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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 |
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| SCHEDULE FOR VOLUME 6 | | | |
| 31 | Monday Jan 18 | Monday Jan 25 | Monday Feb 1 |
| 32 | Monday Jan 25 | Monday Feb 1 | Monday Feb 8 |
| 33 | Monday Feb 1 | Monday Feb 8 | Monday Feb 15 |
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*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

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

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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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:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A 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 1-13, inclusive | Issue 39, cumulative for 1-39 |
| Issues 14-25, inclusive | Issues 40-51, inclusive |
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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
 2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
 3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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

Proposed Temporary Rules Requiring Annual Audited Financial Reports

Notice is hereby given that the Insurance Division of the Department of Commerce has proposed the following above entitled temporary rules. These temporary rules are promulgated pursuant to Minn. Stat. § 60A.031 and 60A.13.

All interested persons may submit comments on the proposed temporary rules for 20 days immediately following publication of this material in the *State Register* by writing to Leo Flaten, Insurance Division, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101. The temporary rules 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 rules. Pursuant to Minn. Stat. § 15.0412, subd. 5 (1980) these temporary rules shall be in effect for a period of ninety days following adoption and approval by the Attorney General.

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

PROPOSED RULES

Temporary Rules as Proposed (all new material)

4 MCAR § 1.9120 [Temporary] Authority. Rules 4 MCAR §§ 1.9120-1.9135 [Temporary] are promulgated by the Commissioner of Insurance under Minn. Stat. §§ 60A.031 and 60A.13.

4 MCAR § 1.9121 [Temporary] Purpose and scope. The purpose of 4 MCAR §§ 1.9120-1.9135 [Temporary] is to improve the Minnesota insurance division's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

Rules 4 MCAR §§ 1.9120-1.9135 [Temporary] shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of the practices, procedures, financial condition, market conduct, and other aspects of the operations of insurers.

Rules 4 MCAR §§ 1.9120-1.9135 [Temporary] apply to all insurers required under Minn. Stat. § 60A.13, subd. 3a to file a report of their annual audit, except that insurers having direct premiums written in this state of less than \$100,000 in any year and having fewer than 500 policyholders in this state at the end of any year are exempt from the provisions of 4 MCAR §§ 1.9120-1.9135 [Temporary] for that year.

Insurers filing audited financial reports in another state under the other state's requirements of audited financial reports which have been found by the commissioner to be substantially similar to these requirements are exempt from the provisions of 4 MCAR §§ 1.9120-1.9135 [Temporary] if:

A. A copy of the audited financial report, the evaluation of accounting procedures, and systems of internal control report, which are filed with the other state, are filed with the commissioner in accordance with the filing dates specified in 4 MCAR § 1.9123 [Temporary] and 4 MCAR § 1.9130 [Temporary]. Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance; and

B. A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in 4 MCAR § 1.9129 [Temporary].

4 MCAR § 1.9122 [Temporary] Definitions.

A. Terms. Unless the context requires otherwise, the terms defined in B.-G. have the meanings given them.

B. Accountant. "Accountant" and "independent public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or firm is licensed to practice. For Canadian and British companies, the term means a Canadian-chartered or British-chartered accountant.

C. Audited financial report. "Audited financial report" includes those items specified in 4 MCAR § 1.9124 [Temporary].

D. Commissioner. "Commissioner" means the Commissioner of Insurance of the State of Minnesota.

E. Examiner. "Examiner" means an examiner of the Insurance Division of the Department of Commerce of the State of Minnesota.

F. Executive officer. "Executive officer" means any individual whose duties relate to active participation in control, supervision, and management of a person, whether incorporated or unincorporated. The term includes a chairman of the board, president, vice-president, treasurer, secretary, controller, and any other individual performing in a similar position.

G. Insurer. "Insurer" means a company required to have an annual audit by Minn. Stat. § 60A.13, subd. 3a.

4 MCAR § 1.9123 [Temporary] Filing and extensions for filing of annual audited financial reports. All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 30 for the year ending December 31.

Extensions of the June 30 filing date may be granted by the commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting the extension and a determination by the commissioner of good cause for the extension.

The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

4 MCAR § 1.9124 [Temporary] Contents of annual audited financial report. The annual audited financial report shall report, in conformity with statutory accounting practices required or permitted by the commissioner, the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, changes in financial position, and changes in capital and surplus for the year then ended.

The annual audited financial report shall include all of the following:

- A. A report of an independent certified public accountant;
- B. A balance sheet reporting admitted assets, liabilities, capital, and surplus;
- C. A statement of gain or loss from operations;
- D. A statement of changes in financial position;
- E. A statement of changes in capital and surplus;
- F. Any notes to financial statements. These notes shall be those required by generally accepted accounting principles and shall include:

- 1. a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under Minn. Stat. § 60A.13, subd. 1 with a written description of the nature of these differences; and

- 2. a narrative explanation of all significant intercompany transactions and balances; and

- G. Supplementary information which includes any additional information which the commissioner may from time to time require to be disclosed.

The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner.

The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

The amounts may be rounded to the nearest thousand dollars, and all insignificant amounts may be combined.

4 MCAR § 1.9125 [Temporary] Designation of independent certified public accountant. Each insurer required by 4 MCAR § 1.9123 [Temporary] to file an annual audited financial report must notify the commissioner in writing of the name and address of the certified public accountant or accounting firm retained to conduct the annual audit within 60 days after becoming subject to the annual audit requirement.

Insurers not retaining an independent certified public accountant on the effective date of this rule shall register the name and address of their retained certified public accountant not less than six months before the date when the first certification is to be filed.

The insurer shall obtain from the accountant a letter which states that the accountant is aware of the provisions that relate to accounting and financial matters in the insurance laws and the rules of the insurance division of the state of domicile. The letter shall affirm that opinions on the financial statements will be expressed in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that division, unless exceptions to these practices are appropriate. The letter shall specify all exceptions believed to be appropriate. A copy of this letter shall be filed with the commissioner.

If an accountant who was not the accountant for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the insurer shall notify the division of this event within 30 days of the date the accountant is engaged. The insurer shall also furnish the commissioner with a separate letter stating whether in the 24 months preceding this engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons that he does not agree. The insurer shall furnish this responsive letter from the former accountant to the commissioner together with its own.

4 MCAR § 1.9126 [Temporary] Qualifications of independent certified public accountant. The commissioner shall not recognize any person or firm as an independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or for a Canadian or British company, that is not a chartered accountant.

Except as otherwise provided, a certified public accountant shall be recognized as independent as long as he or she conforms to the standards of his or her profession.

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

PROPOSED RULES

The commissioner, after notice and hearing under Minn. Stat. ch. 15, may find that the accountant is not independent for purposes of expressing an opinion on the financial statements in the annual audited financial report. The commissioner may require the insurer to replace the accountant with another whose relationship with the insurer is independent within the meaning of this rule.

4 MCAR § 1.9127 [Temporary] Consolidated or combined audits. Upon written application and for specified periods, the commissioner may permit an insurer to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements. In such cases, the report shall include an organization chart of the companies together with a columnar consolidating or combining worksheet.

Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.

Amounts for each insurer subject to this rule shall be stated separately.

Noninsurance operations may be shown on the worksheet on a combined or individual basis.

Explanations of consolidating and eliminating entries shall be included on the worksheet.

A reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers shall be included on the worksheet.

The commissioner may at any time require an insurer to file separate annual audited financial statements even though permission had previously been given to file on a consolidated or combined basis.

4 MCAR § 1.9128 [Temporary] Scope of examination and report of independent certified public accountant. Financial statements furnished under 4 MCAR § 1.9124 [Temporary] shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to such other procedures illustrated on the "Financial Condition Examiners Handbook," in the 'Examiners Handbook,' issued by the National Association of Insurance Commissioners (Milwaukee, Wisconsin: 1976, as amended) as the independent certified public accountant deems necessary. The commissioner may from time to time require that additional examination procedures be observed by the accountant in the audit of the financial statements of insurers pursuant to this rule. Any separate reports given to the commissioner on the additional procedures and findings shall be considered to be the commissioner's workpapers.

4 MCAR § 1.9129 [Temporary] Notification of adverse financial condition. The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to immediately notify in writing an executive officer and all directors of the insurer of the final determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of Minn. Stat. § 60A.07 as of that date.

Any executive officer or director of an insurer required to file an annual audited financial report who received any notification from the accountant shall make a written report to the commissioner of the existence of the materially misstated financial condition or the failure to meet the minimum capital and surplus requirements of the commissioner within three business days of the notification.

If the accountant becomes aware of facts which might have affected this report subsequent to the date of the audited financial report filed under this rule, the accountant shall take the action prescribed by section AU561, volume 1 of the 'AICPA Professional Standards,' issued by the American Institute of Certified Public Accountants.

4 MCAR § 1.9130 [Temporary] Evaluation of accounting procedures and system of internal control. In addition to the annual audited financial report, each insurer shall furnish the commissioner with a report of the evaluation performed by the accountant, in connection with the examination, of the accounting procedures of the insurer and its system of internal control.

A report of the evaluation by the accountant of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the division within 60 days after the filing of the annual audited financial report.

This report on internal control shall be in the form prescribed by generally accepted auditing standards.

4 MCAR § 1.9131 [Temporary] Definition, availability, and maintenance of certified public accountant workpapers. Workpapers are the records kept by the independent certified public accountants of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the examination of the financial statements of an insurer. Workpapers may include work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and which support his opinion.

Every insurer required to file an audited financial report shall require the accountant, through the insurer, to make available for review by the examiners the workpapers prepared in the conduct of the examination. The insurer shall require that the accountant retain the audit workpapers for a period of not less than five years after the period reported upon.

In the conduct of the periodic review by the examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the insurance division. These copies shall be part of the commissioner's workpapers.

4 MCAR § 1.9132 [Temporary] Exemptions. Upon written application of any insurer, the commissioner may grant an exemption from compliance with the provisions of 4 MCAR §§ 1.9120-1.9135 [Temporary] if the commissioner finds, upon review of the application, that compliance would constitute a financial hardship upon the insurer. An exemption may be granted at any time and from time to time for specified periods. Within ten days from a denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. This hearing shall be held in accordance with Minn. Stat. ch. 15.

Upon written application of any insurer, the commissioner may permit an insurer to file annual audited financial reports on some basis other than a calendar year basis for a specified period. No exemption shall be granted until the insurer presents an alternative method satisfying the purposes of this rule. Within ten days from a denial of a written request for an exemption, the insurer may request in writing a hearing on its application. The hearing shall be held in accordance with Minn. Stat. ch. 15.

4 MCAR § 1.9133 [Temporary] Reports prepared in accordance with generally accepted accounting principles. With the commissioner's approval, an insurer may comply with this rule by filing the requisite reports which have been prepared in accordance with generally accepted accounting principles if the notes to the financial statements include a reconciliation of differences between net income and capital and surplus on the annual statement filed pursuant to Minn. Stat. § 60A.13, subd. 1 and comparable totals on the audited financial statements, and a written description of the nature of these differences.

4 MCAR § 1.9134 [Temporary] Examinations. The commissioner or a designated representative shall determine the nature, scope, and frequency of examinations under this rule conducted by examiners under Minn. Stat. § 60A.13. These examinations may cover all aspects of the insurer's assets, condition, affairs, and operations and may include and be supplemented by audit procedures performed by independent certified public accountants. Scheduling of examinations will take into account all relevant matters with respect to the insurer's condition, including results of the National Association of Insurance Commissioner's Insurance Regulatory Information System, changes in management, results of market conduct examinations, and audited financial reports. The type of examinations performed by examiners under this rule shall be compliance examinations, targeted examinations, and comprehensive examinations.

Compliance examinations will consist of a review of the accountant's workpapers defined under 4 MCAR § 1.9131 [Temporary] and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the Minnesota insurance laws and the rules of the insurance division. The examiners may perform alternative or additional examination procedures to supplement those performed by the accountant when the examiners determine that the procedures are necessary to verify the financial condition of the insurer.

Targeted examinations may cover limited areas of the insurer's operations as the commissioner may deem appropriate.

Comprehensive examinations will be performed when the report of the accountant as provided for in 4 MCAR § 1.9128 [Temporary], the notification required by 4 MCAR § 1.9129 [Temporary], the results of compliance or targeted examinations, or other circumstances indicate in the judgement of the commissioner or a designated representative that a complete examination of the condition and affairs of the insurer is necessary.

Upon completion of each targeted, compliance, or comprehensive examination, the examiner appointed by the commissioner shall make a full and true report on the results of the examination. Each report shall include a general description of the audit procedures performed by the examiners and the procedures of the accountant which the examiners may have utilized to supplement their examination procedures and the procedures which were performed by the registered independent certified public accountant if included as a supplement to the examination.

4 MCAR § 1.9135 [Temporary] Canadian and British companies.

A. Annual audited financial report. In the case of Canadian and British insurers, the annual audited financial report means the annual statement of total business on the form filed by these companies with their domiciliary supervision authority and duly audited by an independent chartered accountant.

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

PROPOSED RULES

B. Conformity letter. For these insurers, the letter required in 4 MCAR § 1.9125 [Temporary] shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner under 4 MCAR § 1.9123 [Temporary] and shall affirm that the opinion expressed is in conformity with those requirements.

State Board of Education Department of Education School Management Services Division

Proposed Rule Governing the Capital Loan Program (5 MCAR § 1.0430)

Notice of Intent to Adopt Rule without a Public Hearing

Notice is hereby given that the State Board of Education proposes to adopt the above-entitled rule without a public hearing. The board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h.

The proposed rule is authorized by Minn. Stat. § 121.41, subd. 2. This rule, 5 MCAR § 1.0430, establishes the application procedure for school districts that require state funds to assist in financing a school construction project. The rule establishes the criteria the State Board of Education and commissioner will use in determining whether the capital loan should be recommended for approval, denial, or reduced in the requested amount.

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

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f.

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

Janet Kielb
School District Organization
911 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Telephone: (612) 296-1382

Authority for the adoption of these rules is contained in Minn. Stat. § 121.41, subd. 2. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules has been prepared and is available from Janet Kielb upon request.

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

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Janet Kielb.

December 8, 1981

John J. Feda
Secretary

Rule as Proposed (all new material)

Chapter Twenty-Two A: Capital Loan Program

5 MCAR § 1.0430 Capital loan program.

A. Preapplication requirement. A school board which intends to submit an application for a capital loan, regardless of the capital expenditure amount, shall submit the construction proposal to the Commissioner of Education for a review and comment statement pursuant to Minn. Stat. § 122.90, subs. 2-4.

B. Review and comment by commissioner. The commissioner shall base the review and comment statement on information required to be provided pursuant to Minn. Stat. § 122.90, subd. 2. In determining the educational and economic advisability of the proposed facility, the commissioner shall:

1. determine if the size of the proposed facility is appropriate for the projected number of pupils;
2. determine whether the pupil enrollment will continue to be sufficient to support the need for the proposed facility for at least ten years;
3. determine if currently recommended energy conservation methods will be used;
4. determine whether the projected annual operating costs will be consistent with current construction projects of a similar size and nature;
5. determine whether the proposed facility can also be used for community education programs, as a meeting facility, or in ways other than direct delivery of educational services; and
6. determine the availability and cost-effectiveness of purchasing or leasing existing facilities from adjacent school districts or from other institutions. The commissioner shall take into consideration: the size, nature and age of existing facilities; whether existing facilities meet current fire safety and other applicable codes and requirements established in state and federal law; and the cost of any remodeling required to make the facilities satisfy district needs.

C. Recommendation by commissioner. Based upon the determinations in B., the commissioner shall recommend to the State Board of Education whether the amount of the capital loan should be approved in the requested amount, denied or reduced.

D. Approval recommendation by state board. The State Board of Education shall recommend approval of a loan if all of the criteria in 1.-3. are met, unless the loan is denied pursuant to the provisions of F.

1. The commissioner's review and comment statement must recommend approval.
2. The facilities must be comparable in size and quality to facilities constructed within the last decade and financed by a local bond issue in no less than three districts with similar pupil enrollment.
3. The facilities are needed either:
 - a. to replace facilities that no longer comply with current fire safety codes and other applicable codes and requirements established in state and federal law; or
 - b. to provide adequate and sufficient instructional areas to carry out the educational requirements for pupils for whom adequate facilities do not exist. To satisfy requirement 3.b. the district shall provide documentation that one or more of the following situations exist: the programs are not provided due to lack of space or the programs are provided in inappropriate spaces, such as temporary buildings or rented buildings not intended for educational purposes.

E. Information required by state board. In making its application to the State Board of Education, the applying school district shall supply the following information about adjacent school districts:

1. projected enrollment for each district;
2. size, nature and age of their present educational facilities; and
3. whether the buildings meet current fire safety and other applicable codes and requirements established in state and federal law.

F. Denial recommendation by state board. Based upon the information submitted pursuant to B. and E., the State Board of Education shall recommend denial of a loan if the facility could be made available in at least one of the following ways:

1. through the purchase or lease of a facility from an existing institution within the district or adjacent districts;
2. through an interdistrict cooperation agreement with another district;
3. by dissolving the applicant district and attaching it to another district; or
4. through consolidation with another district.

G. Reduction recommendation by state board. Based upon the information submitted in B., C. and E., the State Board of Education shall recommend loan approval in a reduced amount when the problems may be resolved through a less costly manner.

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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 Administration Cable Communications Board

Adopted Rule Repealing Certain Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems

Notice is hereby given that the repeal of 4 MCAR § 4.100 E., noticed in *State Register*, Volume 6, Number 7, August 17, 1981, page 185, was adopted by the Cable Communications Board on December 11, 1981.

Pollution Control Agency Water Quality Division

Adopted Amendments to 6 MCAR § 4.8024, Classifications of Intrastate Waters of Minnesota

The rules proposed and published at *State Register*, Volume 6, Number 15, pages 638-641, October 12, 1981.(6 S.R. 638) are now adopted with the following modifications:

Rule as Adopted

6 MCAR § 4.8024 Classifications of intrastate waters of Minnesota.

Supplement I

Class 7 Limited Resource Value Waters

Minnesota River Basin

Big Stone Lake Watershed (No. 20)

Streams

Old Whetstone River Channel T.121,R.46,S.16,17,21

Ortonville

Big Stone Canning Co.

Waste Management Board

Adopted Rules Governing the Establishment, Alteration, and Termination of Solid Waste Management Districts

The rules proposed and published at *State Register*, Volume 6, Number 6, pages 161-165, August 10, 1981 (6 S.R. 161) are now adopted with the following modifications:

Rules as Adopted

6 MCAR § 8.103 Petition requirements and procedures for establishment or alteration of a district.

A. Petition contents. A petition requesting establishment or alteration of a solid waste management district shall contain the following:

7. A description of the solid waste management improvements and facilities which are envisioned, together with a discussion of the impact that the improvements and facilities will have on the solid waste management problems identified by the petitioners, and on the existing solid waste management system;

C. Petition review procedures.

2. Petitions involving a district which includes or extends into a metropolitan county shall, upon acceptance, be referred to the Metropolitan Council for review. If the Metropolitan Council does not approve the establishment or alteration of the district, the board shall dismiss the petition. The Metropolitan Council shall make its decision within ~~60~~ 90 days after receiving the petition from the board.

D. Waste Management Board decision.

1. Within 60 days after receiving the recommendations from the Solid Waste Management Advisory Council, or, in the instance of a contested case proceeding, within 60 days after receiving the report from the hearing examiner, the board shall make its decision on whether establishment or alteration of the district is in the public interest and serves the purposes of Minn. Stat. §§ 115A.62-115A.72. In making this decision the board shall consider:

e. Whether the delivery of solid waste management services, public or private, will be more efficient, or more convenient; and

6 MCAR § 8.104 Petition requirements and procedures for termination of a district.

A. Petition contents. A petition to terminate a district shall include:

3. An affidavit executed by the chairperson of the county boards of each petitioning county which states that the notice provisions of B. and Minn. Stat. § 115A.66, subd. 1, have been complied with; and

C. Termination review procedures.

4. The Solid Waste Management Advisory Council and Metropolitan Council shall make their recommendations to the board within ~~60~~ 90 days after receiving the petition. The Technical Advisory Council and the director shall make their recommendations to the board within 30 days after receiving the petition.

D. Waste Management Board decision.

1. Within 60 days after receiving the Solid Waste Management Advisory Council's recommendations, or in the instance of a contested case hearing, within 60 days after receiving the report of the hearing examiner, the board shall determine whether termination of the district is in the public interest. In determining whether the termination of a district is in the public interest the board shall consider:

e. Whether the termination will provide for more efficient or more convenient delivery of public or private solid waste management services; ~~and~~

f. Whether the purposes for which the district was established have been accomplished or are no longer necessary to accomplish; and

g. The impact the termination would have on the solid waste management system serving the district.

6 MCAR § 8.105 Designation of resource recovery facilities. Articles of incorporation which would permit a district to require that all or any portion of the solid waste generated within the district's boundaries be taken to a designated facility pursuant to Minn. Stat. § 115A.70 shall not be effective prior to July 1, 1982. Districts which are established prior to July 1, 1982, may request authority to designate facilities on or after July 1, 1982. The request to designate facilities shall be considered a substantial change in the district's powers requiring a petition for alteration of the district. After July 1, 1982, review of articles of incorporation providing for designation of facilities shall be reviewed together with the review of the remainder of the petition for establishment of a district.

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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 County of Steele

Mayme Middlestadt and
Derold W. Middlestadt,
Appellants,

v.

The Commissioner of Revenue,
Appellee.

Tax Court, Regular Division Third Judicial District

In the Matter of the Appeal from the Commissioner's
Order dated February 12, 1981, Relating to Gift Tax
File No. 030450, Donor: Mayme Middlestadt. Year of
Gift: 1978

Docket No. 3276
Order dated January 5, 1982

The above matter came on for trial on December 15, 1981, before the Minnesota Tax Court in Owatonna, Minnesota, Judge Carl A. Jensen presiding.

David M. Leach, attorney, appeared on behalf of Appellants.

James W. Neher, Special Assistant Attorney General, appeared for Appellee.

Syllabus

On appeal from the assessment of a gift tax where a farm is the subject of the gift, the Court tries the matter de novo and establishes the value on the basis of the preponderance of the evidence.

Findings of Fact

1. Mayme Middlestadt (hereinafter referred to as Appellant) gave certain farm property consisting of 199.5 acres located in Steele County, Minnesota, to her son on May 25, 1978. A gift tax return was filed April 9, 1979, in which the farm was valued at \$100,000 and a gift tax of \$4,200 was paid.
2. After an audit of the return, Appellee issued an Order dated February 12, 1981, in which it was determined that the value of the farm was \$247,779 and the gift tax should have been \$14,962. Appellant has appealed from this determination of the value of the farm.
3. The County Assessor's estimated market value of the farm, as of January 2, 1977, was \$98,842 and, as of January 2, 1978, was \$149,680.
4. Appellant was unable to testify, but Appellant's son, the recipient of the gift, testified that in his opinion the fair market value of the farm at the time of the gift was \$148,000.
5. Appellants appraiser testified that the value of the farm at the time of the gift was \$149,625.
6. Appellee's appraiser testified that the total value was \$247,779, or \$1,242 per acre.
7. The farm has been rented out for \$65 per acre for the tillable acreage in the amount of 104 acres.
8. Appellee's appraiser used sales of several comparables to arrive at his value. One of the comparables sold for \$1,350 per acre and contained 100 tillable acres out of 120.5 total acres. One comparable sold for \$1,200 per acre and contained 70 tillable acres out of 75 total acres. One comparable sold for \$1,592 per acre and contained 143 tillable acres out of 157 tillable acres. One comparable sold for \$1,941 per acre and contained 134.83 tillable acres out of a total acreage of 147.83 acres. One comparable sold for \$2,000 per acre and contained 67 tillable acres out of a total acreage of 80 acres.
9. Appellant's son testified that when Appellee's appraiser first viewed the farm, the appraiser told Appellant's son that the approximate value of the farm would be, in his opinion, about \$1,300 per acre for tillable acres and \$100 per acre for wasteland. Appellee's appraiser denied having made this statement.
10. Appellee's appraiser assigned a value of \$17,850 to the buildings on the subject farm.
11. Appellant testified that a farm across the road from the subject farm had sold in 1976 for \$395 per acre and another nearby farm had sold for \$587 per acre in 1976. There were no buildings on either of these farms, but Appellant's son testified that the land was very comparable to the subject land.

12. There was testimony that land had inflated in value over the past several years at rates between 10 and 15 percent per year.

13. This Court finds that the value of the subject land as of May 25, 1978, is as follows:

| | |
|---|-----------|
| 104 Tillable Acres at \$1,300 per acre | \$135,200 |
| 95.5 Non-Tillable Acres at \$100 per acre | 9,550 |
| Buildings | 17,850 |
| TOTAL | \$162,600 |

The gift tax return should be amended accordingly and the gift tax recalculated on the basis of this valuation.

Conclusions of Law

1. The value of the subject gift consisting of a farm is \$162,600 as of May 25, 1978, and Appellee is directed to recalculate the gift tax with interest on the basis of this value.

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

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

Memorandum

It is very difficult to arrive at an exact value of land when there has been no recent arms-length sale of that land. This Court has considered all of the evidence which included comparisons with sales of other farms, opinions of appraisers, and opinions of the owner and other witnesses.

It would be of no great value to go over the evidence at length in this Memorandum.

The County Assessor had valued the land as of January 2, 1977, at \$98,842. This is the tax statement that would have been available to the taxpayer on the date of the gift, May 25, 1978, and it would appear that this value was used in preparing the original gift tax return in which the value was stated to be \$100,000.

It would appear that the County Assessor physically appraised the property as of January 2, 1978, when he arrived at a value of \$149,680. Since this is a tremendous increase from the previous year, it might be possible to draw a conclusion that the assessor felt that this was close to the actual value, although it is likely that the assessor's value is somewhat lower than actual value since this is usually the practice.

Appellant's son testified that when Appellee's appraiser first viewed the farm, he advised Appellant's son that he thought the approximate value of the farm would be \$1,300 per acre for the tillable acres and \$100 per acre for the non-tillable acres. Appellee's appraiser did not recall making such statement, but it is the recollection of this Court that he did not absolutely deny making the statement. Although this is not necessarily determinative of the value of the land, the Court did find that these values coincided with the Court's determination of values based on all of the rest of the evidence and the Court found that they did furnish some substantiation for the Court's finding.

We might note that it appears to the Court that a rental value of \$65 per acre would tend to substantiate a value of about \$1,300 per acre for the land.

We might also note that the Appellee's appraiser stated that he did not consider the fact that the comparables he used were all sold on a contract for deed affected the price paid. The terms of the contracts were not disclosed, so no particular conclusion could be drawn from this, although there is substantial opinion that a price stated in a contract for deed may be substantially different than a cash price.

C.A.J.

State of Minnesota

Charles M. Bend, Jr. and
Cynthia Bend,

Appellants,

v.

Commissioner of Revenue,

Appellee.

Tax Court

In the Matter of the Appeal from the Commissioner's
Order, dated May 8, 1981, relating to individual income
tax of Appellants for the year ending December 31, 1979.

Docket No. 3348

Order dated January 11, 1982

The above matter came on for trial on October 27, 1981, before the Minnesota Tax Court in St. Paul, the Honorable Earl B. Gustafson, Judge, presiding.

Bruce C. Eckholm appeared as attorney for Appellants and Thomas K. Overton, Special Assistant Attorney General, appeared for Appellee.

Syllabus

The termination payment of \$75,349.00 received by Appellant was "severance pay" under Minn. Stat. § 290.032, subd. 5, and should therefore be taxed according to this section.

Findings of Fact

1. Charles M. Bend, Jr. was employed by the Davidson Company, a Minnesota corporation, for over twenty-five years.
2. In June of 1977, the Davidson Company was dissolved and the business of Davidson Company was continued by a trust under the name of Davidson & Co. for the purpose of selling the assets of Davidson Company for the benefit of the shareholders of Davidson Company.
3. In April of 1978, substantially all of the assets of Davidson & Co. were sold and most of the employees of the company were terminated. A few of the employees were continued until the end of the year to assist in the winding up process.
4. The employees who were terminated in April of 1978 consisted of twenty-four full-time hourly employees and three part-time hourly employees. Each said hourly employee was paid a termination bonus based on his or her years of service and rate of pay at the time of termination.
5. The payments to the hourly employees were called a "special separation bonus." (Exhibit 1)
6. The salaried employees each received a lump sum termination payment in either December of 1978 or January of 1979. The amount each such employee received was computed on the basis of a formula taking into consideration the employee's highest three-year earnings and his years of service. Appellant received a lump sum payment in the amount of \$75,349.00 in January of 1979.
7. On the worksheet used in calculating the payments to salaried employees, these payments were called "termination pay." (Exhibit 2)
8. The beneficiaries of the trust (the former shareholders of the Davidson Company) were asked by the trustees to approve or disapprove of the payments to salaried employees. The explanation listed the amounts and described the payments as "retirement payments which we feel the company owes to long-time, faithful employees." (Exhibit 2)
9. Appellant and his wife reported the \$75,349 payment on their 1979 federal and state income tax returns as ordinary income under the heading "fully taxable pensions and annuities."
10. Subsequently, Appellant and his wife filed an amended return claiming that the payment was entitled to special tax treatment under Minn. Stat. § 290.032, subd. 5. Appellant claimed a refund of \$7,094.35. The commissioner denied the claim and this appeal followed.
11. Minn. Stat. § 290.032, subd. 5, provides as follows:

An amount distributed to an individual as severance pay upon discontinuation of the individual's employment due to termination of business operations by the individual's employer may be treated as a lump sum distribution according to the provisions of this section. For the payment to be treated as a lump sum distribution under this subdivision, the termination of the employer's business operations at that site must be reasonably likely to be permanent and to involve the discharge within a period of one year of at least 75 percent of the persons employed by that employer at that site. For the purposes of this subdivision, "severance pay" shall mean an amount received for the cancellation of an employment contract or a collectively bargained termination payment in the nature of a substitute for income which would have been earned for personal services to be rendered in the future.

The minimum distribution allowance provided in sections 402(e) (1) (C) and (D) of the Internal Revenue Code of 1954, as amended through December 31, 1979, shall not apply to the computation allowed under this subdivision.

12. Minn. Stat. § 290.01, subd. 20(b) (16) provides that for purposes of determining Minnesota gross income there shall be subtracted from federal adjusted gross income the amount of any severance pay that may be treated as a lump sum distribution under the provisions of § 290.032, subd. 5.

Conclusions of Law

1. The lump sum payment of \$75,349.00 received by Appellant, Charles M. Bend, Jr. in January of 1979 is "severance pay" within the meaning of Minnesota Statutes, Section 290.032, Subd. 5.

2. The Commissioner of Revenue's Order, dated May 8, 1981, rejecting Appellants' claim for refund is reversed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

By the Court,
Earl B. Gustafson, Judge
Minnesota Tax Court

Memorandum

The commissioner maintains that this payment of \$75,349 to the Appellant, Charles M. Bend, was more in the nature of a retirement pension than severance pay. We disagree. The payments to Appellant and the other employees were made at the time the business was dissolved and their employment terminated. No payments were connected to an employee's "retirement age."

The facts of this case come within the limited circumstances addressed by Minn. Stat. § 290.032. The employer's business operation terminated and an amount was distributed to individual employees because of the cancellation of their employment. The fact that the termination payment formula considered an individual's past salary and years of service does nothing to negate considering this as severance pay.

E.B.G.

SUPREME COURT

Decisions Filed Friday, January 15, 1982

Compiled by John McCarthy, Clerk

51429/Sp., 51433, 51400 Lyle Eisert, trustee for the heirs of Todd Eisert, deceased, and Donald Strommen, trustee for the heirs of Dale Strommen, deceased, petitioners, Appellants, Independent School District No. 999, a.k.a. Agassiz Valley Vocational Cooperative Center, Plaintiff, 51429, 51433, v. Greenberg Roofing & Sheet Metal Company, Empro Corporation, PPG Industries, Inc., Cook Paint & Varnish Company, Inc., and Independent School District No. 593, Crookston, Minnesota, petitioner, Appellant, 51400 v. Greenberg Roofing & Sheet Metal Company, Empro Corporation, PPG Industries, Inc., Cook Paint & Varnish Company, Inc. Polk County.

Punitive damages may not be awarded in an action for death by wrongful act under Minn. Stat. § 573.02 (1980).

There was no abuse of discretion in denying a motion to amend when the punitive damages claims sought to be amended could not be maintained by a plaintiff alleging property damage in a strict liability action.

Punitive damages may not be awarded in a strict products liability action when plaintiff alleges injury solely to property.

Affirmed. Peterson, J. Took no part, Kelley, J.

81-143/Sp., 81-246 State of Minnesota, Appellant (81-246), v. George Earl Johnson, Appellant (81-143). Ramsey County.

Trial court did not err in concluding that arresting officers had probable cause to believe defendant had violated a weapons ordinance.

Circumstances did not justify departure, in the form of a stay of execution of gross misdemeanor sentence, from Sentencing Guideline's presumptive stayed felony sentence.

SUPREME COURT

Remanded for resentencing. Yetka, J.

81-208/Sp. State of Minnesota v. Martin L. Weibel, Jr., Appellant. Hennepin County.

Evidence identifying defendant as the perpetrator of burglary of dwelling and sexual assault of resident of dwelling was sufficient, and trial court did not prejudicially err in admitting evidence establishing that defendant committed similar offense in same geographic area less than two weeks later.

Affirmed. Scott, J.

50394/349 (1980) State of Minnesota v. John Dodis, Appellant. Ramsey County.

The evidence was sufficient beyond a reasonable doubt to support a jury verdict of murder in the second degree.

The trial court did not err in refusing to give defendant's requested instruction on self-defense, as the substance of the request and a correct statement of law on self-defense were contained in the instruction given. The trial court also correctly instructed the jury on the defense of mental illness.

The Minnesota Rules of Criminal Procedure allow a defense psychiatrist to be called as a witness for the prosecution in a criminal case where the defendant has consulted with the psychiatrist in preparation for trial but chooses not to use him as a witness for the defense.

No error occurred when an alternate juror who had heard all of the evidence replaced one of the original jurors after the determination of guilt portion of a bifurcated trial, but before the mental illness portion of the trial.

We find no error, under the facts and circumstances of this case, in the failure of the trial court to respond immediately to a note from a juror in the course of jury deliberations or to grant defendant's motion for a mistrial.

Defendant was not denied effective assistance of counsel by the failure of his counsel to request a *Schwartz* hearing.

Affirmed. Scott J. Concurring specially, Wahl, J. Took no part, Kelley, J.

52003/Sp. State of Minnesota v. Gary A. Schwantes, Appellant. Hennepin County.

The prosecutor's failure to comply with the discovery rules requires a new trial.

Reversed and remanded for trial. Scott, J. Took no part, Kelley, J.

51913, 51964 Edward Johnson, Appellant (51964), v. Edward J. Dirkswager, Jr., as Commissioner of the Minnesota Department of Public Welfare, *et al.*, Appellants (51913). Ramsey County.

Since the threshold question in a defamation action as to whether truth was a defense was not raised by the parties, it will not be decided on appeal.

Minnesota's Commissioner of Public Welfare, as a top level cabinet-type official in state government, has an absolute privilege to communicate a defamatory statement in the performance of his official duties. In this instance, the commissioner's disclosure of the reasons for discharge of an employee in one of the state hospitals was within the ambit of the commissioner's official duties.

A letter of termination of employment from the Department of Public Welfare to one of its employees, when issued to the employee, becomes a public document under the Data Privacy Act. It is not a violation of the Data Privacy Act for the Commissioner of Public Welfare to communicate orally the contents of a public document.

Here, where the defamatory material appears in a letter terminating an employee, we hold the absolute privilege also prevails because the government's representative was required by law (the Data Privacy Act) to disclose the defamatory material.

Because the government official, in disclosing the contents of a letter of termination, was exercising due care in the execution of the Data Privacy Act, that official and the state are further excluded from liability under the Minnesota Tort Claims Act.

Reversed with directions. Simonett, J. Took no part, Kelley, J.

Decision Filed Tuesday, January 5, 1982

52010/Sp., 81-309 United Wild Rice, Inc. v. Clifton Nelson, Appellant. Itasca County.

In the absence of a showing that the defendant caused interference between the plaintiff and its present contractual relations, an action for tortious interference with present contractual relations will not lie.

Interference with a competitor's prospective contractual relations is not improper when: the relation concerns a matter involved in the competition between the actor and the other and; the actor does not employ wrongful means and; his action does not create or continue an unlawful restraint of trade and; his purpose is at least in part to advance his interest in competing with the other.

Information made freely available to all the individual members of a large cooperative is not a trade secret because no reasonable effort has been made to maintain its secrecy.

In an action for a false or misleading statement or report under Minn. Stat. § 325D.44(8) (1980) or 7 U.S.C. § 2303(e) (1976) the plaintiff carries the burden of proving that the statement or report was false or misleading.

Reversed. Amdahl, C. J.

Decisions Filed Thursday, December 17, 1981

51461 Ravenna Township v. Jon R. Grunseth and Katharine Grunseth, Appellants. Dakota County.

In this action to enjoin landowners from interfering with an alleged public road, it is held:

Evidence was insufficient to establish the existence of a public road by statutory dedication, pursuant to Minn. Stat. § 160.05, subd. 1 (1980).

Where a town board fails to record a road under the Marketable Title Act, Minn. Stat. § 541.023 (1980), it is presumed to have abandoned the road absent proof of possession on the part of the township that is "present, actual, open and exclusive."

The township's proof of possession was insufficient to overcome the conclusive presumption of abandonment imposed by the Marketable Title Act.

Reversed. Amdahl, J. Took no part, Sheran, C. J.

52088, 52089 Michael K. Smith, Relator, 52088 v. Employers' Overload Company, Department of Economic Security, and Alan Nowicki, Relator, 52089 v. Top Temporary, Inc., Department of Economic Security. Department of Economic Security.

The voluntary leave provision of the Unemployment Compensation Act, Minn. Stat. § 268.09, subd. 1(1) (1980), only disqualifies a person who voluntarily abandons *continuing* employment without good cause. Recipients of benefits may not be disqualified for merely failing to appear for a possible offer of employment, unless such employment would be deemed "suitable" under Minn. Stat. § 268.09, subd. 2(a) (1980).

Reversed. Amdahl, 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.

League of Minnesota Cities Minnesota Energy Agency

Notice of Request for Proposals for District Heating Development Grants

The League of Minnesota Cities has \$200,000 for making district heating development grants to local communities. The Minnesota Energy Agency (MEA) will serve as technical advisor to the League in evaluating and processing the grant applications.

The purpose of the grant program is to encourage communities to develop new hot water district heating systems and expand existing steam systems.

Applications for individual grants of up to \$20,000 will be accepted in two month cycles. The deadline for Cycle Two applications is March 1, 1982.

Communities not selected in one funding cycle may resubmit applications for consideration in another funding cycle.

STATE CONTRACTS

Further information and an application package containing a formal request for proposals, application form, building survey form, program rules, and a final draft copy of *District Heating in Minnesota: A Community Guidebook*, may be obtained from Mary Lesch, Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101; phone (612) 297-2324 or 296-9096.

The Upper Midwest Section of the International District Heating Association is holding its quarterly meeting on Thursday, February 4 from 11:00 a.m. to 6:00 p.m. in the Town Square Ballroom of the Radisson Plaza, 411 Minnesota Street, St. Paul, Minnesota 55101. The MEA will make a presentation on the grant program at 3:00 p.m. Communities submitting applications for Cycle Two are encouraged to attend this meeting. For registration information, please call Monica Westerland at (612) 297/8955.

Department of Natural Resources Fish and Wildlife Division

Notice of Request for Proposals for Assessing the Distribution and Biology of the Five-lined Skink in the Minnesota River Valley

Notice is hereby given that the Department of Natural Resources intends to engage the services of a consultant to conduct an in-depth assessment of the five-lined skink (*Eumeces fasciatus*) population in the Minnesota River Valley during the summer of 1982. A more detailed outline of the project tasks is available in the Request for Proposals (RFP). The formal RFP may be requested and inquiries made should be directed to:

Lee Pfannmuller
Nongame Program
Department of Natural Resources
Box 7, Centennial Office Bldg.
St. Paul, Minnesota 55155
(612-296-2895)

Proposals should be submitted no later than 19 February, 1982. The estimated amount of the contract is \$5,000.

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.

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

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Work Experience Career Exploration Programs (WE/CEP)

Notice is hereby given that the State Department of Education, Division of Vocational-Technical Education, is seeking information or opinions from sources outside the agency in preparing to promulgate amendments to the rules governing WE/CEP. The promulgation of these rules is authorized by Minnesota Statutes § 121.11, subd. 12, which permits the agency to promulgate rules to waive minimum clock hours or credits required in 5 MCAR § 1.0040 for students enrolled in WE/CEP not to exceed 360 hours per year.

The State Department of Education, Division of Vocational-Technical Education, requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Hal Birkland, Supervisor
Student Support Services
Division of Vocational-Technical Education
5th Floor Capitol Square Building
St. Paul, MN 55101
(612) 296-5707

Oral statements will be received during regular business hours over the telephone and in person at the above address.

All statements of information and comment shall be accepted until February 16, 1982. Any written material received by this date shall become part of the record of any rules hearing held on this subject.

January 11, 1982

John J. Feda
Secretary

Department of Transportation Technical Services Division

Appointment and Scheduled Meeting of a State Aid Standards Variance Committee

Notice is hereby given that the Commissioner of Transportation has appointed a State Aid Standards Variance Committee who will conduct a meeting on Tuesday, January 26, 1982, at 9:30 A.M. in Room 419, State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota.

This notice is given pursuant to Minnesota Statute § 471.705.

The purpose of the open meeting is to investigate and determine recommendation(s) for variances from minimum State Aid roadway standards as governed by 14 MCAR § 1.5032 M.4.b., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978), as amended.

The agenda will be limited to these questions:

1. Petition of Freeborn County for a variance from Standards for Design Speed on CSAH 35 between CSAH 20 and Trunk Highway 35, one mile west of Geneva.
2. Petition of City of Minneapolis for a variance from Standards for Street Width on East 14th Street between Chicago Avenue and 11th Avenue South.
3. Petition of City of Mendota Heights for a variance from Standards for Street Width along Marie Avenue between Victoria Road and Lexington Avenue.
4. Petition of City of St. Louis Park for a variance from Standards for Parking on Virginia Avenue South between Cedar Lake Road and Burd Place.

The cities and counties listed above are requested to follow the following time schedule when appearing before the variance committee:

| | |
|-----------|-------------------------|
| 2:00 p.m. | Freeborn County |
| 2:30 p.m. | City of Minneapolis |
| 3:00 p.m. | City of Mendota Heights |
| 3:30 p.m. | City of St. Louis Park |

Dated this 18th day of January, 1982.

Richard P. Braun
Commissioner of Transportation

OFFICIAL NOTICES

Department of Transportation

Petition of the City of Mendota Heights for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Mendota Heights has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Marie Avenue between Victoria Road and Lexington Avenue.

The request is for a variance from 14 MCAR § 1.5032 H.I.C., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 44 feet with parking permitted instead of a roadway width of 46 feet with parking.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 18th day of January, 1982.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of Minneapolis for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Minneapolis has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along East 14th Street (CSAH 102) between Chicago Avenue and 11th Avenue South.

The request is for a variance from 14 MCAR § 1.5032 H.I.C., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 44 feet from Chicago Avenue to Elliot Avenue and a minimum roadway width of 40 feet Elliot Avenue to 11th Avenue South with parking permitted instead of a roadway width of 46 feet with parking permitted.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 18th day of January, 1982.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of St. Louis Park for a Variance from State Aid Standards for Parking

Notice is hereby given that the City Council of the City of St. Louis Park has made a written request to the Commissioner of Transportation for a variance from minimum design standards for parking along Virginia Avenue South between CSAH 16 (Cedar Lake Road) and Burd Place.

The request is for a variance from 14 MCAR § 1.5032 H.I.C., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a minimum roadway width of 32 feet with parking permitted instead of a minimum roadway width of 32 feet with no parking.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 18th day of January, 1982.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Freeborn County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Freeborn County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a special resurfacing project along CSAH 35 between County State Aid Highway 20 and Trunk Highway 35, 1 mile west of Geneva.

The request is for a variance from 14 MCAR § 1.5032 H.1.d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 42 miles per hour instead of a required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 18th day of January, 1982.

Richard P. Braun
Commissioner of Transportation

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