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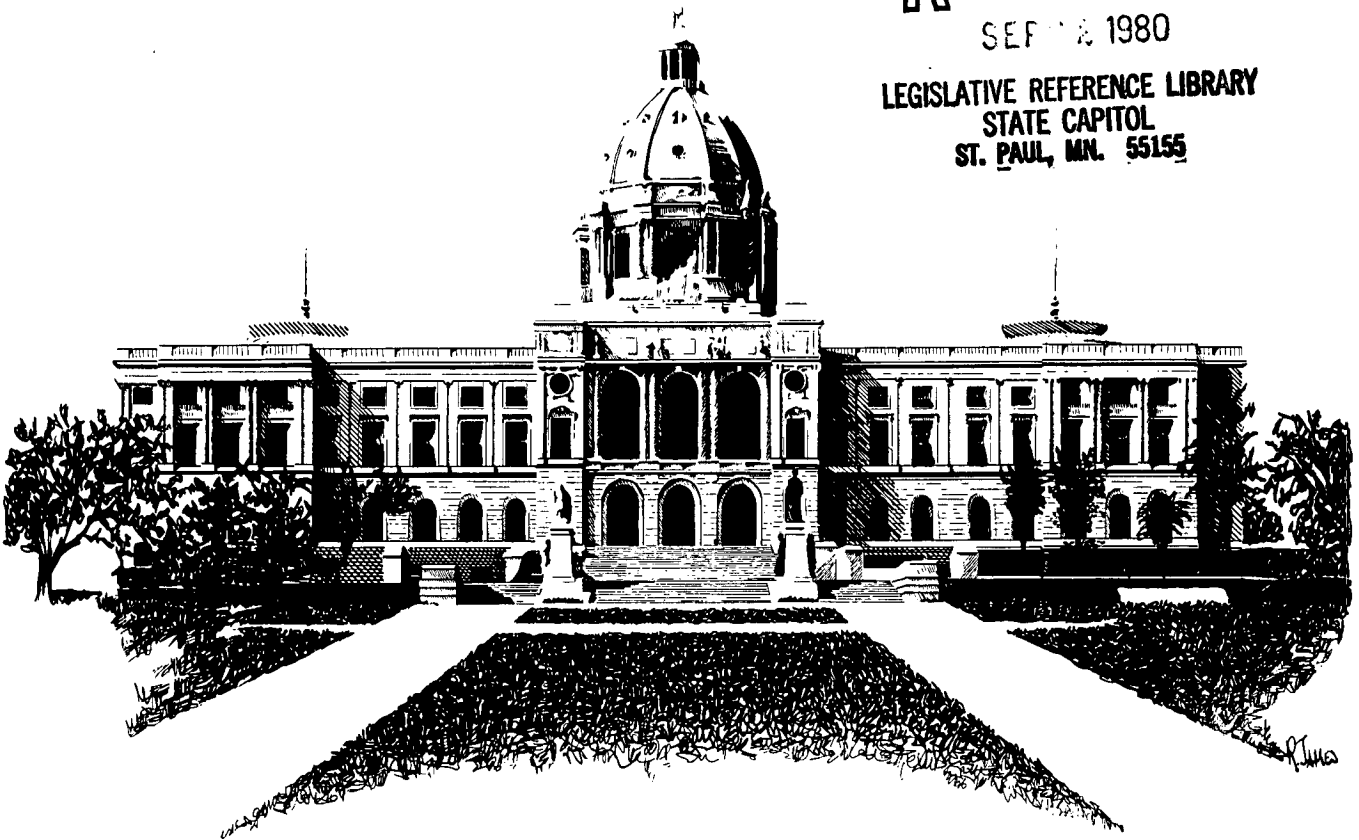
**STATE
REGISTER**

STATE OF MINNESOTA

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VOLUME 5, NUMBER 12

September 22, 1980

Pages 455-478



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 5			
13	Monday Sept 15	Monday Sept 22	Monday Sept 29
14	Monday Sept 22	Monday Sept 29	Monday Oct 6
15	Monday Sept 29	Monday Oct 6	Monday Oct 13
16	Monday Oct 6	Monday Oct 13	Monday Oct 20

*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.

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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:

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Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
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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.

Public Hearings on Agency Rules September 29-October 3, 1980		
Date	Agency and Rule Matter	Time & Place
Oct. 2	Revenue Department Individual Income Tax and Property Tax Refund Hearing Examiner: Jon L. Lunde	9:00 a.m., Rm. 83, State Office Bldg., 435 Park St., St. Paul, MN

Pollution Control Agency

Notice of Withdrawal of Proposed Rule Relating to Control of Fugitive Emissions within Designated Areas

The Minnesota Pollution Control Agency hereby withdraws the proposed rule 6 MCAR § 4.0040, "Fugitive emissions within designated areas," which was originally published at *State Register*, Volume 4, Number 1, pp. 9-22, July 9, 1979 (4 S.R. 9) and which was repropoed in an amended form at *State Register*, Volume 4, Number 16, pp. 622-628, October 22, 1979 (4 S.R. 622).

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

Department of Revenue Petroleum Tax Division

Proposed Amendments and Additions to Rules Relating to Taxation and Inspection of Petroleum Products

Notice of Intent to Adopt Rules Without A Public Hearing

Notice is hereby given that the Department of Revenue intends to adopt amendments and additions to the rules relating to the taxation and inspection of petroleum products. Because the agency is of the opinion that its proposed amendments and additions to the rules will be noncontroversial in nature, it has decided to utilize the provisions of Minn. Stat. § 15.0412, subd. 4h and adopt them without first holding a public hearing on the matter. All interested or affected persons have 30 days from the date this notice is published in the *State Register* to object, in writing, to the lack of a hearing. The agency will hold a public hearing on the proposed amendments and additions to the rules in accordance with the provisions of Minn. Stat. § 15.0412, subs. 4 through 4f only if seven or more persons submit to the agency within this 30-day period for comment a written request for a hearing.

All interested or affected persons have 30 days from the date this notice is published in the *State Register* to submit, in writing, data and views on the proposed amendments and additions to the rules. The proposed amendments and additions may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

All correspondence, including written requests for a hearing or for notification of the date upon which the proposed amended rules are submitted to the attorney general and written comments on the proposed changes to the rules, should be addressed to Mr. James Dagen, Director, Petroleum Tax Division, Minnesota Department of Revenue, Centennial Office Building, St. Paul, Minnesota, 55145, (612) 296-3511.

Copies of the proposed amended rules and copies of the Statement of Need and Reasonableness are now available, and one free copy of each may be obtained by writing to Mr. James Dagen at the address listed in the preceding paragraph. The Statement of Need and Reasonableness includes a summary of all of the agency's evidence justifying both the need for, and the reasonableness of, the proposed amendments and additions to the rules. The agency strongly recommends that both of the above-mentioned documents be carefully examined before a decision to request a hearing or to comment on the proposed changes is considered.

The proposed amended rules, if adopted, would incorporate amendments since 1972 to the statutes dealing with the tax on gasoline and gasoline substitutes (Minn. Stat. ch. 296). Generally, the amendments are proposed in order to accomplish the following goals: (1) to bring the rules into compliance with the above-mentioned statutory amendments; (2) to clarify and correct existing rules; (3) to simplify procedures wherever possible; and (4) to abolish those procedures which no longer serve a useful purpose. The agency's authority to promulgate the proposed amendments and additions to the rules is contained in Minn. Stat. § 296.27.

An amendment to 13 MCAR § 1.4001 C. (Gas Tax 1(c)) is being proposed which would tighten the requirements relating to the type of documentation which must be issued for each withdrawal of petroleum from a terminal. Conversely, an amendment to 13 MCAR § 1.4012 would eliminate the language in Gas Tax 12(b), which, as it presently reads, prohibits dealers and distributors and their agents from preparing gasoline tax refund claims for others.

Amendments to 13 MCAR §§ 1.4002, 1.4004 and 1.4006 (Gas Tax 2, 4 and 6) are being proposed in order to abolish procedures which no longer serve a useful purpose. The amendment to 13 MCAR § 1.4002 B. (Gas Tax 2(b)) would strike the requirement that a certificate of calibration be obtained prior to applying for a transport permit. The amendment to 13 MCAR § 1.4004 A. (Gas Tax 4(a)) would do away with the requirement that sales to the federal government must be supported by Federal Exemption Certificate 1094 when application is made for the credits allowed by Minn. Stat. § 296.14, subd. 2. Under the proposed amendment to 13 MCAR § 1.4006 B. (Gas Tax 6(b)), the person accepting a delivery of special fuel would no longer be required to sign the sales invoice.

Amendments to 13 MCAR §§ 1.4003 and 1.4005 (Gas Tax 3 and 5) are being proposed in order to ease the requirements pertaining to record keeping and to the preparation and issuance of sales invoices for dealers and distributors operating on the retail level. To that end, amendments to these two rules define a bulk sale and differentiate between bulk sales and sales of relatively small amounts of fuel at the retail level when setting forth the procedural requirements to be followed when sales invoices are issued for purposes of securing refunds or credits of the Minnesota gasoline tax. In addition, amendments to these two rules provide a definition for the term "original invoice," and they explain the proper procedure for filing claims for refunds or credits of the gasoline tax when the original invoices are unavailable. An amendment to 13 MCAR § 1.4012 A. (Gas Tax 12(a)) also provides a definition for the term "original invoice" and explains the proper procedure for filing claims for refund of the tax paid on aviation gasoline and on special fuel for aircraft when the original invoices are unavailable.

An amendment to 13 MCAR § 1.4006 C. (Gas Tax 6(c)) is being proposed in order to clarify the procedure for taking meter readings of special fuel dispensed and to bring this provision into compliance with the language contained in Minn. Stat. § 296.12, subd. 10.

Amendments throughout the provisions of 13 MCAR § 1.4012 (Gas Tax 12), relating to claims for refunds or credits of the Minnesota tax on gasoline (including gasohol) and special fuel used for eligible purposes such as off-highway use or use in boats and to claims for refund of the tax on aviation gasoline and on special fuel for aircraft, are being proposed in order to bring this rule into compliance with Minn. Stat. §§ 290.06, subd. 13; 296.02, subd. 7; and 296.18, subds. 1 and 5. Amendments updating 13 MCAR §§ 1.4003 and 1.4005 (Gas Tax 3 and 5) are also being proposed in light of the statutory changes reflected in Minn. Stat. §§ 290.06, subd. 13 and 296.18, subd. 1.

Amendments to 13 MCAR § 1.4013 (Gas Tax 13) are being proposed to correct an error relating to the number of axles a motor vehicle must have in order to qualify for exemption from the road tax law, to provide an alternative procedure for obtaining trip permits, and to bring into compliance with Minn. Stat. § 296.17, subd. 11, the provisions governing the filing of reports.

If no hearing is required, the agency shall submit to the Attorney General the proposed rules and notice as published, the rules as proposed for adoption, any written comments received by the agency, and a Statement of Need and Reasonableness for the rules. The agency shall give notice to all persons who requested to be informed that these materials have been submitted to the Attorney General. This notice shall be given on the same day that the record is submitted. The Attorney General shall approve or disapprove the rules as to form and legality, including the issue of substantial change, within 14 days. If he approves the rules, he shall promptly file them in the Office of the Secretary of State. If he disapproves the rules, he shall state in writing his reasons therefor, and the rules shall not be filed in the Office of the Secretary of State, nor published. The rules shall become effective upon publication in the *State Register* in the same manner as provided for adopted rules in Minn. Stat. § 15.0412, subd. 4f.

September 2, 1980

Clyde E. Allen, Jr.
Commissioner of Revenue
Arthur C. Roemer
Deputy Commissioner

Amendment as Proposed

13 MCAR § 1.4001 ~~Gas Tax 1~~ Terminal records and reports.

A. ~~(a)~~ Terminal. As used herein, the word "terminal" shall mean a facility for storage of petroleum products which have not theretofore been received in this state by a licensed distributor.

B. ~~(b)~~ Records and terminal reports. All operators of terminals in this state shall keep a true and accurate record of all petroleum products delivered into and withdrawn from their terminal. A terminal report on a form approved by the commissioner shall be filed for each month showing receipts, disbursements and inventories.

C. ~~(c)~~ Manifests to be furnished. A manifest, ~~or a bill of lading or loading ticket~~ shall be issued for each withdrawal from a terminal in this state at the time of such withdrawal. Manifests or bills of lading shall show the following information: state tax number, date shipped, name of carrier, transport permit (MDR) number, origin (point of loading), name of supplier, name and address of distributor who will report and pay the tax and/or fee (consignee), destination, kind of product and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. A legible duplicate copy of each such manifest or bill of lading shall be filed with the commissioner.

No petroleum product shall be loaded into a tank car, the cargo tank of a tank truck or a truck transport at any terminal located outside the state for shipment to a Minnesota destination unless the distributor who will report and pay the tax and/or fee (consignee) shall require that a manifest or bill of lading be issued showing the following information: State tax number, date shipped, name of carrier, transport permit (MDR) number, origin (point of loading), name of supplier, name and address of consignee, destination, kind of product and number of gallons. The state tax number may be the manifest or bill of lading number if designated as the state tax number. A legible duplicate copy of such manifest or bill of lading shall be sent to the commissioner.

13 MCAR § 1.4002 ~~Gas Tax 2~~ Transport requirements.

A. ~~(a)~~ Truck transports. Any unit operated on the public highways of this state which is used to transport petroleum products shall be deemed to be a truck transport if the cargo tank has a capacity of 2,100 gallons or more.

B. ~~(b)~~ Transport permits. Except as specifically authorized by the commissioner, no truck transport shall be operated in Minnesota until a transport permit for the cargo tank has been obtained from the commissioner. ~~Before applying for such permit, a certificate of~~

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PROPOSED RULES

calibration shall have been obtained from the Weights and Measures Division of the Department of Public Service. If any person sells, trades or otherwise disposes of a cargo tank during the term of the permit, he shall immediately surrender the permit to the commissioner at his office in St. Paul, Minnesota, together with complete information regarding its disposal, including the name and address of any new owner.

C. ~~(e)~~ Permit number. The transport permit number prefixed by the letters ~~“MDT”~~ “MDR” shall be painted in six-inch letters and numbers in a conspicuous place on the left front and right rear ends of the cargo tank for which the permit is issued.

D. ~~(d)~~ Transporter must have permit. No petroleum product shall be loaded into the cargo tank of a truck transport to be operated in Minnesota unless the operator has in his possession a valid transport permit for such cargo tank.

E. ~~(e)~~ Diversions to be reported. Any supplier or transporter of petroleum products who diverts a shipment destined to a state other than Minnesota to a Minnesota destination, or who diverts a shipment from one Minnesota destination or consignee to another Minnesota destination or consignee, shall notify the commissioner within 48 hours, setting forth the manifest number (state tax number), date, kind of product, number of gallons, the consignee to whom the shipment has been diverted and the final destination.

F. ~~(f)~~ Accidents to be reported. Any transporter who while in the act of transporting petroleum products on the highways of this state has an accident involving a loss of petroleum products due to spillage, fire, leakage or any other cause, shall notify the commissioner within 48 hours, setting forth the date of the accident, the manifest number (state tax number) and date, the consignee and destination.

G. ~~(g)~~ Manifest to be carried. Operators of tank trucks or truck transports transporting petroleum products in this state on which the gasoline ~~excise~~ tax and/or the inspection fees have not been assumed shall carry proof of ownership of such material (bill of lading, manifest, invoice or other identification).

13 MCAR § 1.4003 Gas Tax 3 Distributor records.

A. ~~(a)~~ Records to be kept. Licensed distributors shall keep a true and accurate record of all purchases, transfers, sales and use of petroleum products. A record shall be kept showing the following information for each receipt of petroleum products: Manifest number (state tax number), point of origin, from whom received, kind of product, gallons received and date unloaded. A daily record shall be kept of the totals of all sales of each petroleum product.

B. ~~(b)~~ Sales invoices. A sales invoice shall be made for each bulk sale, ~~delivery or transfer~~ of petroleum products at the time of the sale, ~~delivery or transfer~~ regardless of gallonage. All sales invoices issued for bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: Name and address of distributor printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons, and rate and amount of tax if any. The words “bulk sale,” as used in this rule, shall mean any sale of a petroleum product dispensed from a truck transport or tankwagon into a storage facility. When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices shall, in addition to the aforementioned requirements, be prepared at least in duplicate, the original to be marked “Original Invoice-” and given to the purchaser. The words “original invoice,” as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed. Unless otherwise authorized by the commissioner, double-faced carbon paper (carbon on both sides) shall be used, invoices shall be issued in sequence and the original invoice shall be given to the purchaser.

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the name and location of the seller, date of purchase, number of gallons and total price.

When issued for deliveries made into another state, invoices shall be issued in the same manner with a separate set of numbers.

Sales invoices used for the sale of a rejected petroleum product not meeting specifications which the commissioner has approved for sale shall bear the following notation:

“FUEL OIL—REJECTED PRODUCT—UNSAFE FOR HEATING OR LIGHTING PURPOSES”

“GASOLINE—REJECTED PRODUCT—CONTAINS OTHER PETROLEUM PRODUCTS ON WHICH THE GASOLINE TAX HAS BEEN PAID”

C. ~~(c)~~ Inventories. A physical inventory shall be taken at the end of each month of all petroleum products and a record kept of the quantity in each tank, tank capacity, tank number if any, and kind of product.

D. ~~(d)~~ Records to be retained. With the exception of sales invoices or receipts issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, copies ~~Copies~~ of all manifests, bills of lading, invoices and delivery tickets, as well as all other records relating to the purchase, transfer, sales and use of petroleum products, shall be retained for a period of four years.

13 MCAR § 1.4004 ~~Gas Tax 4~~ Distributor and dealer credits and refunds.

A. ~~(a)~~ Distributor credits, how allowed. The credits under ~~section 296.14, subdivision 2,~~ Minn. Stat. § 296.14, subd. 2, shall be allowed as follows:

Under clause (1), credit shall be taken prior to computing the allowance for evaporation and loss;

Under clause (2), credit on sales made directly from terminals shall be taken prior to computing the allowance for evaporation and loss; credit on all other sales shall be taken after computing the allowance for evaporation and loss ~~and must be supported by Federal Exemption Certificates 1094;~~

Under clause (3), credit shall be taken prior to computing the allowance for evaporation and loss;

Under clause (4), credit shall be taken only when supported by a credit memorandum issued by the commissioner. Such credit memorandum will reflect the adjustment for the allowance for evaporation and loss.

B. ~~(b)~~ Unusual losses. A written notice of any unusual loss of gasoline or special fuel by a distributor or dealer while in his possession, including gasoline or special fuel destroyed by accident, shall be given to the commissioner within 30 days after the discovery of the loss in order to qualify for credit or refund of tax paid, and, in addition, all claims of a distributor or dealer for refund or credit of gasoline or special fuel tax paid as a result of such unusual loss shall be filed with the commissioner within 90 days after the discovery of such loss.

13 MCAR § 1.4005 ~~Gas Tax 5~~ Dealer records.

A. ~~(a)~~ Records to be kept. Dealers shall keep a true and accurate record of all purchases and sales of petroleum products. Purchase records shall show the kind of product, from whom purchased, number of gallons and date unloaded. A daily record shall be kept of the total of all sales of each petroleum product.

B. ~~(b)~~ Sales invoices. When issued for the purpose of securing refunds or credits of the Minnesota gasoline tax, sales invoices representing bulk sales shall be machine-numbered serially with numbers of at least three digits, and shall show the following: Name and address of the dealer printed or rubber-stamped upon the invoice, date of sale, name and address of the purchaser, kind of product, price per gallon, number of gallons and rate and amount of tax. They shall be prepared at least in duplicate, the original to be marked "Original Invoice-" and given to the purchaser. The words "bulk sale," as used in this rule, shall mean any sale of a petroleum product dispensed from a truck transport or tankwagon into a storage facility. The words "original invoice," as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed. Unless otherwise authorized by the commissioner, double-faced carbon paper (carbon on both sides) shall be used, invoices shall be issued in sequence and the original invoice shall be given to the purchaser.

When issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, the invoices or receipts shall show the name and location of the seller, date of purchase, number of gallons and total price.

When such invoices are issued, When issued for the purpose of securing a refund or credit of the Minnesota gasoline tax, a separate invoice shall be issued for each sale, at time of sale, regardless of gallonage.

Invoices issued to operators of portable feed mills, corn shellers and other portable units for gasoline serviced to the unit tank, shall show separately the number of gallons, if any, serviced to the vehicle supply tank.

Sales invoices used for the sale of a rejected petroleum product not meeting specifications which the commissioner has approved for sale shall bear the following notation:

"FUEL OIL—REJECTED ~~PRODUCTS~~ PRODUCT—UNSAFE FOR HEATING OR LIGHTING PURPOSES"

"GASOLINE—REJECTED PRODUCT—CONTAINS OTHER PETROLEUM PRODUCTS ON WHICH THE GASOLINE TAX HAS BEEN PAID"

C. ~~(c)~~ Records to be retained. All records relating to the purchase and sale of petroleum products, ~~including~~ excluding copies of sales invoices or receipts issued for other than bulk sales and for the purpose of securing refunds or credits of the Minnesota gasoline tax, shall be retained for a period of four years.

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

13 MCAR § 1.4006 ~~Gas Tax 6~~ Special fuel requirements.

A. ~~(a)~~ Records. All distributors, special fuel dealers and bulk purchasers shall keep a true and accurate record of all purchases, transfers, sales and use of special fuel. They shall also keep complete and accurate records of purchases, sales and use of fuel oil and liquefied petroleum gas at all their locations where special fuel is sold or stored.

B. ~~(b)~~ Sales invoices. A sales invoice shall be issued for each sale of special fuel made by a distributor or a special fuel dealer. Such sales invoices shall bear the signature of the person making the delivery, ~~the signature of the person accepting the delivery~~, name and address of the purchaser, motor vehicle license number if delivered into the supply tank of a licensed motor vehicle, date of sale, number of gallons, rate of tax, price per gallon and total amount of sale. The words "Special Fuel" shall be written or printed on each sales invoice at the time of sale or delivery. Sales invoices shall have the name and address of the distributor or special fuel dealer printed or rubber-stamped thereon and shall be machine-numbered serially with numbers of at least three digits and issued in sequence. A separate sales invoice book shall be maintained for special fuel sales, and one copy of each such sales invoice shall be retained in the special fuel sales invoice book, unless otherwise authorized by the commissioner. Sales invoices issued for fuel other than for use as special fuel shall show the kind of fuel and the name and address of the purchaser.

C. ~~(c)~~ Meter reading and inventories. Distributors, special fuel dealers and bulk purchasers shall at the end of each month take and record

1. ~~(1)~~ through an accumulating meter in working order, meter readings for each pump through which special fuel is dispensed; and

2. ~~(2)~~ physical inventories of special fuel showing quantity in each tank, tank capacity and kind of product.

D. ~~(d)~~ Users' records and reports. All users of special fuel shall keep a true and accurate record of all purchases, sales, transfers and use of special fuel and shall retain all such records for a period of four years. Users of special fuel (except licensed distributors, special fuel dealers and bulk purchasers required to file monthly reports) shall file an annual information report showing the number of gallons used, miles traveled and such other information as the commissioner may prescribe, for each licensed motor vehicle. This report shall be filed on or before March 1 of each year for the preceding calendar year.

E. ~~(e)~~ Mileage reports. Upon demand of the commissioner there shall be attached to and made a part of the monthly special fuel tax report an accurate statement of mileage traveled during such month on Minnesota highways by each licensed motor vehicle supplied with special fuel from the bulk storage facilities maintained by the licensee.

F. ~~(f)~~ Bulk sales reports. Persons selling or delivering special fuel into storage facilities maintained by any licensed bulk purchaser shall, on or before the 23rd day of each month, file with the commissioner an itemized report, in a manner prescribed by and on a form supplied by him, showing all sales of special fuel to said licensed bulk purchaser.

G. ~~(g)~~ Records to be retained. Copies of all manifests, bills of lading, invoices, sales and delivery tickets, as well as all other records relating to the purchase, transfer, sales and use of special fuel, shall be retained for a period of four years.

H. ~~(h)~~ Changes in storage capacity or location. Distributors, special fuel dealers and bulk purchasers shall report to the commissioner in writing within seven days any change in storage capacity or location of special fuel facilities.

I. ~~(i)~~ Prices posted. Each pump used to dispense special fuel into the supply tank of a licensed motor vehicle by a special fuel dealer shall show the total sales price per gallon posted on the pump in a conspicuous manner.

13 MCAR § 1.4007 ~~Gas Tax 7~~ Other taxable products. Material used as stove or lamp gasoline, and naphtha, toluol, benzol or any like product used in blending to produce gasoline, shall be reported and the Minnesota gasoline ~~excise~~ tax paid thereon.

13 MCAR § 1.4012 Gas Tax 12 Refunds and credits.

A. ~~(a) General requirements.~~ Aviation gasoline and special fuel tax refunds. ~~Claims for refund of the excise tax paid on gasoline or special fuel, except for aviation gasoline or aviation special fuel, must be filed within four months from the date of purchase, except that a gasoline or special fuel purchase invoice filed within 15 days after the expiration of the four months filing period may be honored less a penalty of 25 percent of the amount of the approved invoice.~~ Claims for refund of the excise tax paid on aviation gasoline or ~~aviation on special fuel for aircraft~~ must be filed on or before April 15 of the year following the year in which the fuel was purchased. Any such claim filed during the 15-day period from April 16 to April 30 may be honored less a penalty of 25 percent of the amount of the approved refund claim. The postmark on the envelope in which the claim is mailed determines the date of filing. Each claim must be accompanied by the original invoice receipted for payment by the supplier. The words "original invoice," as used in this rule, shall mean the first or top sheet of an invoice, bearing the original inked or penciled imprint, whether it be typewritten, handwritten or printed, issued by a seller to a purchaser covering the product or products sold. Whenever the original invoice is unavailable, the commissioner may approve the use of a copy thereof. In such cases, a lost-or-destroyed-invoice affidavit executed by the claimant, together with a supporting statement by the supplier, must be filed.

~~(b) Preparation of claims. No distributor or dealer or agent or servant of either shall assist in the preparation of any claim for gasoline tax refund of any other person.~~

B. Minnesota gasoline tax refunds and credits.

1. General. The amount paid by a taxpayer-claimant during the taxable year as tax on gasoline (including gasohol) or special fuel may be credited against any income or excise tax due under Minn. Stat. ch. 290 to the extent that the gasoline was bought and used for a purpose other than use in motor vehicles or snowmobiles and to the extent that the special fuel was bought and used for a purpose other than use in licensed motor vehicles. The tax on aviation gasoline and on special fuel for aircraft cannot be used as a credit. If the credit for the amount paid as tax on gasoline or special fuel exceeds the tax due under ch. 290, the excess shall be refunded to the taxpayer-claimant.

A credit or refund may be claimed only for the amount paid as the Minnesota-imposed tax on gasoline or special fuel. No credit or refund may be claimed solely on the basis that the Minnesota tax was paid on gasoline or special fuel subsequently used outside Minnesota; that is, if no credit or refund of the Minnesota tax would be allowable with respect to a particular use of gasoline or special fuel inside Minnesota, then no credit or refund of the Minnesota tax will be allowable with respect to that particular use of gasoline or special fuel outside Minnesota.

2. Individuals. Every individual taxpayer-claimant seeking this credit or refund must file a Minnesota individual income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, individuals classified as exempt from income tax under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

3. Trusts and estates. Every trust and every estate seeking this credit or refund must file a Minnesota fiduciary income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, trusts and estates classified as exempt from income tax under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

4. Corporations. Every corporation seeking this credit or refund must file a Minnesota corporate income tax return, together with a properly completed gasoline tax credit form to be furnished by the commissioner. However, corporations classified as exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1, need only file the properly completed gasoline tax credit form in order to claim a refund.

5. Information required. The gasoline tax credit form shall contain all of the following information:

a. The claimant's name, address and Minnesota tax identification number or social security number, whichever is applicable; and

b. If the claimant is exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1, the signature of the claimant or the signature and title of the claimant's duly authorized representative, whichever is applicable; and

c. The preparer's signature, address, Minnesota tax identification number or social security number, whichever is applicable; and

d. A description of the use or uses made of the gasoline, gasohol and special fuel on which this claim is based; and

e. Dates of purchase and total gallonage of Minnesota gasohol used in boats. For purposes of this subclause and of subclause g below, the words "Minnesota gasohol" shall mean gasohol in which the alcohol contained therein has been distilled in Minnesota from agricultural products produced in Minnesota; and

f. Dates of purchase and total gallonage of gasoline and non-Minnesota gasohol used in boats. For purposes of this subclause and of subclause h below, the words "non-Minnesota gasohol" shall mean any gasohol which does not fall within the definition of "Minnesota gasohol" as set forth in subclause e above; and

g. Dates of purchase and total gallonage of Minnesota gasohol used for a purpose for which a credit or refund is allowable under clause 1 of part B of this rule, other than boat use; and

h. Dates of purchase and total gallonage of gasoline, non-Minnesota gasohol and special fuel used for a purpose for which a credit or refund is allowable under clause 1 of part B of this rule, other than boat use.

6. Information returns. Information returns filed by partnerships and by qualifying electing small business corporations (qualifying Subchapter S corporations) must include the names and addresses of all partners or all shareholders entitled to a distributive share of the Minnesota gasoline tax credit and the amount of such distributive share to which each is entitled.

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

7. Filing requirements. A claim for credit or refund of the Minnesota tax on gasoline or special fuel shall be filed only once per calendar or fiscal year. The due date for filing such a claim shall be the same as the due date specified in Minn. Stat. § 290.42 for filing an income or excise tax return. For purposes of determining the due date for filing a claim, cities, counties, school districts and other organizations classified as exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1(m) shall be treated as if they were corporations.

8. All of the provisions contained in Minn. Stat. ch. 290, are applicable to claims filed for purposes of securing a credit or refund of the Minnesota tax on gasoline or special fuel, including but not limited to, provisions governing the statute of limitations on allowable claims and provisions setting forth the penalties to be invoked for filing false claims.

C. ~~(e)~~ Motor vehicle with a power take-off. As used in this ~~regulation~~ rule, the words "motor vehicle with a power take-off" mean any motor vehicle or licensed motor vehicle whose motor is used for the dual purpose of propelling the vehicle and the operation of special equipment by means of a power take-off.

No refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off which can be operated while the vehicle is being propelled on the public highways unless such vehicle is equipped with an automatic metering device approved by the commissioner which accurately measures the amount of fuel which is consumed when the vehicle is stationary and not being propelled on the public highways.

A refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off if the vehicle has two separate fuel supply tanks, one for use when the special equipment is being operated and the other when the vehicle is being propelled on the public highways, and if the use of the fuel from the appropriate supply tank is automatically controlled.

A refund or credit is allowable with respect to the tax paid on gasoline or special fuel used in a motor vehicle with a power take-off provided that such claim is supported by complete and detailed records that will clearly and accurately establish the amount of gasoline or special fuel used for purposes other than propelling the vehicle on the public highways or provided such vehicle is equipped with an automatic metering device approved by the commissioner. Such records shall include, but not be limited to, all of the following information which is applicable to the claimant's situation: Type of operation, dates of operation, name of customer, miles traveled, hours of operation of special equipment, age of equipment, and results of tests determining engine performance during highway and power take-off operations. The use of separate fuel tanks and/or hubometers are not sufficient in themselves to qualify as complete and accurate records. Estimates of the amount of fuel used, regardless of how reasonable they may be, are not acceptable.

D. ~~(d)~~ Off public highway use. If a motor vehicle or a licensed motor vehicle is used entirely off the public highways, a refund or credit of the tax paid on gasoline or special fuel is allowable.

If a motor vehicle or a licensed motor vehicle is used both on and off the public highways, a refund or credit of the tax paid on gasoline or special fuel used for purposes other than propelling the vehicle on the public highways is allowable provided such claim is supported by complete and detailed records that will clearly and accurately establish such amounts of fuel. Such records shall include, ~~some or all of the following~~ but not be limited to, all of the following information which is applicable to the claimant's situation: Type of operation, dates of operation, miles traveled on public highways, miles traveled on private roads, hours of travel off the public highways, age of equipment, and results of tests determining engine performance during off highway use. Estimates of such amounts, regardless of how reasonable they may be, are not acceptable.

E. ~~(e)~~ Gasoline or special fuel lost by accident. No refund or credit is allowable with respect to the tax paid on gasoline or special fuel which is lost through spillage or accident except while in the possession of a distributor or dealer.

F. ~~(f)~~ Gasoline not used by claimant. No refund or credit is allowable with respect to the tax paid on gasoline which has not been purchased and used by the claimant.

G. ~~(g)~~ Gasoline or special fuel used by State of Minnesota. No refund is allowable with respect to the tax paid on gasoline used in motor vehicles or special fuel used in licensed motor vehicles owned by the State of Minnesota, including any of its municipalities and school districts, if such motor vehicles or licensed motor vehicles are used on the public highways.

13 MCAR § 1.4013 ~~Gas Tax~~ Road tax.

A. ~~(a)~~ Commercial motor vehicle. "Commercial motor vehicle" means a passenger vehicle that has seats for more than nine passengers in addition to the driver, or any road tractor, or any tractor truck or any truck having more than two axles, which passenger vehicle, road tractor, tractor truck or truck is propelled by motor fuel.

B. ~~(b)~~ Vehicles exempted from road tax. The following vehicles are exempted from the road tax law:

1. ~~(1)~~ All straight trucks having only two axles;

2. ~~(2)~~ All motor vehicles having ~~two~~ three or more axles on which is permanently mounted a corn sheller, feed grinder, back hoe, crane, well drilling machine or other similar equipment and the use of which on the public highways of this state is only for transporting the special equipment to and from the site of operation;

3. ~~(3)~~ All commercial motor vehicles operated by this state, any subdivision thereof, the United States, or any agency of two or more states or of states and the United States in which this state participates, or to any school bus as defined by the laws of this state operated by, for or on behalf of a state or any subdivision thereof;

4. ~~(4)~~ All motor vehicles which bear base license plates issued by the ~~state~~ State of Minnesota or by states with which Minnesota has reciprocal agreements relating to motor fuel taxes. The ~~Commissioner~~ commissioner of ~~highways~~ public safety will be furnished a list of such states and notified of any new agreements entered into or any cancellation of agreements now in existence.

C. ~~(e)~~ Temporary authorizations. Any person not having a valid trip permit or who is not licensed as a motor carrier who, because of unforeseen circumstances, is required to operate a commercial motor vehicle in this state may obtain temporary authorization for operating a commercial motor vehicle in Minnesota by one of the following ~~procedure~~ procedures:

1. A telegram ~~shall~~ may be sent to the Petroleum Division, Department of ~~Taxation~~ Revenue, requesting either a motor carrier license or a trip permit, together with a Western Union money order payable to the commissioner of ~~taxation~~ revenue for the amount of either \$10 in the case of a motor carrier license or \$5 in the case of a trip permit. The copy of the telegram and the money order receipt shall be carried in the cab of the vehicle while it is operated in Minnesota; or

2. A trip permit may be purchased through a service company authorized by the State of Minnesota to sell trip permits. An electronically transmitted facsimile of the trip permit shall be carried in the cab of the vehicle while it is operated in Minnesota.

No more than three trip permits may be issued during any calendar year.

D. ~~(d)~~ Reports of motor carriers and payment of tax. All motor carriers are required to file a road tax report each ~~month~~ calendar quarter. The motor carrier's report shall be for a complete ~~calendar month~~ three-month period and is due to be filed by the last day of the ~~following month~~ April, July, October and January. The report shall be on a form prescribed and furnished by the commissioner of ~~taxation~~ revenue. All reports must be accompanied by a remittance for the full amount of the tax shown to be due on the report. If no travel takes place in Minnesota during any ~~month~~ quarter, a report must still be filed, with the word "None" written in the appropriate column on line 4 of the return. The person who is responsible for the payment of the motor fuel used in the vehicle is liable for the filing of the report whether the vehicle is owned or leased by him.

E. ~~(e)~~ Annual affidavit instead of ~~monthly~~ quarterly report. The commissioner may exempt from the ~~monthly~~ quarterly reporting requirements those motor carriers all or substantially all of whose mileage is within the State of Minnesota and require in such instances an annual affidavit attesting to the intrastate or substantially intrastate character of their operations provided that the enforcement of this law is not adversely affected thereby and that the commissioner is satisfied that an equitable amount of motor fuel is purchased in Minnesota by such carriers. The affidavit shall be on a form prescribed and furnished by the commissioner.

F. ~~(f)~~ Records and invoices. An accurate record must be kept by all motor carriers of the following:

1. ~~(1)~~ The miles traveled within and without Minnesota;
2. ~~(2)~~ The miles traveled in Minnesota;
3. ~~(3)~~ The number of gallons of fuel used in the entire operation within and without Minnesota;
4. ~~(4)~~ The number of gallons of fuel purchased in Minnesota.

To substantiate the purchases of fuel in Minnesota, the original invoices or receipts must show the following:

1. ~~(1)~~ Date of purchase;
2. ~~(2)~~ Name and location of seller printed thereon;
3. ~~(3)~~ Name and address of purchaser;
4. ~~(4)~~ Kind of product;
5. ~~(5)~~ Number of gallons;
6. ~~(6)~~ Price per gallon;
7. ~~(7)~~ Total sales price.

All records and invoices must be retained for a period of at least three years.

G. ~~(g)~~ Surrender of motor carrier license. When the motor carrier shall voluntarily or ~~unvoluntarily~~ involuntarily sell, dispose of or discontinue his business, he shall immediately notify the commissioner in writing and shall within 10 days surrender his motor carrier license together with all copies of such license.

H. ~~(h)~~ Enforcement powers. The officers of the Minnesota highway patrol shall assist the Commissioner of ~~taxation~~ Revenue in the enforcement of the provisions of the road tax act. Prosecution for violation of the road tax act may be commenced in the county in which the violation occurred or in Ramsey County.

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."

SUPREME COURT

Decisions Filed Friday, September 12, 1980

Compiled by John McCarthy, Clerk

50185/255 In the Matter of the Welfare of Carl Otis Mullins. Hennepin County.

The State of Minnesota is without primary jurisdiction to entertain a petition in neglect or dependency filed on behalf of a minor who, although placed with foster parents in Minnesota, is adjudged dependent by the State of California and under its continuing supervision. Minnesota may only modify the custody decree of another state when the original state no longer has or declines to assume jurisdiction. Under the ancillary jurisdiction afforded by the presence of the child and the foster parents in this state, however, and to assure an informed decision on custody as contemplated by the Uniform Child Custody Jurisdiction Act to which Minnesota and California both adhere, the return of the child is conditioned on an evidentiary hearing to be conducted by a court of record in Minnesota on behalf of the State of California to afford appellants the opportunity to introduce local evidence relevant to the child's disposition.

Affirmed and remanded with special instructions. Sheran, C. J. Dissenting, Scott, J. Took no part, Amdahl, J. and Simonett, J.

50229/270 State of Minnesota vs. John Earl Turnipseed, Appellant. Hennepin County.

A decision to deny a motion for a continuance lies within the sound discretion of the trial court and will only be reversed upon a showing that the court abused that discretion. Here, we find no such abuse.

In instructing on circumstantial evidence, the phrase that "all circumstances proved must be consistent with that conclusion and inconsistent with any other rational conclusion" in order for the jury to reach a conclusion beyond a reasonable doubt, is not mandatory. Where the jury was properly instructed on the standards of reasonable doubt and the instruction on circumstantial evidence was otherwise adequate, no error was created by such omission.

Evidence of guilt is sufficient if, based on the facts contained in the record and the inferences that may legitimately be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged.

In this burglary case, the defendant's contention that the trial court should have instructed the jury on the offense of trespass has no merit.

Affirmed. Scott, J. Took no part, Amdahl, J. and Simonett, J.

49842/16 Timothy Wilson, Appellant, vs. City of Eagan, et al., Jay Berthe. Dakota County.

Punitive damage awards against municipal officers and employees are not precluded by Minn. Stat. § 466.04, subd. 1a (1978).

Punitive damages are appropriate against an animal warden who intentionally killed plaintiff's pet cat in violation of a city ordinance and Minn. Stat. § 35.71, subd. 3 (1978), but are not appropriate against a police officer who actually shot the cat but did not know that the cat had not been impounded for the length of time required by the city ordinance and Minn. Stat. § 35.71, subd. 3 (1978).

The trial court did not err in reducing the punitive damages awarded by the jury.

It is unfair to allow joinder of a defendant halfway through the trial where the new defendant had no notice that he would be a defendant, where the defendant had no opportunity to select an attorney or prepare his defense, and where the statute of limitations did not preclude a new action against the newly joined defendant.

The trial court did not err in finding defendants negligent and plaintiff not contributorily negligent as a matter of law.

Affirmed in part, reversed in part. Wahl, J. Took no part, Simonett, J.

Decisions Filed Friday, September 5, 1980

48890/411 Nancy L. Hanson, et al., vs. Fred L. Stoerzinger, et al., Appellants, The Igo Company, Defendant. Dakota County.

The trial court erred in concluding that defendant purchasers waived rescission of a contract for the sale of land where, prior to the parties' entering into the contract, plaintiff sellers represented the area of the subject property as substantially greater than its actual area and the abstract of title, containing a legal description of the property from which its actual area was calculable, was not in defendant's possession until the date of closing.

Reversed and remanded. Peterson, J. Took no part, Todd, J., and Amdahl, J.

50232/212 In the Matter of the Welfare of Lori Marie Gillispie and James Allen Gillispie. Ramsey County.

In order for a termination order to be sustained by this court, the record must contain clear and convincing evidence that the statutory grounds for termination of parental rights exist.

The order terminating Bruce Gillispie's parental rights is vacated. Todd, J. Took no part, Amdahl, J.

50424/Sp. State of Minnesota vs. Wilburt E. Buckhalton, Appellant. Hennepin County.

Evidence that defendant used or threatened use of dangerous weapon to cause person to submit to sexual penetration was legally sufficient to sustain the verdict.

Issue of extent to which prosecutor may comment on or introduce evidence to rebut favorable but false impression of good character created by conduct of defendant during trial or recesses of trial is delicate issue requiring use of discretion by prosecutor and trial court; *held*, whether or not evidence of this nature was improperly admitted in this case, defendant was not prejudiced by it.

Affirmed. Todd, J.

50564/Sp. State of Minnesota vs. Todd Duane Gunderson, Appellant. Ramsey County.

Evidence of defendant's participation in burglary was sufficient.

Defendant, by failing to object to trial court's granting of jury request for rereading of testimony, must be deemed to have forfeited his right to have this court review the propriety of the trial court's action.

Affirmed. Todd, J.

51240/Sp. In the Matter of the Welfare of David Weselenak. Hennepin County.

Evidence that complainant was mentally defective, mentally incapacitated, or physically helpless at time of sexual contact with her by appellant juvenile held sufficient.

Affirmed. Todd, J.

Decision Filed Monday, September 8, 1980**51314/Sp. State of Minnesota vs. William Robert Felson, Appellant. Hennepin County.**

District court in a criminal prosecution should certify a question of law for pretrial determination only if the question "in the opinion of the judge is so important or doubtful as to require a decision of the Supreme Court." R. 29.02, subd. 4, R. Crim. P.

Held, district court properly denied motion to suppress evidence based on contention that nighttime execution of search warrant was unjustified. *State v. Lien*, 265 N.W.2d 833 (Minn. 1978).

Remanded. Sheran, C. J. Took no part, Simonett, J.

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 Education
Vocational-Technical Education Division****Notice of Availability of Contract to Develop A Funding Formula to Disburse Federal Dollars
According to P.L. 94-482**

The Minnesota Division of Vocational-Technical Education is accepting proposals to develop a funding formula(e). Developed formula(e) will be used to disburse funds allocated under P.L. 94-482 and must conform to relevant federal rules and regulations and state vocational program management.

The contract period will be approximately November 17, 1980 to January 30, 1981. Contracted services and expenses are not to exceed \$8,000.

STATE CONTRACTS

Interested persons may request further information from:
Ronald C. Dreyer, Management Information Specialist
Minnesota Department of Education
Division of Vocational-Technical Education
551 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: (612) 296-2421

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.

Department of Administration Cable Communications Board

Solicitation of Public Comments on Petitions Pertaining to Newspaper and Broadcasting Station Cross-ownership of Cable Communications Systems by October 17, 1980

Notice of Solicitation of Public Comments Regarding a Petition from the Minnesota Broadcasters Association for Amendment and Repeal of Rules Governing Broadcast Station Ownership of Cable Communications Systems

Notice is hereby given that public comments in the above-entitled matter are being solicited by the Minnesota Cable Communications Board pursuant to 4 MCAR § 4.006 of the board rules.

The board will conduct public hearings concerning the petition during its regular meeting on October 17, 1980. The meeting is scheduled to convene at 9 a.m., 500 Rice Street (at University Avenue), St. Paul.

Written comments may be submitted to the board at 500 Rice Street, St. Paul, Minnesota 55103.

All interested or affected persons will have an opportunity to be heard.

The Minnesota Broadcasters Association is petitioning the board for amendment of 4 MCAR § 4.100 A. (underlining indicates petitioner's proposed additions to existing rule language, and ~~strike outs~~ indicate petitioner's proposed deletions from existing rule language):

4 MCAR § 4.100 Certain ownership prohibited. None of the following shall directly or indirectly own, operate, control or have a legal or equitable interest in a cable communications system:

A. A television broadcasting station ~~whose predicted Grade B contour, computed in accordance with section 73-684 of which is prohibited from cross-ownership pursuant to the Federal Communications Commission's rules and regulations, overlaps in whole or in part the service area within the system is serving subscribers~~; or

and for repeal of 4 MCAR § 4.100 F:

4 MCAR § 4.100 F. ~~A radio or television broadcast station, broadcasting from within the Twin Cities metropolitan area as designated in Minn. Stat. § 473.121, Subd. 4 (1976).~~

Notice of Solicitation of Public Comments Regarding a Petition from the Minnesota Newspaper Association for Repeal of Rules Governing Newspaper Ownership of Cable Communications Systems

Notice is hereby given that public comments in the above-entitled matter are being solicited by the Minnesota Cable Communications Board pursuant to 4 MCAR § 4.006 of the board rules.

The board will conduct public hearings concerning the petition during its regular meeting on October 17, 1980. The meeting is scheduled to convene at 9 a.m., 500 Rice Street (at University), St. Paul.

Written comments may be submitted to the Board at 500 Rice Street, St. Paul, Minnesota 55103.

All interested or affected persons will have an opportunity to be heard.

The Minnesota Newspaper Association is petitioning the board for repeal of 4 MCAR § 4.100 E. (~~strike outs~~ indicate petitioner's proposed deletions from existing rule language):

4 MCAR § 4.100 Certain ownership prohibited. None of the following shall directly or indirectly own, operate, control or have a legal or equitable interest in a cable communications system:

E. A publisher and/or owner of a newspaper company within the primary market area, as defined by the Audit Bureau of Circulation, served by the newspaper.

Department of Commerce Insurance Division

Notices of Meetings

Minnesota Comprehensive Health Association

Actuarial Committee

Thursday, September 25, 1980
10:00 a.m.
NWNL Reinsurance Company
100 North 7 Street—Suite 400
Minneapolis, Minnesota

and

Financial Committee

Wednesday, October 8, 1980
1:00 p.m.
NWNL Reinsurance Company
100 North 7 Street—Suite 400
Minneapolis, Minnesota

and

Board of Directors

Tuesday, October 21, 1980
9:00 a.m.
Federated Mutual Insurance Company
129 East Broadway
Owatonna, Minnesota

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the office of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone (612) 296-2202.

Energy Agency

Data and Analysis Division

Notice of Intent to Solicit Outside Opinion Regarding Rules on Annual Electric Utility Information Reported Annually

Notice is hereby given that the Minnesota Energy Agency (hereinafter the "agency") is seeking information or opinions from sources outside the agency in preparing to amend rules governing the contents of the annual report and forecast submitted by electric utilities. Amendments would reflect three years of experience under operation of the current rules which were made effective in 1977.

OFFICIAL NOTICES

The current rules are authorized by Minnesota Statutes §§ 116H.10 and 11 (1978) which require the agency to implement certain forecasting, statistical and informational reporting requirements.

The agency requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information and comment orally or in writing. Written statements may be addressed to:

Dan Quillin
Minnesota Energy Agency
980 American Center Building
150 E. Kellogg Blvd.
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-8283 and in person at the above address.

All statements of information and comment must be received by November 1, 1980. Any written material received by the Agency shall become part of the hearing record in the event that amendments to the rules are promulgated.

September 8, 1980

Dan Quillin
Energy Specialist Intermediate

Minnesota Sentencing Guidelines Commission

Notice of Public Hearing to Consider Modifications to Sentencing Guidelines

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Thursday, October 23, 1980, at 6:30 p.m. in Room 57 of the State Office Building, 435 Park Street, St. Paul, Minnesota. The public hearing is to consider proposed modifications to the sentencing guidelines specifically as they relate to:

- a) the application of concurrent and consecutive sentencing procedures as they pertain to the crime of escape, and
- b) the presumptive duration for conspiring to commit or attempting to commit Murder in the 1st degree.

Copies of the above proposed modifications are available, free of charge, by contacting the Minnesota Sentencing Guidelines Commission at Suite 284, Metro Square Building, 7th and Robert Street, St. Paul, MN 55101, or by calling at (612) 296-0144.

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

The commission will hold the record open for five days after the public hearing to accept additional written comment on the proposed modifications. On or about October 30, 1980, the commission will meet to formally adopt or reject the proposed modifications. If adopted, the modifications will become effective immediately following the Commission's formal adoption and will have the same force and effect as the language it is replacing.

For additional information, contact Linda Anderson, Administrative Assistant to the Commission at (612) 296-7508.

Proposed Modifications

F. Concurrent/Consecutive Sentences: When an offender is convicted of multiple current offenses, or when there is a prior felony sentence which has not expired or been discharged, concurrent sentences shall be given in all cases not covered below. The most severe offense among multiple current offenses determines the appropriate offense severity level for purposes of determining the presumptive guideline sentence.

Consecutive sentences may be given only in the following cases:

1. When a prior felony sentence for a crime against a person has not expired or been discharged and one or more of the current felony convictions is for a crime against a person, and when the sentence for the most severe current conviction is executed according to the guidelines; or
2. When the offender is convicted of multiple current felony convictions for crimes against different persons, and when the sentence for the most severe current conviction is executed according to the guidelines; or
3. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485. The presumptive disposition for escapes from executed sentences shall be execution of the escape sentence. If the executed escape sentence is to be served concurrently with other sentences, the presumptive duration shall be that indicated by the appropriate cell of the Sentencing Guidelines Grid. If the executed escape sentence is to be served consecutively to other sentences, the presumptive duration shall be that indicated by the aggregation process set forth below.

The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2 and section E of these guidelines.

For persons given consecutive sentences, the sentence durations for each separate offense sentenced consecutively shall be aggregated into a single presumptive sentence. The presumptive duration for offenses sentenced consecutively is determined by locating the Sentencing Guidelines Grid cell defined by the most severe offense and the offender's criminal history score and by adding to the duration shown therein the duration indicated for every other offense sentenced consecutively at their respective levels of severity but at the zero criminal history column on the Grid. The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations.

For persons who, while on probation, parole, or incarcerated ~~or supervised release~~, pursuant to an offense committed on or before April 30, 1980, commit a new offense for which a consecutive sentence is imposed, service of the consecutive sentence for the current conviction shall commence upon the completion of any incarceration arising ~~out from~~ from of the prior sentence.

G. Convictions for Attempts or Conspiracies: For persons convicted of attempted offenses or conspiracies to commit an offense, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed offense, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day except that the presumptive disposition for Conspiracy to Commit or Attempted First Degree Murder, Minn. Stat. § 609.185, with § 609.17 or § 609.175 cited, shall be imprisonment for all cases. The presumptive durations shall be as follows:

SEVERITY LEVELS OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
Conspiracy/Attempted Murder, 1st Degree	70 67-73	84 80-88	97 92-103	122 115-128	146 139-153	170 162-179	194 185-203

V. OFFENSE SEVERITY REFERENCE TABLE

Assault 1-609.221
~~Attempted Murder 1-609.185 with 609.17 or 609.175 cited~~
 VIII Criminal Sexual Conduct 1-609.342
 Kidnapping (w/great bodily harm)-609.25, subd. 2(2)
 Manslaughter 1-609.20(1) & (2)

Sale of Cocaine-152.15, subd. 1~~(2)~~ (1)
 III
 (No other changes to this severity level.)

Possession of Cocaine-152.15, subd. 2~~(2)~~ (1)
 I
 (No other changes to this severity level.)

**Minnesota Small Business Finance Agency
 Department of Economic Development**

**Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Relating to
 the Minnesota Small Business Finance Agency**

Notice is hereby given pursuant to Minn. Stat. § 15.0412, subd. 6 (1978) that the Minnesota Small Business Finance Agency is commencing the process of drafting rules governing the Minnesota Small Business Finance Agency created by Laws of 1980, ch. 547.

The proposed rules are authorized by the language of Laws of 1980, ch. 547, § 4, subd. 4. Information and opinions regarding the following matter are solicited from sources outside the agency:

1. Criteria, conditions and guidelines for the acceptance or rejection of applications to the agency.
2. Application review and priorities.

Comments should be addressed to Minnesota Small Business Finance Agency, Department of Economic Development, 480 Cedar Street, St. Paul, Minn. 55101. (Attention: M. Jean Laubach, Executive Director). Any comments received by the Small Business Finance Agency shall become a part of the record of proceeding leading to the adoption of permanent rules.

OFFICIAL NOTICES

The agency invites interested persons or groups to provide information, comments, opinions and advice on the subject as an information meeting to be held at the State Capitol Building in St. Paul, MN, Room 112, commencing at 7:00 p.m., on October 9, 1980. All written comments must be received by October 22, 1980.

Please be advised that a lobbyist must register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined by Minn. Stat. § 10A.01, subd. 11, as any individual who is:

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

B. Spends more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

A 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 the 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; or

F. Stockholder of a family farm corporation as defined in Minn. Stat. § 50024, subd. 1, who does not spend over \$250, excluding *his own* travel expenses in any year in communication with public officials. Questions should be addressed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

September 9, 1980

Kent E. Eklund
Vice Chairman
Small Business Finance Agency

Minnesota State Retirement System

Special Meeting, Board of Directors

A special meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, October 17, 1980 at 9:00 a.m. in the office of the system, 529 Jackson Street, St. Paul, Minnesota.

The purpose of the meeting is to receive a report regarding the data base system, revision of board rules and any other matters to come before the board.

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agency

Notice is hereby given to the public that vacancies have occurred in a multi-member state agency, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-2805. **Application deadline is Tuesday, October 14, 1980.**

Apprenticeship Advisory Council has 3 vacancies open October 1, for one employee representative, one employer representative, and one public member. The council proposes occupational classifications and minimum standards for apprenticeship programs and agreements and advises the Commissioner of Labor and Industry. Members are appointed by the Commissioner of Labor and Industry and receive \$35 per diem plus expenses. For specific information, contact Department of Labor and Industry, 5th Floor, Space Center Building, 444 Lafayette Rd., St. Paul 55101; (612) 296-2342.

Department of Transportation

Notice of Variance Request in the Matter of the Request of the City of St. Cloud for A Variance from Standards for the Design and Construction of the 10th Street Bridge in St. Cloud, MN

Notice is hereby given that the City of St. Cloud has made a written request to the Commissioner of Transportation for a roadway width variance for the design and construction of the 10th Street Bridge in the City of St. Cloud.

The request is for a variance from 14 MCAR § 1.5032, H.1.c., Rules for State Aid Operations under Minn. Stat. chs. 161 and 162, (1978) as amended, so as to permit the 10th Street Bridge to be designed and constructed to a width of 39 feet to accommodate two traffic lanes and two bicycle lanes; plus 6 foot sidewalks on each side for pedestrian use.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155 within 20 days of the publication of this notice in the *State Register*.

If a written objection is received within said 20 days, the variance shall be granted or denied only after a contested case hearing has been held on the request.

September 12, 1980

Richard P. Braun
Commissioner of Transportation

Errata

The Department of Administration, Building Code Division's Notice of Adoption of Amendments to the State Building Code, published at Vol. 5, Number 9, p. 333, September 1, 1980, contained an error. That notice stated that the rules published and proposed at 4 S.R. 233 and at 4 S.R. 1149 were adopted with amendments. However, of those proposed rules, 2 MCAR §§ 1.15501-1.15517 and Tables 55A and D were not amended, but have been withdrawn.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

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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
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