or parent of a child-client under 18 years of age, is unable or not required to pay.

3. The individual service plan shall be designed to provide services to the client ~~in his/her home~~ the client's home, and to strengthen family relationships, capabilities and responsibilities when placement in a day or residential facility is necessary. Such placement shall be made by the local social service agency in order to carry out the individual service plan.

a. When placement in a day or residential facility is necessary, the local social service agency shall be responsible for planning with the client, ~~his/her~~ the family or representative, the residential or day facility resources, and the public school, if the client is of school age.

(4) ~~b.~~ b. Arrangements for placement in a public or private day or residential facility ~~or state hospital~~ shall be made by the local social service agency. When in the facility, the ~~person~~ client continues to be the client of the local social service agency.

(2) ~~c.~~ c. Acceptance by the public or private facility ~~or state hospital~~ shall be based on the goals and objectives of the individual service plan of the local social service agency, as agreed upon with the client, parent, and/or guardian and as indicated by subsequent assessment and review. Acceptance shall constitute agreement that the public or private facility ~~or state hospital~~ can carry out the goals and objectives of the individual service plan within a specified period of time.

(3) ~~d.~~ d. When a ~~mentally retarded person~~ client is accepted in a day or residential facility, the facility staff shall be responsible, within 30 days of admission, for the development of an individual program plan based on the individual service plan of the local social service agency. The local social service agency shall participate in the development of the facility's individual program plan.

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(4) e. Placement of ~~mentally retarded persons,~~ clients or persons in the process of diagnosis, is restricted to residential facilities licensed under ~~DPW Rule 34 12 MCAR § 2.034~~ and other applicable state agency rules or their successor. Exception can be made (1) in the case of certification of need for hospitalization or need for a skilled nursing facility for skilled nursing care on a 24 hour per day basis, or (2) when the individual service plan calls for placement in a licensed or certified foster home for four or fewer residents.

(5) f. When the local social service agency places a client in a private residential facility located outside of that county, formal arrangements, noted in the individual service plan, must be made with the host county social service agency to carry out certain services. Primary responsibility, however, remains with the agency of ~~legal~~ financial responsibility, as specified in Minn. Stat. § 256E.08, subd. 7.

(6) g. Counseling shall be provided or arranged by the local social service agency to the individual, his parents or guardian as needed. The local social service agency may request assistance of the community mental health ~~director~~ board.

(7) h. Appeal may be made to the commissioner pursuant to Minn. Stat. § 256.045 as a social service appeal, ~~of the state agency.~~

D. Responsibilities of the county board for services to ~~mentally retarded. Community Mental Health Board or Human Service Board.~~ These responsibilities may be delegated to a community mental health board pursuant to Minn. Stat. § 256E.08, subd. 4, and § 245.61 to 245.69 and Chapter 402.

1. The ~~community mental health county board or human service board~~ shall ensure opportunity for the involvement of local social service agencies, local developmental disabilities councils, ~~state institutions~~ public and private residential and day care facilities and other service providers and advocacy organization in the planning and coordination of service delivery.

2. The county board shall employ a ~~Qualified Mental Retardation Professional Person~~ professionally qualified persons who has experience in treating or working with persons who are mentally retarded to coordinate service delivery to mentally retarded in the area county and develop a service delivery plan, ~~for the area served on a biennial basis.~~

a. The county board shall take the lead in planning and development of services not available through service providers, public and private agencies, educational and judicial agencies.

b. The county board shall identify the social services categories available in and outside of the geographical area county for its mental retardation population, including those provided by private individuals or agencies, local public agencies and public facilities. ~~state institutions.~~

c. The county board shall identify in priority of need order the social services that are not available to its mental retardation population.

d. The county board shall provide or arrange for social services categories needed, as specified in the service delivery plan County Social Services Plan, within the means provided in ~~grants-in-aid by the state agency.~~ by the county board.

e. ~~Copies of the plan shall be submitted to the state agency in approved format on or before July 1 of the year preceding the biennial legislative session for the purposes of budget planning and legislative proposals. Copies of the plan shall be made available to agencies involved in related planning activities.~~

3. The county board shall provide psychological and psychiatric diagnostic evaluation, client and parental counseling and assistance in care planning for persons who are or may be mentally retarded as requested by the client or the local social service agencies in the ~~area~~ county served by the board.

4. ~~The board shall submit a letter of recommendation to the Commissioner concerning the need, location and program for facilities and services applying for license under Minn. Stat. § 252.28.~~

4. Need determination responsibilities of the county board.

a. The county board shall obtain need assessment data and other available information concerning needs of the mental retardation population in the county.

(1) The county board shall provide such data and information to parties interested in developing a facility or service for mentally retarded clients.

(2) Applications for need determination for a proposed facility or service to be located in the county shall be prepared by the applicant and reviewed by the county board.

(3) Applications shall include, but are not limited to, the following:

(a) Applicant's name, address, telephone number; proposed location of the facility or service; number, sex and age range of clients to be served; description of proposed facility or service.

(b) Functional level of clients to be served; description of physical, sensory, behavioral conditions.

(c) Program plan; developmental, education, vocational services that will be available outside of the facility (if residential).

(d) Sources of clients; numbers of clients to be served from named facilities such as state hospital, general intermediate care facility, skilled nursing facility, intermediate care facility for mentally retarded, foster home, natural home.

(e) Name(s) of other counties to be served by applicant; if so, the applicant shall submit evidence to the board that those counties will make referrals.

b. The county board after consideration of the standards for provision of services (part B, this rule), shall

submit a letter of recommendation to the commissioner concerning local need, location and program for proposed facilities and services subject license under Minn. Stat. § 252.28. The letter shall include need data and other information relevant to need for the proposed facility or service, and the applicant's information concerning the proposal.

c. The commissioner shall make final determination of need, location and program.

(1) After receiving the required information, the commissioner shall consider the facts, and recommendation of the county board, and other considerations, which shall be:

(a) To protect mentally retarded persons from violations of their human and civil rights.

(b) To assure that such persons receive the full range of needed social, financial, residential and habilitative service to which they are lawfully entitled.

(c) To assure that the location of the facility will not substantially contribute to excessive concentration of community residential facilities within any town, municipality or county of the state.

(d) To assure that clients of public residential facilities who are in need of a small, home-like facility near their family will be admitted to the facility.

(e) To assure that standards for provision of services are carried out, the size of the facility must relate to the needs of the clients for services. The following criteria shall apply:

(1) Residential facilities for six shall be considered most desirable when the residents' needs can be met by live-in staff.

(2) Residential facilities for eight shall be considered most desirable when the residents' needs can be met by shift staff.

(3) Residential facilities for sixteen shall be considered most desirable when the residents have extraordinary service needs such as concomitant physical and sensory disabilities, which cannot be economically met in a facility of lesser size. The commissioner shall determine whether the severity of the physical, sensory or other disability of the residents require the 16-bed size.

(4) The ability of the residents to use community medical, psychological, therapeutic and support services.

(5) The number of residents whose physical, sensory or other disability justifies the employment of special staff by the facility.

(f) To assure that the facility and program plan cost projections are within fiscal limitations, and meet

standards of effective program management. The following criteria shall apply:

(1) Facilities which are not to be for six, eight or 16 residents, must justify that they are as efficient and cost effective as the facilities for six, eight or 16 residents.

(2) Within 30 days of receipt of the applicant information and recommendation of the county board, the applicant and county board shall be notified of the commissioner's decision. If approved the licensing division of the state agency shall then act upon a license application, and the applicant may seek certification under Title XIX and other funding resources from the state agency.

(3) If a licensed facility requests an increase or decrease in licensed capacity, or change in program of any facility or service, the facility shall apply to the commissioner directly. No change shall be granted until the county board has an opportunity to comment. The commissioner shall notify the county board of such a request by sending a copy of the request to the county board. The county shall have 30 days to comment. The commissioner shall use the same criteria as is specified for original applications.

E. General

The provisions of this rule shall be severable. If any clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability shall not be affected.

E. Service Categories.

1. The following service categories, in alphabetical order, shall constitute the range of direct and indirect services needed for a service delivery system in an identified geographical area of the State of Minnesota for its mentally retarded population. These service categories shall be identified to assure delivery as needed.

a. Activity program for adults: Activities which emphasize occupational and social goals which assist adults to become as self dependent as possible and to make constructive use of leisure time. They are comprehensive and coordinated sets of activities providing personal care and other services to adult mentally retarded persons in or out of their own homes during a portion of the 24-hour day. Services may include a variety of creative, social, physical and learning activities based upon an appropriate assessment of needs.

b. Assessment services: The systematic determination of pertinent physical, psychological, vocational, educational, cultural, social, economic, legal, environmental and other factors of the mentally retarded person and his/her family; to determine the extent to which the disability limits can be

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expected to limit the person's daily living and work activity; to determine how and to what extent the disabling conditions may be expected to be minimized by services; to determine the nature and scope of services to be provided; to select service objectives which are commensurate with an individual service plan of action. It is to be followed at whatever intervals are needed by periodic reassessment; services are to be provided whenever necessary in the life of the individual. Assessment services are directed toward the effects of the disability and toward maximizing life functions in the face of remaining conditions.

e. **Basic developmental services:** Activities emphasizing maturation and supplementing the services provided by parents or parent surrogates.

They are comprehensive and coordinated sets of developmental learning activities conducted in or outside the home during a portion of the day. These services include a variety of creative, social, physical, and learning activities selected in accordance with an appropriate assessment. The focus is upon the developmental schedule itself (individual program plan) and upon the acquisition of skills in self care. This service should continue on a sustaining basis for those who would otherwise suffer loss of functional level.

d. **Case management (service management):** An expert person who provides coordination of all the case activities on behalf of the clients of the local social service agency. The case manager is held responsible for mobilizing the resources needed, including especially those not provided directly by his/her own agency. It is a persuasive, rather than an administrative role. Case management is provided by a professionally qualified individual (typically not a volunteer) who has a limited but assigned number of clients.

e. **Client information and referral service:** Public information about services and procedures in obtaining them. This service may provide referral activity directly or may inform an inquirer. This client information and referral service may be on a face to face basis or may be available by telephone.

f. **Community services:** Mentally retarded people are ordinarily expected to make use of the same community services that are used by people who are not retarded. These services are not detailed because they are not specialized on behalf of the mentally retarded population.

g. **Counseling:** A face to face relationship with the mentally retarded individual and/or parent, siblings or other relatives in order to help the individual understand and accept his/her capabilities and limitations, and to carry through on a program of adjustment and self-improvement. This requires knowledge of human behavior and the use of special interviewing skills to achieve specified goals mutually accepted by counselor and client (or parent/guardian). Counseling is an episodic activity carried out when the need arises. Its focus is upon the solution of specific problems.

h. **Diagnostic services:** Coordinated services including, but not limited to, psychological services, social services, medical and other services necessary to identify the presence of

a disability, its causes and its complications. Diagnosis is a current assessment of the client's condition and shall be a guiding factor in the development of the individual service plan. Diagnostic review is to be made whenever necessary in the life of the mentally retarded person, according to C.I.d. of this rule.

i. **Domiciliary (residential) care:** Out of home living quarters, supervision and personal care to persons needing such care and services. Domiciliary care services differ from special living arrangements by its higher degree of supervision and the greater amount of personal care needed, as compared to Special living arrangements.

j. **Family support services:** Those services which enable the family as a unit to meet the family-related needs of the mentally retarded persons. Family support services may include any of the other defined services. It is distinguished in that it is given to the family in their homes.

k. **Follow-along:** A monitoring relationship by the local social service agency on a life long basis with retarded persons and their families, if needed. It is to assure that changes in need, progression to new levels of adaptive competence, and the problems arising from crises are recognized and appropriately met.

l. **Job placement services:** The process of securing employment. Competitive employment is employment offered under ordinary conditions and in competition with ordinary employees. Job placement services needed by mentally retarded persons are generally those of securing and adjusting to a job, with no implication that this is limited to a single time or period in the life of the persons.

m. **Professional information and referral service:** An up-to-date and complete listing of all appropriate resources which can be made available and accessible to professional persons serving mentally retarded persons and their families so that they can be referred to the most appropriate and readily available resources. This kind of information and referral services is ordinarily not used by the client.

n. **Protective services:** Social, legal and other appropriate services which assist individuals who are unable to manage their own affairs or to protect themselves from neglect, exploitation or hazardous situations without assistance from others and to help them exercise their rights as citizens. Protective services may be an adjunct to parent responsibility, or they may be exercised in the absence of the responsible parent. Protective services should be selective in scope and should be limited to those aspects of life function in which a need is demonstrated. (See Minn. Stat. §§ 252A.01-252A.21, MR Protection Act.)

o. **Recreation services:** Planned and supervised leisure time activities designed to help meet specific individual needs in self expression, social interaction, athletic endeavors and entertainment; to develop skills and interests leading to enjoyable and constructive use of leisure time; and to improve his/her well being. The service may include assistance to the individual in his/her use and access of normal community recreation activities.

p. Service delivery system coordination: Responsibility within a given community for the provision of the full range of services. This is a planning and resource mobilizing function rather than a direct service to clients. It is concerned with the structure and the availability of services rather than with the solution of personal problems. It must be provided in connection with a multi-service area of authority. Information and referral services shall be provided in conjunction with service coordination, and the two are typically interrelated.

q. Sheltered employment: A structured service providing partial self support through the employment of the retarded worker under conditions which allow for low production rate, need for special work supervision, inability to handle a full range of job duties, or need for special job engineering and adaptive equipment.

r. Special education: A structured learning experience, based upon appropriate assessment and through the use of a broad curriculum of practical academic subjects primarily designed to develop the ability to learn and to acquire useful knowledge and basic skills in its earliest stages. In its later stages, it grades all the way through the equivalent of a secondary education and appropriately interacts with the occupational service system, such as work adjustment. Special education is legally required of the public school district acting either as direct provider or as purchaser of the service.

s. Special living arrangements: Living arrangements for persons who need some degree of supervision. Special living arrangements should provide at least counseling and leisure time activities in addition to living arrangements. The service is for disabled persons who can leave their place of residence for work, recreation or other reasons.

t. Treatment services: Interventions which halt, control or reverse those processes which cause, aggravate or complicate disability. Interventions may include treatment, such as surgical procedures, dietary controls, cosmetic therapy, chemotherapy, speech therapy or physical therapy, directed toward basic personal goals, dentistry, and medical treatments as indicated by the needs of the individual being served. Specialized medical and dental care are included.

u. Training services: Planned and systematic sequence of instruction in formal and informal activities based upon appropriate assessment and designed to develop skills in performing activities of daily living, including self help, motor skills, and communications; to enhance emotional, personal, and social development; to provide experiences conducive to the acquisition of positive self concepts and desire to learn; and to

provide experiences basic for future productive activity. Emphasis is upon those skills needed to function as a member of the community. This service is not restricted to any particular age and can be offered at any appropriate time in the life of the individual who is mentally retarded.

v. Transportation services: Necessary travel and related costs in connection with transporting retarded persons to and from places in which they receive services. Transportation also includes taking services to the homebound, delivery of raw materials, and finished products from homebound industries when needed. The use of public transportation is included.

w. Vocational evaluation: Assessment of worker characteristics, through the use of unreal or simulated work tasks. The purpose is to assess occupational strengths and weaknesses, and potential for vocational development. It also includes provocational evaluation and work evaluation. This requires the use of a rehabilitation facility or similar controlled experimental setting.

x. Volunteer services: Volunteer activities by individuals, service organizations and advocacy groups, provide a variety of services on a group or one-to-one basis that supplements and augments services provided to mentally retarded persons. This may also include participation in advisory committees, advocacy activities and other forms of personal support to individuals. Such services are not to supplant staff services, and are ordinarily provided by unpaid persons and groups.

y. Work activity: It is for those whose productivity is such that they cannot meet the demands of sheltered employment. For people who need a work setting as part of their program in order to foster a sense of self worth through work while earning a below minimum wage, it legally enables a wage to be paid. Work activity, in addition, includes a variety of creative, social, physical and learning activities. Work activity may be provided only in facilities having a Federal Wage and Hour certificate for this purpose. It differs from activity programs for adults in that there is a significant productive element: it differs from sheltered employment in that it allows a wage of up to one-fourth the standard minimum.

z. Work adjustment: Learning activities typically involving real or simulated work tasks and situations. It is intended to assist a person to develop basic skills, attitudes, motivation, and work habits of the kind needed in competitive employment, sheltered employment or work activity. It develops social skills needed to function in a work environment. Its focus is upon basic employability rather than upon the skills of a specific occupation.

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ADOPTED 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 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.

Department of Health Manpower Division

Adopted Rules Relating to the Collection of Information Pertaining to Health Manpower

The rule proposed and published at *State Register*, Volume 4, Number 13, pp. 523-529, October 1, 1979 (4 S.R. 523) is adopted with the following amendments:

Rules as Adopted

7 MCAR § 1.235 B.3. The commissioner may at his option reduce the types of information for which responses are requested from licensees and registrants residing and practicing out-of-state.

7 MCAR § 1.235 C. Types of forms for collection of information.

1. Information shall be collected on forms designed by the commissioner which shall contain ~~a statement~~ statements of the statutory authority for collecting the information and of the data classification as classified pursuant to the Minnesota Government Data Practices Act. Whenever a survey form is sent to licensees or registrants in the same envelope as their license or registration renewal application, a statement will be added to the form to the effect that the survey is independent of licensure or registration renewal and that responses to the survey will have no bearing on license or registration renewal. The exact form and wording of the questions may vary depending upon the specific occupation surveyed:

a. So that the questions will be specific and relevant to the characteristics of each occupation; and

b. May change in form and wording over time so that a question can be classified or its emphasis modified.

Department of Health Manpower Division

Adopted Rule of Procedure for Determining Regulation of Human Services Occupations

The rule published and proposed at *State Register*, Volume 4, Number 17, pp. 718-721, October 29, 1979 (4 S.R. 718) is now adopted with the following amendments.

Amendments as Adopted

7 MCAR § 1.536 General.

D. Factors for determining the necessity of regulation. In the review of an applicant group questionnaire, the subcommittee, council, and commissioner shall base their recommendation or decision as to whether or not the applicant group shall be regulated upon the factors contained in Minn. Stat. § 214.001, subd. 2.

1. In applying the factor of whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens of the state and whether the potential for harm is recognizable and not remote, at a minimum the relevance of the following shall be considered:

a. Harm shall be construed to be a condition representative of physical, emotional, mental, social, financial, or intellectual impairment resulting from the functions rendered or failed to be rendered by the applicant group.

b. Potential for harm may be recognizable when evidenced by at least one or more of the following:

(1) Expert testimony;

(2) Client, consumer, or patient testimony;

(3) Research findings;

(4) Legal precedents, financial awards, or judicial rulings;

c. Potential for harm may be recognizable when evidenced by at least one or more of the following characteristics of the applicant group:

(1) ~~(5)~~ Inherently dangerous nature of the applicant group's functions;

(2) ~~(6)~~ Dangerous nature of devices or substances used in performing applicant group's functions;

(3) ~~(7)~~ Exercise by practitioners of the applicant groups of an observable degree of independent judgment when:

(a) Identifying or evaluating a consumer's or client's symptoms;

(b) Formulating a plan for consumer or client care, service delivery or treatment; and/or

(c) Providing consumer or client care, delivering service or implementing a plan of treatment.

d. ~~e.~~ Potential for harm may be remote when evidenced by at least one or more of the following:

(1) Infrequent or rare instances of impairment;

(2) Impairment which is minor in nature; or

(3) Secondary or tertiary effects of the applicant group's function.

2. In applying the factor of whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability, the existence of the following items shall be considered as indicating that specialized skill or training or their continuation is required:

a. That the functions performed by the practitioner are several and their performance necessitates a thorough understanding of the complex relationship between those functions;

b. That the one or more functions performed by the practitioner requires a detailed understanding of the specific components of the function and the relationship between the functions and the symptoms, problem or condition that function is intended to address or ameliorate;

c. That the absence of specialized skill or training is likely to increase the incidence and/or degree of harm as defined in 7 MCAR § 1.536 D.1. to the consumer as client.

d. That there occurs frequent or major changes in areas of skilled knowledge and technique of which the practitioner must keep informed in order to meet current standards.

3. In applying the factor of whether the citizens of this state are or may be effectively protected by other means, at a minimum the relevance of the following shall be considered:

a. Indicators of protection by other means shall include but not be limited to:

(1) Supervision by practitioners in a regulated occupation;

(2) Existence of laws governing devices and substances used in the occupation;

(3) Existence of laws governing the standard of practice;

(4) Existence of standards for professional performance;

(5) Employment in licensed human service facilities which are required to employ competent staff;

(6) Existence of federal licensing as credentialing mechanism;

(7) Existence of civil service procedures which effectively screen potential employees for competence;

(8) Graduation of members of the applicant group from an accredited educational institution or training program;

(9) Mandatory participation in on-the-job training programs which are required by law or by professional organization of the occupation;

(10) Existence of professional credentials and standards of performance which effectively sanction malpractice;

(11) Existence of a national certification process which effectively attests to the competency of recognized professionals.

b. Indicators of protection by other means shall be assessed and evaluated at least in view of the extent to which they:

(1) Address all practitioners within an occupational group;

(2) Appear sufficient to protect the general public from harm caused by the practice of the occupation in question;

(3) Appear to be permanent and ongoing mechanisms.

4. Rule 7 MCAR § 1.536 D.1.-3. shall be considered nonlimiting guidelines to be used in applying the statutory factors contained in Minn. Stat. § 214.001, subd. 2. Additional elements may be considered if necessary to permit a thorough review and evaluation of an applicant group questionnaire in light of the statutory factors; provided, however, that the additional elements shall be identified during the course of the review and evaluation process, all interested persons given the opportunity to comment thereon, and shall be specifically addressed in the commissioner's written decision required by 7 MCAR § 1.538 B.6.

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."

ADOPTED RULES

Housing Finance Agency

Adopted Rules Relating to the Home Improvement Grant Program, the Definition of Developmentally Disabled, and American Indian Housing Programs

The rules proposed and published at *State Register*, Volume 4, Number 17, pp. 1326-1330, February 25, 1980 (4 S.R. 1326) are adopted with the following amendments:

12 MCAR § 3.152 The urban Indian housing loan program. The urban Indian housing loan program provides loans for housing for American Indian persons and families residing in urban areas of the state. The program is implemented through administrators selected by the agency after review of proposals submitted pursuant to these rules. A proposal by an administrator may serve all or a portion of the eligible areas of the state of

Minnesota. The eligible areas are the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2 and any city with a population greater than 50,000 persons. To the extent practicable, the agency shall allocate urban Indian loan program funds equitably among eligible areas, based upon American Indian population estimates. To assist potential applicants, the agency shall provide, upon request, information describing potential uses of urban Indian housing loan program funds ~~and may provide additional technical assistance upon request by the applicants.~~

12 MCAR § 3.155 Application of other rules. 12 MCAR §§ 3.093-3.098, 3.101 and 3.105 shall apply to programs under this chapter, except that the Administrator may make loans ~~may be made~~ with appropriated funds without interest.

12 MCAR § 3.157

D. Any ~~other~~ further provision deemed necessary by MHFA in its reasonable discretion to assure that the program will be carried out pursuant to these rules and Minn. Stat. § 462A.07, subd. 15.

TAX COURT

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

State of Minnesota

Richard D. Wright,

v.

The Commissioner of Revenue,
Docket No. 2620

Tax Court

Appellant,

Appellee.

Order Date June 4, 1980.

Appeal from the Commissioner's Order dated February 17, 1978 relating to alleged tax liability of \$21,270.71 for taxable periods 1974 and 1975.

This is an appeal from an order of the Commissioner of Revenue, dated February 17, 1978, assessing additional income taxes, along with interest and penalties for the taxable years of 1974 and 1975 in the amount of \$21,270.71.

Appellant did not file Minnesota State income tax returns for the years 1974 and 1975, and claims for those years that he was not a legal resident of Minnesota.

This issue is whether Appellant was a legal resident of the State of Minnesota for income tax purposes during the taxable years 1974 and 1975.

The trial of this case was held on February 6 and 7, 1980, before the Honorable Jack Fena at the Minnesota Tax Court in the Space Center at 444 Lafayette Road in the City of St. Paul, Minnesota.

The evidence in this matter consisted of oral testimony and numerous exhibits received at the trial, and from all the files, records and proceedings herein.

R. Gregory Stephens, Esquire, for Appellant
Richard W. Davis, Special Assistant Attorney General of the State of Minnesota, for Appellee.

Decision

The Order of the Commissioner of Revenue assessing income tax against the Appellant is reversed.

Findings of Fact

Jack Fena

1. Appellant Richard Wright was not a legal resident of the State of Minnesota during the taxable years 1974 and 1975.
2. Appellant Richard Wright was domiciled in the State of Florida during the taxable years 1974 and 1975.
3. Appellant Richard Wright has been employed as an airline pilot for Braniff Airlines since 1947.
4. During the taxable years in question, 1974 and 1975, Appellant's permanent and only flight duty station, the permanent base where all of his flights began and ended, was Miami, Florida.
5. During the period in question, Braniff Airlines sent all of its mailings directed to Richard Wright, including his W-2 form statements, to Florida. No company mailings or W-2 form withholding statements were ever sent to Appellant in Minnesota.
6. During the taxable years in question, Braniff Airlines paid Richard Wright in Florida on the 5th and 20th of each month.
7. During the taxable year in question, Richard Wright listed for sale and attempted to sell the house he owned in Minnesota.
8. During the taxable year in question, Richard Wright did not apply for, nor was he granted, a homestead classification for the house he owned in Minnesota because he considered himself a Florida resident.
9. During the taxable year in question, Richard Wright rented a room in Florida, and lived in an apartment in Florida. Richard Wright presently lives in Florida.
10. During the taxable year, 1974, Richard Wright's job in Florida required him to be physically present in Florida for flying out of Florida and back into Florida a minimum of 20 days out of every working month, and a minimum of 18 days out of every working month in the year 1975. None of his flights ever began or ended in Minnesota.
11. Commencing in December, 1973, and during the taxable period in question, Richard Wright's wife was experiencing ill health. Because of her ill health, she was unable to be deposed in the State of Minnesota, and also unable to attend the trial at the Minnesota Tax Court due to her inability to travel because of her state of health. During part of the taxable period in question, Richard Wright and his wife had a "trial separation" and Richard Wright after medical consultation found that his wife had a potassium deficiency or situation, and that after consultation with a Catholic Priest friend, he was prevailed upon to be more patient and understanding and set aside his "trial separation." The Court finds that this is an additional reason for Richard Wright to have removed himself from the State of Minnesota to the State of Florida.
12. During the taxable years in question, Richard Wright was registered to vote in Florida. He was not registered to vote in Minnesota.
13. During the taxable years in question, Richard Wright obtained a Florida driver's license and surrendered his Minnesota driver's license.
14. During the taxable years in question, Richard Wright had a checking account in Florida, and the only personal savings account he had was through Braniff Airlines Credit Union, and the statements were sent to him in Florida.
15. In February, 1974, Richard Wright drove his Ford Station Wagon automobile to Florida, and registered and licensed his car in Florida. The registration and licensing were renewed for the year 1975. He also owned a one-half ton truck which was also registered and licensed in Florida.
16. On his federal income tax returns for the years 1974 and 1975, Richard Wright claimed Florida as his residence. In April, 1974 and February, 1975, Richard Wright looked for real estate in Florida to purchase.
17. After Richard Wright commenced working for Braniff Airlines in 1947, he was subsequently transferred to Kansas City, Kansas; Minneapolis, Minnesota; Sioux City, Iowa; Minneapolis, Minnesota; Dallas, Texas, and then back to Minneapolis, Minnesota, until December, 1973. The above transfers which comprised Richard Wright's job and flight locations from 1947 until December, 1973, were all as a result of temporary domestic flying assignments.
18. The job progression for Braniff pilots like Richard Wright range from domestic flying to international flying, which is the highest one could go with Braniff. From the time Richard Wright started work for Braniff Airlines, it was his goal to receive an international flight and flight base as would be the summit or peak of his career as a pilot with Braniff Airlines.
19. Richard Wright's plan was to permanently move to the international flight base state if he were ever fortunate enough to be awarded an international flight status. It turned out that Florida was the international flight base during the taxable period in question. International flying was considered a permanent transfer and move.
20. In December, 1973, Mr. Wright was awarded his first international flight opportunity, an international flight base permanently in Miami, Florida, effective January 1, 1974. Richard Wright accepted the new permanent job in Miami, Florida, and was permanently based in Miami, Florida, during the taxable years in question.
21. Richard Wright left Minnesota on January 1, 1974, to carry out his life-long plan by moving to his new job location, which was finally a permanent as opposed to a temporary transfer. The new permanent international flight transfer was to Florida. Richard Wright's plan and goal

once he was awarded the permanent transfer was to live in and become a resident of that state which turned out to be Florida during the taxable years in question.

22. Richard Wright considered his move to Florida as being a permanent move. At no time during the taxable period in question did Richard Wright have any intention to leave Florida and come back to Minnesota.

23. There was no job-related reason with Braniff Airlines for Richard Wright to keep his residence or domicile in Minnesota. Richard Wright had no business venture nor did he engage in any business in the State of Minnesota during the taxable years in question. All flights flown by Mr. Wright were Braniff Airlines originated and terminated in Florida during the taxable years in question. None of his flights for Braniff Airlines began and ended in Minneapolis or in Minnesota.

Conclusions of Law

During the taxable years in question, 1974 and 1975, Appellant Richard D. Wright lost his residence in Minnesota, and was domiciled in Florida within the meaning of Minnesota income tax regulation 2001(7) and Minn. Stat. § 290.01, subd. 7. Therefore, Appellant's income for 1974 and 1975 is not assignable to Minnesota under Minn. Stat. § 290.17(1).

Memorandum

There are very few concepts that could be more perplexing to a Court that the question of what is meant by the word "resident" as defined very smartly in Minn. Stat. § 290.01, subd. 7, to-wit:

The word Resident. The term "resident" means any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such year, have been domiciled outside the state.

Income tax regulations 2001(7) further defines the term resident as follows:

"2001(7) RESIDENT DEFINED.

The term "resident" means any individual domiciled in Minnesota, and any other individual maintaining an abode therein during any portion of a year who shall, during any portion of such year, have been domiciled within the state.

Residence, as defined in the Act, is practically synonymous with domicile. The residence of any person is held to be in that place in which his habitation is fixed, without any present intentions of removing therefrom, into which, whenever he is absent, he intends to return.

A person who leaves his home to go into another state for temporary purposes only is not considered to have lost his residence. But if a person removes to another state with intention of remaining therefor an indefinite time as a place of permanent residence, he shall be considered to have lost his residence in this state.

The place where a man's family resides shall be considered his residence, and the residence of a wife is *usually* that of her husband, *unless there is affirmative evidence to the contrary* or unless the husband and wife are permanently separated. When a man has taken up his abode at any place with the intention of remaining there and his family neither resides with him nor intends to do so, then he shall be considered to have established a residence separate from that of his family.

The residence of a single man is his usual place of abode. In case of a minor child, who is not emancipated, the residence of a child's father, or the mother if the father is deceased, is the domicile of the child.

The mere intention to acquire a new residence, without the fact of removal, does not change the status of the taxpayer, nor does the fact of removal, without the intention to remain, change his status. The presumption is that one's domicile is the place where he lives. A domicile once shown to exist is presumed to continue until the contrary is shown. An absence of intention to abandon a residence is equivalent to an intention to retain the existing one. *No positive rule can be adopted* with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by *acts and declarations*, and of the two forms of evidence, acts are generally conceded more weight than declarations. A person who is temporarily employed within the state does not acquire a residence in the state if during such period he is domiciled without the state.

While the exercise of one's voting franchise is presumptive evidence of residence, such evidence may be overcome by a showing of the facts involved in the determination of residence. Casting an illegal vote does not of itself establish residence for income tax purposes. (emphasis supplied)

It would appear that the income tax, the Minnesota income tax regulation, in trying to embellish upon or define the legislative enactment emphasizes what would very commonly be known as a saying, "action speaks louder than words." This seems to be a sound philosophy when applied to the case at hand. The Court is hard pressed to find that Appellant left Minnesota to go to Florida for a temporary purpose only. Appellant "removed" himself from Minnesota and went to Florida with the intention of remaining there for an indefinite period of time as a place of permanent residence. Appellant left Minnesota and went to Florida because he had become personally assigned, based, and transferred by his international Florida based employer, Braniff Airlines. Henceforth in the memorandum Appellant will be referred to by his last name.

In arriving at a sound logical conclusion as to where Wright lived during the years in question, a brief reference to his employment and personal background must be gone into. He started working for Braniff in Minnesota in 1947, was then transferred to Kansas City, Kansas, then Minneapolis, then Sioux City, Iowa, then Minneapolis, then Dallas, Texas, and then back to Minneapolis, Minnesota, until December, 1973. These transfers, which comprise Wright's job and flight location for Braniff from 1947 to the end of 1973, were all the result of temporary domestic flying assignments. Domestic flying assignments did not give Wright any real permanency because he was subject to be transferred to

another temporary base or assignment whenever he was needed in that capacity by Braniff. Wright testified that he wanted permanency and that above all he wanted to be at an international flight base because that would be a permanent move and he would be in whatever that state was in a permanent position without the specter or fear of being transferred once again. During the taxable years in question, Wright had no idea that the move to Florida would be anything but permanent in nature because that is what an international flying base would be for him. In December, 1973, Wright was given his first international flight opportunity, a permanent international flight base in Florida effective January 1, 1974. He accepted this new job in Florida and was permanently based in Florida during the taxable years in question. He left Minnesota on January 1, 1974, to carry out what he testified to be his life-long plan and goal and did this by moving to his new permanent international flight base and becoming according to his testimony a permanent resident of that state, and that state turned out to be Florida.

At no time during the taxable period in question did Wright have any intention to leave Florida and come back to Minnesota to live. During that time Wright lived in a rented room in Florida at times and in a rented apartment in Florida at times which he shared with other pilots.

Applying Minnesota income tax regulation 2001(7), Wright lost his residence in Minnesota when he "removed" himself to Florida intending to remain there for an indefinite time in that place as a permanent resident.

It appears that Wright was domiciled in Florida during these years. All of the facts point to that conclusion. All of Wright's flights began and ended in Florida, none of his flights beginning or ending in Minnesota. During the months when Wright was on blank or reserve status, he was required to be in Florida every day of the month except for a *maximum* of ten days in 1974, and a *maximum* of 12 days in 1975. It is difficult to conceive that someone would "live," or be "domiciled," or be a "resident" of the northern-most (until statehood for Alaska) state and have to spend at least 2/3 of their time in the southern-most state of the United States.

On the days of the month, except for 10 or 12, Wright was either flying in or flying out of Florida. During the time that he was in Florida, he lived in a rented room or a rented apartment. Whether he lived in a highrise luxurious condominium, or for that matter a palace, or whether he lived in a wretched hovel is of little consequence to the Court. The courts cannot question his lifestyle or his standards of living. The question is, did he live there, and was he a resident of Florida? It is inescapable that he was a resident and that he lived there.

According to 2001(7), the presumption is that one's domicile is the place where he lives. Because the Court finds that Wright lived in Florida during the period in question, the presumption is that Florida was his domicile. Since the Court finds that Wright lived in Florida during the taxable years in question, the burden of proof may well be upon the state to overcome the presumption that Florida was Wright's domicile. Regardless of who has the burden of proof on the question of domicile, the Court finds that the preponderance of evidence clearly and definitely demonstrates that Wright was domiciled in Florida during the taxable years in question.

The legal test for establishing "domicile" requires actual body presence in a given jurisdiction coupled with an intention to make such place one's home. *In re Estate of Smith*, 242 Minn. 85, 64 N.W. 2d 129 (1954).

Relative to the years in question, where was Wright's bodily presence? He was in Miami, Florida, because his job was there, his permanent job, and he flew in and out of Miami, Florida. All of his flights began and ended in Florida. He was there. The maximum number of days that he could be outside of the State of Florida or not flying into or not flying out of Florida during any working month during '74 was ten days and during '75 was twelve days. With the exception of those few days, Wright was either in Florida, flying out of Florida, or preparing to fly into Florida every day of the working month. During the two years in question, he lived in Florida, at times in a rented room, sometimes at a Florida motel, but for 18 continuous months, he lived in an apartment. Obviously, the evidence weighs heavily in showing that Wright had his body, his bodily presence in the State of Florida during the taxable years in question.

What about Wright's intention to make Florida his home? One, again, must look at not only his acts (of being there) but his so-called declarations.

Wright testified that his goal and his life ambition was to be an international flyer and to live in any state where he received the opportunity to be an international flyer. The state turned out to be Florida. International flying as opposed to domestic flying offered Wright a chance to permanently transfer and move from Minnesota. He received that opportunity in December, 1973, and he left Minnesota January 1, 1974, and he went to Florida to fly for Braniff on an international flight basis and on a permanent basis. Wright also testified that he had no intention to leave Florida and come back to Minnesota.

Evidence in this case differs from a number of cases decided by the Minnesota Tax Court involving airline pilots who moved out of Minnesota. See *Bolton v. Commissioner*, Docket #2600, March 18, 1980; *Stamp v. Commissioner*, Docket #2572, June 27, 1979; and *Sarek v. Commissioner*, Docket #2524, April 19, 1975. In those cases the airline pilots involved did not lose their Minnesota residence or domicile and had long standing employment with a Minnesota based employer, normally Northwest Airlines, throughout the period in question. All the flight schedules flown by the Northwest pilots began and ended in Minnesota. Northwest sent all of its mailings directly to the pilots, including their W-2 statements to their homes in Minnesota. There was positively no job-related reason for the pilots to have changed their residence or domicile to Florida. Quite to the contrary, there was a strong job related reason for the pilots to have maintained their residence or domicile right here in Minnesota. The pilots also applied for and obtained a homestead credit on the homes they owned in Minnesota and did not attempt to sell their Minnesota houses.

In sharp contrast, Wright did not maintain a long standing employment with a Minnesota employer during the taxable years in question. To the contrary he was personally and permanently assigned to and worked out of Florida during the taxable period in question. During all this time all of his flights began and ended in Florida, not Minnesota. None of his flights began or ended in Minnesota during the period. Wright never applied for and never attempted to homestead the house he owned in Minnesota because no doubt he knew and felt that he was a resident of the State of Florida.

Wright attempted to sell the house he owned in Minnesota during the taxable years in question. During all of this time all of the mail he

TAX COURT

received from Braniff Airlines, including his W-2 withholding statements, including his paychecks, were sent to Wright in the State of Florida. Consequently, unlike the previously cited Northwest pilot cases decided adversely to the pilots, there was a job related reason for Wright to have changed his domicile residence to the State of Florida. As a matter of fact, there was no job related reason to keep his residence or domicile in Minnesota during 1974 and 1975. Additionally, Wright had no business ventures, nor was he engaged in any business in the State of Minnesota during 1974 or 1975.

The fact that Wright did not apply for a homestead classification for the house he owned during the taxable years in question shows a strong and significant intent to abandon the dwelling place as his *permanent* home. Merely because Wright owned a house in Minnesota and stayed in that house when he came back to visit his sick wife here is not of any significance. The Minnesota Supreme Court in *Miller's Estate v. The Commissioner of Taxation*, 240 Minn. 18, 59 N.W. 2d 925 (1953), stated:

“The fact that Miller never actually disposed of his former residence in St. Paul, but, in fact actually resided there while in Minnesota is of similar consequence. It is to be *emphasized* that it is the *intention to abandon* the former dwelling place of the home that is the important criterion.” (emphasis supplied)

Wright appears not only to have intended to abandon his former dwelling place by not claiming a homestead classification, but he actually listed the home with a reputable real estate agent to be sold.

The evidence showed that Wright listed his Minnesota house for sale on a multiple listing during the taxable years in question. Mr. Artie Johnson, a realtor familiar with Wright's house and the neighborhood it was in and the prices of houses in that neighborhood, and who showed the house in question on several occasions, testified that the listing price was reasonable and equitable, and he did not feel that this house was at all overpriced as listed. In spite of its listing, there were no offers given to Wright for the three months that same was listed, and after talking with Johnson about the usury laws, tight money situation, etc., and because his wife was ill and that there were people looking at the house without resulting offers, and because he was afraid that the house would become “shop-worn,” Wright decided to and did take the house off the market for a period of time.

Mr. Johnson, realtor, testified that during the time in question the money market was tight and depressed and that it was not unusual for the seller of a house to remove it from the market during the type of financial atmosphere prevailing at the time, and that it was not unusual that a seller be concerned that his house would become shop-worn by over showing it in a multiple listing situation.

The testimony showed that in the spring of 1975, when the house financing situation eased, Wright intended to put it back on the market, but while in the process of doing so, the City of Minnetonka put in sewer and water in the neighborhood and the property was torn up until the latter part of November, 1975, and that it was impossible to show the house.

Because of the sewer and water construction both Wright and his realtor, Johnson, testified that it was impractical to show the house between April, 1975, and December, 1975. The realtor, Mr. Johnson, testified that in December, 1975, he advised Wright to wait until after the first of the year until the spring of '76, before the house was put back on the market. Wright did then list the house and a year later on about March, 1977, the house was sold.

Also, during the trial, the evidence showed that during the taxable years in question, Wright was not a registered voter in Minnesota, but he was registered to vote in Florida. Wright also surrendered his Minnesota driver's license and had a Florida driver's license. He also had, during the time herein in question, a checking account in Florida. During that time the only personal savings account he had was through Braniff Airlines Credit Union, and those statements were sent to him in Florida. It would appear that the Braniff Airlines Credit Union would have members probably from all over the world.

The testimony further showed that in February, 1974, Wright drove his automobile to Florida and registered and licensed it in Florida, and again the license was renewed for the year 1975. During the taxable years in question, Wright also had a one-half ton truck registered and licensed in Florida. On Wright's federal income tax returns for the years in question, he showed Florida to be his residence. He also testified that in April of 1974, and February of 1975, he looked for real estate in Florida for purposes of purchasing the same.

The preceding dossier of Wright's movements, his presence, and his intentions fortified by his acts showed that in 1974 he lost or abandoned his Minnesota residence and was actually domiciled in the State of Florida. Therefore, the income he earned in Florida as a pilot permanently based there for Braniff Airlines was not assignable to the State of Minnesota, and Appellant, Richard D. Wright, is not liable to pay Minnesota State income taxes for the taxable years of 1974 and 1975. This Court finds that Appellant established the requisite bodily presence and intention to make Florida his home, his domicile, and his residence, through both declarations and acts in order to establish Florida as his home, residence, and/or domicile during the taxable years in question.

Jack Fena, Judge

SUPREME COURT

Decisions Filed Friday, June 13, 1980

Compiled by John McCarthy, Clerk

50171/384 In the Matter of the Petition in Eminent Domain Proceedings, by the City of Shakopee, a municipal corporation, by its City Council. The City of Shakopee, petitioner, vs. John R. Clark, et al., Respondents-below, and Metropolitan Waste Control Commission, intervenor, Appellant. Scott County.

Since the Metropolitan Waste Control Commission, a public body, had exercised options to purchase land before the City of Shakopee had instituted proceedings for condemnation against the land, and city officials had actual knowledge of the exercise of the options, the Commission had sufficient interest in the land to raise any defense that the land was in public ownership.

A city has no implied authority to condemn land, in which the Metropolitan Waste Control Commission has an interest, for a city street where (a) the Commission needs the property for sludge disposal, a public use, and effective measures are being taken to apply it thereto without undue delay; (b) the City's proposed use is substantially inconsistent with that of the Commission; (c) the city street can reasonably be constructed without encroaching on public property; and (d) the legislative framework indicates that such authority should not be inferred.

Reversed. Kelly, J.

49957, 49959/3 First Federal Savings and Loan Association of Albert Lea, Appellant, vs. 49957 John W. Guildner, et al., Pickwick International Inc., and John W. Guildner, et al., Pickwick International Inc., Plaintiff, vs. 49959 First Federal Savings and Loan Association of Albert Lea, Appellant. Freeborn County.

Minn. Stat. § 334.011 (1978), providing higher maximum interest rates for certain business loans, operates retroactively to abate the penalty of forfeiture on all such loans, unless the penalty has been reduced to final judgment.

Reversed and remanded. Kelly, J. Took no part, Sheran, C. J. and Rogosheske, J.

50235/19 In the Matter of the Welfare of Reynaldo Castillo. Ramsey County.

Where it is plausible that an offender's motive for not registering a motorcycle is to escape detection of possible unauthorized use of that motor vehicle, both offenses arise out of a single behavioral incident and the state is barred from separately prosecuting in juvenile court.

An offender does not waive the protection against serialized prosecution by failing to state at the outset that he might claim such protection.

Reversed. Scott, J.

50488/Sp. James William Commers, Jr., et al., vs. Jeff Spartz, et al., Appellants. Hennepin County.

A County Board or designated state agency must invoke the mechanisms of the Administrative Procedure Act upon an aggrieved employee's assertion that his discharge is in violation of Minn. Stat. ch. 364 (1978).

Affirmed. Per Curiam.

STATE CONTRACTS

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

Department of Administration procedures require that notice of any

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

Department of Commerce Office of Consumer Services

Notice of Requests for Proposals for Consultant Services

Response Requested by July 11, 1980

I. Introduction

The Office of Consumer Services of the Minnesota Department of Commerce, which is statutorily charged with representing the interests of the state's residential utility consumers in Public Service Commission proceedings, is soliciting proposals from qualified consultants to perform work in connection with the petition of Northern States Power Company for authority to increase its rates by a total additional annual revenue of \$77.5 million. The petition is currently before the Minnesota Public Service Commission and a hearing in the matter has been ordered. The Commission's Initial Order is due on April 30, 1981.

II. Requisite Qualifications

Respondents must be able to demonstrate substantial experience and expertise in the economic and regulatory aspects of the electric industry. Specifically, respondents must have experience in preparation and presentation of testimony before regulatory bodies regarding cost of service, rate design, financial issues and application of relevant Public Utility Regulatory Policies Act (PURPA) standards.

III. Scope of Work

A. Assist the Office of Consumer Services in preparation for and in conducting cross-examination of witnesses presenting direct, rebuttal and surrebuttal testimony for the Company and other intervenors regarding cost of service studies; lifeline or conservation rates; and costs of new plant abandonments. Witnesses filing direct testimony on behalf of the Company on these issues include:

Elizabeth E. Dupay: standard rate design and stratified embedded cost study;

Dennis L. Platteter: allocations and lifeline rate;

Edward J. McIntyre: cost of service and revenue requirement;

Donald W. McCarthy (Chief Executive Officer): general policy issues.

Cross-examination of company witnesses has not yet been scheduled, but OCS anticipates these hearings will be held in the fall.

B. Evaluate the cost data, the cost of service study and the rates proposed by the company, with respect to the impact of these factors on the residential customer class. Identify and analyze PURPA standards relating to the above issues, including those of lifeline (or conservation) and cost-based rates. Analyze the appropriateness of inclusion of costs for Tyrone and Sherco IV abandoned plants.

C. Prepare and present pre-filed direct, rebuttal and surrebuttal testimony concerning the above noted issues. This will include appearing at deposition, if requested, and before a hearing examiner for purposes of cross-examination by parties to the proceeding.

D. Assist in preparation of Brief, Reply Brief, Exceptions to the Hearing Examiner's Report and Reply Exceptions.

E. Assist in preparation of oral argument before the commission.

F. Assist in any Post-Order Motions and Appeals to the courts.

IV. Format for Proposal

The respondent's proposal should include a summary of the respondent's qualifications and experience. The proposal should attempt to address, as specifically as possible, all work tasks to be performed throughout the proceeding and identify personnel who will be responsible for performing the work. Cost estimates should be as detailed as possible and should include estimates for professional services and out-of-pocket expenses, such as travel, lodging, etc. At a minimum, cost estimates should be broken down between cost-of-service study analysis and resulting rate design recommendations; PURPA analysis; and analysis of plant abandonment costs, since contracts for each of these items may be awarded separately to different respondents.

If you have any questions regarding the foregoing, please contact Eldon J. Spencer at (612) 296-6032.

Responses to this Request for Proposals must be submitted by July 11, 1980 and directed to:

Eldon J. Spencer, Jr., Supervisor
Residential Utility Consumer Unit
Office of Consumer Services
Minnesota Department of Commerce
162 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101

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The Office of Consumer Services of the Minnesota Department of Commerce, which is statutorily charged with representing the interests of the state's residential utility consumers in Public Service Commission proceedings, is soliciting proposals from qualified consultants to perform work in connection with the petition of Northern States Power Company for authority to increase its rates by a total additional annual revenue of \$77.5 million. The petition is currently before the Minnesota Public Service Commission and a hearing in the matter has been ordered. The Commission's Initial Order is due on April 30, 1981.

II. Requisite Qualifications

Respondents must be able to demonstrate substantial experience and expertise in the economic and regulatory aspects of the electric industry. Specifically, respondents must have experience in preparation and presentation of testimony before regulatory bodies regarding capital structure, cost of capital and rate of return.

III. Scope of Work

A. Assist the Office of Consumer Services in preparation for, and in conducting cross-examination of witnesses presenting direct, rebuttal and surrebuttal testimony for the company and other intervenors regarding rate of return matters. Witnesses filing direct testimony on behalf of the company on this issue are:

Richard J. Kolkmann, Manager of Financial Research: Discounted cash flow approach.

Francis E. Jeffries, Consultant from Duff and Phelps: Comparable earnings and equity—debt risk spread.

James O. Cox, Vice President and Treasurer: Proposed capital structure.

Cross-examination of company witnesses has not been scheduled yet, but OCS anticipates these hearings will be held in the fall.

B. Prepare and present pre-filed direct, rebuttal and surrebuttal testimony concerning the above noted issues. This will include appearing at deposition, if requested, and before a hearing examiner for purposes of cross-examination by parties to the proceeding.

C. Assist in preparation of the Brief, Reply Brief, Exceptions to the Hearing Examiner's Report and Reply Exceptions.

D. Assist in preparation of the oral argument before the commission.

E. Assist in any Post-Order Motions and Appeals to the courts.

IV. Format for Proposal

The respondent's proposal should include a summary of the respondent's qualifications and experience. The proposal

should attempt to address, as specifically as possible, all work tasks to be performed throughout the proceeding and identify personnel who will be responsible for performing the work. Cost estimates should be as detailed as possible and should include estimates for professional services and out-of-pocket expenses, such as travel, lodging, etc. If you have any questions regarding the foregoing, please contact Eldon J. Spencer at (612) 296-6032.

Responses to this Request for Proposals must be submitted by July 11, 1980 and directed to:

Eldon J. Spencer, Jr., Supervisor
Residential Utility Consumer Unit
Office of Consumer Services
Minnesota Department of Commerce
162 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101

**Minnesota Educational
Computing Consortium
(MECC)****Management Information
Services Division****Notice of Request for Proposals for
Computer System Modification**

MECC is seeking individual/s to make modifications to the Elementary-Secondary-Vocational Student Support Services computer system. Work is primarily in the form of modifying existing programs. Contents of the proposal and the evaluation process are detailed in the Request for Proposal which can be requested from:

Doug LaChance
2520 Broadway Drive
St. Paul, Minnesota 55113
(612) 376-1600

Deadline for the submission of completed proposals will be 4:30 p.m., July 3, 1980.

**Department of Veterans
Affairs****Notice of Contracts
Available—Fiscal Year 1981**

In accordance with Minnesota Statute § 16.0981, the Department of Veterans Affairs is publishing notice that the contracts listed below are available and will be awarded for

STATE CONTRACTS

Fiscal Year 1981 (July 1, 1980 to June 30, 1981).

A. Minnesota Veterans Home (Minneapolis)

1. Notice is hereby given that the Minnesota Veterans Home (Minneapolis) intends to engage the services of licensed individuals to provide medical and dental services to the residents/patients of the Veterans Home. The estimated amount of the individual contracts are outlined below.

a. Medical Director	\$34,000.
b. Dental Services	16,000.
c. Podiatry Services	5,000.
d. Eye Acuity Testing/Related Svs.	10,000.

2. Notice is hereby given that the Minnesota Veterans Home (Minneapolis) intends to engage the services of a qualified corrective therapy consultant to provide individual evaluations of residents/patients and the modalities required in the corrective therapy programs. The estimated amount of the contract is \$8.00 per hour.

3. Inquiries and formal expressions of interest in the proposed contracts outlined above should be submitted by June 30, 1980 to:

Robert J. Strunk
Minnesota Veterans Home
51st Street and Minnehaha Avenue
Minneapolis, Minnesota 55417

B. Minnesota Veterans Home (Hastings)

1. Notice is hereby given that the Minnesota Veterans Home (Hastings) intends to engage the services of licensed individuals to provide medical and dental services to the residents of the Veterans Home. The estimated amount of the individual contracts are outlined below.

a. Medical Director	\$18,000.
b. Dental Services	\$10,000.

2. Inquiries and formal expressions of interest in the proposed contracts outlined above should be submitted by June 30, 1980 to:

Dick Dobrick
Minnesota Veterans Home
1200 East 18th Street
Hastings, Minnesota 55033

C. Department of Veterans Affairs (Central Office)

1. Notice is hereby given that the Department of Veterans Affairs (Central Office) intends to engage the services of a licensed physician to review medical information to determine the medical eligibility for the department's financial assistance program. The estimated amount of the contract is not expected to exceed \$8,000. Inquiries and formal expressions of interest should be submitted by June 30, 1980 to

R. J. Lavell, Deputy Commissioner
Department of Veterans Affairs
Veterans Service Building
St. Paul, Minnesota 55155

OFFICIAL NOTICES

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

either orally or in writing.

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

Ethical Practices Board

Request for Advisory Opinion Re: Officeholder Radio Spots

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its July 9, 1980 board meeting. Written comments concerning the opinion request should be forwarded to arrive at the board's office prior to July 2, 1980.

June 12, 1980

Ethical Practices Board
Room 41, State Office Building
St. Paul, Minnesota 55155

Attention: B. Allen Clutter, Executive Director

Dear Board Members:

I would like to request an advisory opinion regarding the use of radio time that has been made available to me.

Two radio stations, both located in LaCrosse, Wisconsin, have made available to me 90 seconds of radio time every weekend.

The first radio station broadcasts the 90 second segment every Saturday morning, and it is basically a report type format relaying some of the legislation or other current events which are occurring in Minnesota. This radio station terminates this practice later in the fall when, according to FCC regulations, they must give any candidate equal time.

The second radio station broadcasts their 90 second segments several times periodically during the weekend. These segments

are political commentaries on local, state or national issues. The second station gives opponents equal time when, according to the FCC regulations, they are required to do so.

My questions regarding the treatment of these radio segments are two-fold. First, is it legal to continue this practice after June 11, and, second, if it is legal how would I report them on my campaign disclosure forms?

I have discontinued the use of these segments until I receive an advisory opinion from the board. Your prompt response to these questions would be greatly appreciated.

Sincerely,

Al Wieser, Jr.
State Representative, District 35B

Advisory Opinions Regarding Purchase of Typewriter by A Principal Campaign Committee; Candidate Participation—Radio Program; and Ballot Question Support

Advisory Opinion #64

Approved by the Ethical Practices Board on May 30, 1980

Issued to:

Senator Wayne Olhoft
Room 30
State Capitol
St. Paul, MN 55155

Re: Purchase of a Typewriter by a Principal Campaign Committee

Summary

#64. The treasurer of the principal campaign committee shall allocate the total cost of a typewriter as a campaign expenditure in the year first used or consumed, unless the treasurer of the campaign committee can clearly demonstrate the capital expenditure was made in part for a noncampaign purpose.

The full text of the opinion is available upon request from the office of the State Ethical Practices Board, 41 State Office Building, St. Paul, MN. 55155, (612) 296-5148.

Advisory Opinion #66

Approved by the Ethical Practices Board on June 6, 1980

Issued to:

Representative Glen Sherwood
Star Route 60
Pine River, MN 56474

Re: Candidate Participation—Radio Program

Summary

#66. A candidate who merely appears on a radio program is not

influencing his nomination or election if no mention of his candidacy is made, or there is no appeal for support, direct or indirect, for his candidacy.

The full text of the opinion is available upon request from the office of the State Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, (612) 296-5148.

Advisory Opinion #67

Approved by the Ethical Practices Board on June 6, 1980

Issued to:

Pamela Berkwitz, President
Joyce Lake, Action Chair
League of Women Voters of Minnesota
555 Wabasha Street
St. Paul, MN 55102

Re: Ballot Question Support

Summary

#67. The Minnesota League of Women Voters and its state affiliates must register separate political funds to support or oppose a ballot question if, independently, each element of the Minnesota League of Women Voters raises or spends money in excess of \$100 to influence a vote on a ballot question, however, the Minnesota League of Women Voters can establish a single political fund to receive contributions and make expenditures on behalf of all League of Women Voter elements in support or opposition to a statewide ballot question.

The full text of the opinion is available upon request from the office of the State Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, (612) 296-5148.

Department of Health Health Systems Division Emergency Medical Services Section

Notice of Intent to Appoint A Minnesota Poison Information Service Advisory Council

Pursuant to Minnesota Law, the Commissioner of Health hereby gives public notice of intent to appoint a seven-member Minnesota Poison Information Service Advisory Council to serve the functions specified in Minnesota Laws of 1980, Chapter 577. The commissioner has given due notice as prescribed in the Minnesota Open Appointments Act and has reviewed applications received by the Secretary of State pursuant to that notice. The following persons have been selected from applicants for membership on that council:

OFFICIAL NOTICES

Kusum Saxena, M.D.
Edward O'Connell, M.D.
Joseph Horozoniecke, M.D.
S. C. S. Lagalwar, M.D.
Richard Kienzle
Beth Sletten, R.N.
Georgiann Stenerson

As required in Minnesota Statutes, § 15.0597, subd. 6, appointments shall be effective no sooner than five days from the date of public notice. Appointments made for this council shall be effective on July 1, 1980.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

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

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FOR LEGISLATIVE NEWS

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

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

Legislative Reference Library
Room 111 Capitol

Interoffice

