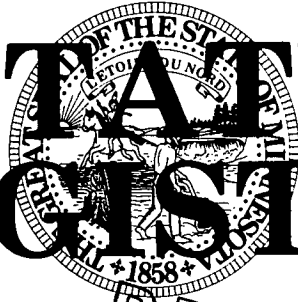


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VOLUME 9, NUMBER 9

August 27, 1984

Pages 405-444



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 9 | | | |
| 10 | Monday Aug 20 | Friday Aug 24 | Monday Sept 3 |
| 11 | Monday Aug 27 | Friday Aug 31 | Monday Sept 10 |
| 12 | Friday Aug 31 | Monday Sept 10 | Monday Sept 17 |
| 13 | Monday Sept 10 | Monday Sept 17 | Monday Sept 24 |

*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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CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Issues 1-9 inclusive 408

MINNESOTA RULES AMENDMENTS AND ADDITIONS

Issues 1-9 inclusive 409

PROPOSED RULES

Commerce Department

Proposed Rules Governing Self-Insurance Plan Administrators 410

Energy and Economic Development Division Energy Division

Proposed Emergency Rules Relating to Minimum Mandatory Energy Efficiency Standards for Residential Rental Units: Definition of Good Cause; Establishment of Fine Schedule 411

Human Services Department

Proposed Emergency Rules Governing Exemption from Work and Registration Requirements 412

Labor and Industry Department

Worker Compensation Rehabilitation Review Panel; Workers Compensation Medical Services Review Board

Proposed Rules Governing Workers' Compensation Rules of Practice for the Medical Services Review Board and Rehabilitation Review Panel 414

Public Service Department

Weights and Measures Division

Proposed Rule Governing Licensing Fees for Weights and Measures Inspectors 422

ADOPTED RULES

Economic Security Department

Adopted Rule Relating to Opportunities Industrialization Centers; Job Training 424

Pollution Control Agency

Adopted Emergency Amendments to Rules and Adopted Emergency Rules Governing Water Pollution Control Fund and Federal Grants 424

OFFICIAL NOTICES

Commerce Department

Outside Opinion Sought Regarding Proposed Rules Relating to Financial Institutions and Deposits Placed by Deposit Brokers Including the Impact of the Rules on Small Businesses 425

Economic Security Department

Outside Opinion Sought Regarding Rules Governing Services to Persons with Severe Disabilities Through Long-Term Sheltered Workshops and Work Activity Programs, and Governing Allocations to Sheltered Workshops and Work Activity Programs Based Upon Evaluated Effectiveness 425

Energy and Economic Development Department Economic Development Division

Notice of Public Hearing on Selection of a City to Host the Minnesota Convention Facility 426

Energy and Economic Development Department Energy Division

Notice of Availability of Draft Energy Policy and Conservation Reports 426

Human Services Department

Chemical Dependency Program Division Mental Illness Program Division

Notice of Legislative Hearing on the Federal Alcohol, Drug Abuse and Mental Health Block Grant, and the Availability of a Statement Describing the Intended Use of Alcohol and Drug Abuse Funds from the Alcohol, Drug Abuse and Mental Health Block Grant—Federal Fiscal 1985 427

Human Services Department

Health Care Programs

Notice of Hospital Cost Index 427

Investment Board

Investment Advisory Council

Notice of Regular Meeting 427

Metropolitan Council

Public Hearing Amending the Recreation Open Space Development Guide by Changing the Capitol Improvement Program for Acquisition and Development in Regional Recreation Open Space 428

Public Hearing Amending the Recreation Open Space Development Guide by Changing the System Plan for Regional Recreation Open Space 428

STATE CONTRACTS

Administration Department

Procurement Division

Commodities Contracts Currently Open for Bidding 429

Metropolitan Council

Request for Proposal to Assist in Study of Metropolitan Area Telecommunications Infrastructure 430

SUPREME COURT

Decisions of the Court of Appeals Filed Tuesday, August 14, 1984 431

Decisions of the Supreme Court Filed August 17, 1984 435

TAX COURT

Orders Dated August 13-15, 1984 436

ERRATA

Housing Finance Agency

Correction to Notice of Request for Proposals for Multi-Family Rental Housing Program 439

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 also.

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 Rules.
• Proposed emergency rules.
• Withdrawal of proposed rules (option: not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the State Register unless an agency requests this.)
• Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
• Notice of adoption of emergency rules.
• Adopted amendments to emergency rules (changes made since the proposed version was published).
• Extensions of emergency rules beyond their original effective date.

The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
• Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register and filed with the Secretary of State before July 31, 1983 are published in the Minnesota Rules 1983. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after July 31, 1983 will be included in a supplement scheduled for publication in mid-1984. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules 1983 due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

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

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

The listings are arranged in the same order as the table of contents of the Minnesota Rules 1983.

MCAR AMENDMENTS AND ADDITIONS

TITLE 2 ADMINISTRATION

Part 1 Administration Department

2 MCAR §§ 1.10103-1.10104; 1.10109; 1.10111; 1.15501-1.15503; 1.18601; 1.18701; 1.18804, 1.18806; 1.18808; 1.18811; MHD 120-124; 126, 130-131 (proposed) 5

TITLE 3 AGRICULTURE

Part 1 Agriculture Department

3 MCAR §§ 1.1340-1.1348 [Emer] (proposed) 86
3 MCAR §§ 1.4060-1.4070 [Emer] (extended) 56

Part 2 Animal Health Board

3 MCAR § 2.026 (adopted) 201

TITLE 4 COMMERCE

Part 1 Commerce Department

4 MCAR §§ 1.850-1.866 [Emer] (extended) 295
4 MCAR §§ 1.9011-1.9028; 1.90281 (adopted) 175
4 MCAR §§ 1.9260-1.9269 [Emer] (extended) 111
4 MCAR §§ 1.9420-1.9442 (adopted) 175

Part 4 Cable Communications Board

4 MCAR §§ 4.260-4.263 (adopted) 295

TITLE 5 EDUCATION

Part 1 Education Department

5 MCAR § 1.0790 (adopted) 332

TITLE 6 ENVIRONMENT

Part 2 Energy and Economic Development

6 MCAR §§ 2.2500-2.2509 [Emer] (adopted) 388
6 MCAR §§ 2.2501-2.2510 [Amend] (adopted) 252

Part 4 Pollution Control Agency

6 MCAR §§ 4.9100; 4.9102; 4.9104; 4.9128-4.9129; 4.9132; 4.9134-4.9135; 4.9210; 4.9214-4.9217; 4.9254-4.9255; 4.9285; 4.9289; 4.9296-4.9297; 4.9302; 4.9307-4.9308; 4.9310; 4.9314; 4.9317-4.9318; 4.9321; 4.9389; 4.9396; 4.9401; 4.9493; 4.9409; 4.9411; 4.9560 [Amend] (adopted) 115

TITLE 8 LABOR

Part 1 Labor and Industry Department

8 MCAR § 1.7001 [Amend] (adopted) 112
8 MCAR §§ 1.7220; 1.7240; 1.7243; 1.7245 (adopted) 56

TITLE 12 SOCIAL SERVICE

Part 1 Human Rights Department

12 MCAR §§ 1.061-1.076 [Emer] (adopted) 260

Part 2 Public Welfare Department (now Human Services)

12 MCAR §§ 2.02001-2.02011 [Emer] (adopted) 112

MINNESOTA RULES AMENDMENTS AND ADDITIONS

| | |
|--|-----|
| DEPARTMENT OF ADMINISTRATIVE | |
| Division of Procurement | |
| 1230.3000-.4300 (proposed) | 362 |
| OFFICE OF ADMINISTRATIVE HEARINGS | |
| Workers' Compensation Hearings | |
| 1415.0100-.3600 (adopted) | 333 |
| AGRICULTURE DEPARTMENT | |
| 1505.1070 [Amend] (proposed) | 365 |
| 1511.0111; .061; .0171; .0231; .0241; .0251; .0261; .0271; .0281; .0320; .0340; .0350; .0360 [Amend] (proposed) | 133 |
| 1545.2050 (proposed) | 150 |
| DEPARTMENT OF COMMERCE | |
| 2675.3160 (proposed) | 377 |
| 2765.0100-.1500 (proposed) | 366 |
| CORRECTIONS DEPARTMENT | |
| 2920.0100; .0200; .0500; .0800-.1300; .1800; .1900; .2300; .2700; .3200; .3300; .3700; .4000; .4300; .4400; .4900-.5500; .5700-.6000; .6200-.6400; .6600; .6700; .6900; .7000; .7300-.7600 (proposed) | 152 |
| 2925.0100; .0200; .0500; .0600; .0800; .1000; .1200; .1400; .1800-.2900; .3100; .3300; .3500-.3900; .4100 (proposed) | 160 |
| DEPARTMENT OF ECONOMIC SECURITY | |
| 3300.3300 (adopted) | 424 |
| 3300.4010-.4110 (proposed) | 292 |
| 3320.0005-.0030 (proposed) | 290 |
| STATE BOARD OF EDUCATION | |
| 3500.5000-.5070 (proposed) | 168 |
| 3550.0100 [Incorporation] (adopted) | 251 |
| ENERGY, PLANNING & DEVELOPMENT DEPARTMENT | |
| Energy Division | |
| 4170.4105; .4110 [Emer] (proposed) | 411 |
| Planning Division | |
| 4350.0200; .0400; .0600 (adopted) | 111 |
| 4351.0100-.0800 (proposed) | 90 |
| ENVIRONMENTAL QUALITY BOARD | |
| 4405.0100-.1300 (adopted) | 333 |
| DEPARTMENT OF HEALTH | |
| 4730.1700 (proposed) | 316 |
| MN HOUSING FINANCE AGENCY | |
| 4900.0550-.0580 (adopted) | 112 |
| 4900.0581-.0584 (adopted) | 295 |
| 4900.0601-.0605 (proposed) | 173 |
| 4900.1220-.1260 (adopted) | 296 |
| 4900.1600-.1650 (adopted) | 296 |
| 4900.1630 [Amend] (proposed) | 378 |
| 4900.1700-.1703 [Emer] (adopted) | 333 |
| DEPARTMENT OF HUMAN RIGHTS | |
| 5000.3400-.3600 [Emer] (proposed) | 228 |
| DEPARTMENT OF LABOR AND INDUSTRY | |
| 5205.0010 [Standards] (proposed) | 225 |
| 5217.0010-.0270 (proposed) | 414 |
| DEPARTMENT OF NATURAL RESOURCES | |
| 6105.0100; .1681 (adopted) | 296 |
| MINNESOTA BOARD OF PHARMACY | |
| 6800.0900 (adopted) | 260 |
| POLLUTION CONTROL AGENCY | |
| Water Quality Division | |
| 7044.0100-.1200 (adopted) | 58 |
| 7075.0100.0200; .0400-.0401; .0405-.0406; .0409; .0411-.0414; .0416-.0417; .0419; .0425; .2000; .04115; .04211-.04214 [Emer] (adopted) | 424 |
| PUBLIC SERVICE DEPARTMENT | |
| 7650.0100 (proposed) | 422 |
| PUBLIC UTILITIES COMMISSION | |
| 7835.0100-.6100; .9910 (proposed) | 41 |
| REVENUE DEPARTMENT | |
| Property Equalization Division | |
| 8105.0100-.9900 [Emer] (proposed) | 96 |
| SMALL BUSINESS FINANCE AGENCY | |
| 8300.0100; .0300; .0500-.0600; .1000-.1200; .1500-.2200 (proposed) | 111 |
| 8300.2400 [Emer] (proposed) | 315 |
| WASTE MANAGEMENT BOARD | |
| 9200.6000-.6009 [Emer] (adopted) | 336 |
| 9200.9500-.9508 (proposed) | 328 |
| DEPARTMENT OF PUBLIC WELFARE (Now HUMAN SERVICES) | |
| 9510.1020-.1140 [Emer] (proposed) | 379 |
| 9525.1800-.1930 [Emer] (proposed) | 317 |
| 9555.3415 [Emer] (proposed) | 412 |

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Rules Governing Self-Insurance Plan Administrators

Notice of Hearing

Notice is given that a public hearing will be held pursuant to Minn. Stat. section 14.14, subd. 1, in the above-entitled matter in the Large Hearing Room, 500 Metro Square Building, St. Paul, Minnesota 55101, on October 16, 1984, at 9:00 a.m. and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing by sending them to Hearing Examiner George A. Beck, Office of Administrative Hearings, 4th Floor, Summit Bank Building, 310 4th Ave. So., Minneapolis, Minnesota 55415, telephone (612) 341-7601. The rule hearing procedure is governed by Minn. Stat. sections 14.02-14.45 and by MN Rule 1400.0200-1400.1200 (Minnesota Rules). Questions regarding procedure may be directed to the Hearing Examiner at the above listed address.

The Commissioner proposes to adopt rules relating to self-insurance plan administrators. Authority for adoption of these rules is contained in Minnesota Statutes, section 60A.23, subd. 8(2). The proposed rules were published in the *State Register* on June 25, 1984 at 8 S.R. 2765, pages 2765 through 2769 (Minnesota Rules 2767.0100-2767.0900, 2768.0950). The rulemaking process follows Laws of Minnesota 1984, Ch. 640, which amends the statutes and rules cited above.

The proposed rules, if adopted, will govern self-insurance plan administrators, to assure that self-insurance plan administrators are capable of providing risk management services, financially solvent, and able to process claims in a prompt and equitable manner.

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

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

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, telephone (612) 296-5148.

As a result of the hearing process, the proposed rule may be modified. Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner at the hearing.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Department of Commerce and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the Department of Commerce anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Pursuant to Minnesota Laws 1983, Ch. 188, codified as Minnesota Statutes section 14.115, subd. 1, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

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

One free copy of this notice and the proposed rules may be obtained by contacting Rose Ortiz, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

Michael A. Hatch
Commissioner of Commerce

Department of Energy and Economic Development Energy Division

Proposed Emergency Rules Relating to Minimum Mandatory Energy Efficiency Standards for Residential Rental Units: Definition of Good Cause; Establishment of Fine Schedule

Notice of Intent to Adopt Emergency Rule

Notice is hereby given that pursuant to Session Laws 1984, Chapter 595, Section 4, the Department of Energy and Economic Development proposes to adopt an emergency rule defining good cause and establishing a schedule of fines. A copy of the proposed emergency rule is attached to this notice.

Persons interested in this rule have 25 days from this publication to submit data and views on the proposed emergency rule in writing. Comments shall be submitted to:

Greg Hubinger
Manager of Residential Programs
Department of Energy and Economic Development
Energy Division
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

The proposed emergency rule may be modified if the modifications are supported by the data and views submitted to the Department.

This proposed emergency rule with modifications, if any, shall be submitted to the Attorney General for final approval as to form and legality. Persons who are interested may request in writing to be notified when the emergency rule is submitted to the Attorney General, and if the rule has been modified, a copy will be available upon request from the Department.

The emergency rule will become effective five working days after approval by the Attorney General.

Connie J. Lewis
Sr. Administrative Officer

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

Emergency Rules as Proposed (all new material)

4170.4105 [Emergency] GOOD CAUSE.

As required by Laws of Minnesota 1984, chapter 595, section 4, "good cause" means any one of the following:

A. That the installation of a program measure to comply with a standard in part 4170.4100 is economically infeasible as defined in part 4170.0100, subpart 8.

B. That the installation of a program measure to comply with a standard in part 4170.4100 is technologically infeasible. Technological infeasibility means that the installation of the measure would threaten the structural integrity of the building.

C. That the installation of a program measure to comply with a standard in part 4170.4100 would necessarily violate the building's esthetic or historic value.

4170.4110 [Emergency] FINE SCHEDULE.

If an administrative law judge finds that an owner or an owner's agent has not demonstrated good cause for failure to comply with the minimum mandatory energy efficiency standards, the judge shall assess the following penalties:

A. For a one-to-four unit building, an immediate fine of \$100 plus \$200 each month beginning 120 days after the finding of failure to show good cause, until the owner demonstrates to the administrative law judge that she or he has complied with the standards. If a person certified under chapter 4170 to conduct evaluations certifies that an owner complies with the applicable standards, the judge shall consider the certification as proof of compliance by the owner.

B. For a building with five or more units, an immediate fine of the greater of \$10 per unit or \$100, up to a maximum of \$500. In addition, a fine each month of two times the amount assessed beginning 180 days after the finding of failure to show good cause, until the owner demonstrates to the administrative law judge that she or he has complied with the standards. If a person certified under chapter 4170 to conduct evaluations certifies that an owner complies with the applicable standards, the judge shall consider the certification as proof of compliance by the owner.

Department of Human Services

Proposed Emergency Rules Governing Exemption from Work and Registration Requirements

Notice of Intent to Adopt Emergency Rules

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Laws of Minnesota 1984, chapter 654, article 5, section 34.

Persons interested in these rules have until 4:30 p.m., September 21, 1984 to submit written comments. The proposed emergency 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. Written comments should be sent to:

Debra Flanagan
Department of Human Services
Rulemaking Unit
Fourth Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101
Telephone: 612/297-1469

Upon adoption of these emergency rules, this notice, all written comments received, and the adopted emergency rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

Notice of the date of submission of the proposed emergency rule to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

The adopted emergency rule will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form. Emergency rules take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, Chapter 14, these emergency rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the

Commissioner to receive notice of rulemaking proceedings. The emergency rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

Minnesota Rules, part 9555.3415 [Emergency] establishes the rights and responsibilities of the Department of Human Services, local agencies, and recipients of general assistance concerning an exemption from the registration and work requirements of part 9555.3403, and identifies the process for the annual redetermination of that exemption. Part 9555.3415 [Emergency] lists criteria for a person's exemption from the registration and work requirements of the General Assistance Program; it establishes the period of exemption; and procedures for referral to a person to other support service programs, if necessary.

These emergency rules will not result in any additional state or county spending beyond the amount of funds appropriated by the legislature.

A free copy of the proposed emergency rule may be obtained by contacting:

Mike Sirovy
Department of Human Services
Policy Department
Second Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101

Leonard W. Levine
Commissioner of Human Services

Emergency Rules as Proposed (all new material)

9555.3415 [Emergency] EXEMPTION FROM WORK REGISTRATION.

Subpart 1. Applicability. This part establishes the rights and responsibilities of the Department of Human Services, local agencies, and recipients of general assistance concerning an exemption from the registration and work requirements of part 9555.3403 [Emergency], and identifies the process for the annual redetermination of that exemption.

Subp. 2. The definitions in part 9555.3400 [Emergency] apply to this part.

Subp. 3. Exemption from registration and work requirements. A recipient of general assistance shall be exempt from the registration and work requirements of part 9555.3403 [Emergency], subparts 3 and 5 if the local agency determines that the recipient meets conditions in item A or B.

A. The recipient has one or more substantial barriers to employment. A substantial barrier to employment means that the person is unable to effectively participate in preparing for, searching for, obtaining, or retaining employment due to:

(1) exhibiting severe symptoms of a mental or emotional disability or chemical abuse for which the person refuses evaluation or treatment; and for purposes of this subitem, a condition may be severe whether it is of short- or long-term duration; or

(2) exhibiting evidence of severely diminished functioning in areas of daily living such as social skills or personal relations; or

(3) the person's residence being more than two hours round trip from all potential employment, exclusive of time needed to transport his or her children to and from child care, or the person lacks and is unable to obtain needed public or private transportation to the employment site; or

(4) current involvement with protective or court-ordered services which prevent the person from working at least four hours per day; or

(5) the person's circumstances, at the time of application for general assistance, indicate that the need for general assistance will not exceed 30 days because of impending employment, an impending move to another state, or anticipated receipt of income; or

(6) being in the last trimester of pregnancy; or

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

- (7) the lack of available child care necessary for children in the person's assistance unit; or
- (8) evaluation by a vocational specialist which finds the person unable to obtain or retain suitable employment; or
- (9) an individual or family crisis.

B. The recipient has been certified by the commissioner of the Department of Economic Security as lacking work skills or training, or as being unable to obtain work skills or training necessary to secure employment.

Subp. 4. Period of exemption. A recipient exempt from the registration and work requirements in subpart 3, item A, subitems (1) to (8), is exempt for a period of 12 months, or until the local agency determines that the recipient no longer meets or will no longer meet the conditions of subpart 3, item A, whichever is earlier. A recipient exempt from the registration and work requirements in subpart 3, item A, subitem (9), is exempt for a period of 30 days. A recipient exempt from the registration and work requirements in subpart 3, item B, is exempt for a period of 12 months.

Subp. 5. Annual reassessment. A recipient's exemption from the general assistance registration and work requirements under subpart 3 shall be reassessed annually or at the expiration of a shorter exemption period.

The local agency shall reassess the recipient exempted under subpart 3, item A during the final month of exemption. The reassessment must be completed by the end of the final month of exemption. If, at the time of the reassessment of exemption status, the local agency determines that the recipient meets the provisions of subpart 3, item A, the recipient shall be exempt for the period specified in subpart 4. If the recipient does not meet the exemption provisions of subpart 3, item A or B, the recipient shall be subject to the registration and work requirements of part 9555.3403 [Emergency].

B. Upon expiration of the recipient's exemption under subpart 3, item B, the local agency shall refer the recipient to the commissioner of economic security as in part 9555.3403 [Emergency]. If the commissioner of the Department of Economic Security subsequently certifies in writing that the recipient lacks work skills or training or is unable to obtain work skills or training necessary to secure employment, the recipient shall be exempt under subpart 3, item B for another 12-month period.

Subp. 6. Referral to supportive service programs. A recipient who is exempt from the registration and work requirements in subpart 3, items A, subitems (1), (2), (7), (8), and (9); and B, shall be offered referral to supportive service programs for assistance in overcoming the barrier to employment.

Department of Labor and Industry Workers' Compensation Rehabilitation Review Panel; and Workers' Compensation Medical Services Review Board

Proposed Rules Governing Workers' Compensation Rules of Practice for the Medical Services Review Board and Rehabilitation Review Panel

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Rehabilitation Review Panel and the Medical Services Review Board propose to adopt the above-captioned rules without a public hearing. The panel and board have determined that the proposed adoption of these rules will be noncontroversial in nature and have elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (1982) (as amended by Minn. Laws 1984, ch. 640, §§ 12-15).

Persons or groups interested in these rules shall have 30 days to submit comments on the proposed rules. Comments in support of or in opposition to the proposed rules are encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the panel and board and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period. If a public hearing is required, the panel and board will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1982) (as amended by Minn. Laws 1984, ch. 640, §§ 7-11). Any person requesting a

public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Cynthia Thompson
Manager of Public Affairs
5th Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 297-3467

Authority for the adoption of these rules is contained in Minn. Stat. §§ 176.102, subd. 3(a) and 176.103, subd. 3 (Supp. 1983) (as amended by Minn. Laws 1984, ch. 432, §§ 13 and 15). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, identifies the data and information relied upon to support the proposed rules and assesses the impact of the proposed rules on small business and on local public bodies has been prepared and is available from the Manager of Public Affairs upon request at the above address.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final rules as adopted, will be delivered to the Attorney General. The rules will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agencies' authority to adopt the rules and the existence of a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to be notified of the submission of this material, including modifications to the rules as originally proposed, to the Attorney General, or who wish to receive a free copy of the final rules as adopted, should submit a written request to the Manager of Public Affairs at the above address.

The text of the proposed rules follows this notice in the *State Register*. The rules prescribe the procedures for appealing workers' compensation rehabilitation decisions and medical decisions to the Rehabilitation Review Panel and Medical Services Review Board pursuant to Minn. Stat. §§ 176.102 and 176.103 (Supp. 1983) (as amended by Minn. Laws 1984, ch. 432, §§ 13-15). These rules govern all aspects of procedure before the panel and board, including prehearing, hearing, and posthearing requirements.

One free copy of the proposed rules may be obtained by contacting the Manager of Public Affairs at the above address or by calling (612) 297-4373.

August 14, 1984

Cynthia Thompson
Manager of Public Affairs

Rules as Proposed (all new material)

5217.0010 DEFINITIONS.

Subpart 1. Scope. The following terms have the meanings given when used in parts 5217.0010 to 5217.0270 unless the context clearly indicates a different meaning.

Subp. 2. Board. "Board" means the Medical Services Review Board created by Minnesota Statutes, section 176.103, subdivision 3.

Subp. 3. Chairperson. "Chairperson" means the member selected by the panel or board to accomplish or delegate the administrative tasks of the panel or board and to take action as directed by parts 5217.0010 to 5217.0270.

Subp. 4. Commissioner. "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 5. Executive secretary. "Executive secretary" means the person assigned to the panel or board to communicate with the parties concerning the procedural aspects of cases and to receive documents filed by the parties.

Subp. 6. Panel. "Panel" means the Rehabilitation Review Panel created by Minnesota Statutes, section 176.102, subdivision 3.

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

Subp. 7. Party. "Party" means each person named as a party by the panel or board in the notice of hearing or later intervening as a party by order of the panel or board. Interested party, as used in Minnesota Statutes, section 176.102, subdivision 3a, has the same meaning as party.

Subp. 8. Person. "Person" means an individual, business entity, or governmental unit.

Subp. 9. Presiding officer. "Presiding officer" means the panel or board member assigned on a rotating basis to preside at the hearing.

Subp. 10. Rehabilitation and medical services. "Rehabilitation and medical services" means the Rehabilitation and Medical Services Section of the Workers' Compensation Division of the Department of Labor and Industry.

5217.0020 SCOPE AND PURPOSE.

Parts 5217.0010 to 5217.0270 govern all proceedings before the panel and the board. The panel's rulemaking authority arises from Minnesota Statutes, section 176.102, subdivision 3a. The board's rulemaking authority arises from Minnesota Statutes, section 176.103, subdivision 3.

5217.0030 COMMENCEMENT OF APPEAL.

Subpart 1. Notice of appeal. An appeal to the panel or the board is commenced by the filing of a notice of appeal of the rehabilitation and medical services decision. The notice must include:

- A. the name of the appellate body, either the panel or the board;
- B. the employee's name, social security number, and date of injury;
- C. the insurer's name and claim number;
- D. the name of the employer;
- E. the name of the person who issued the rehabilitation and medical services decision;
- F. the date the decision was served and filed;
- G. the specific findings and determinations appealed from and the grounds for the appeal;
- H. an affidavit of service; and
- I. the name, address, and telephone number of the appellant.

Subp. 2. Time for appeal. A party wishing to appeal a rehabilitation and medical services decision must file the notice of appeal within 30 days of service of the decision. The date of service is established by the date stamped on the decision by the Department of Labor and Industry.

Subp. 3. Notice to potential intervenors. Within 15 days after filing its notice of appeal, the appellant shall serve notice of the right to intervene on any persons whose interests may be determined or affected by the case, including the special compensation fund.

5217.0040 NOTICE OF HEARING.

The notice of hearing must be served by the executive secretary on the parties at least 30 days before the hearing, unless the parties consent to a shorter time period or a continuance has been granted, and must contain:

- A. the names of the parties to the appeal;
- B. the social security number of the employee;
- C. the date of injury;
- D. the date, time, and place of the hearing;
- E. the name, address, and telephone number of the executive secretary;
- F. notification of the right of the party to be represented by an attorney or another person of the party's choosing;
- G. notification that failure of the appellant to attend the hearing may result in the dismissal of the appeal under part 5217.0140 and failure of a respondent to attend may result in an award by default under part 5217.0150; and
- H. notification that a petition for continuance must conform to part 5217.0220.

5217.0050 REPRESENTATION.

A party may appear in person or through a representative. A representative of a party need not be an attorney. A nonattorney representative must not engage in the unauthorized practice of law under Minnesota Statutes, section 481.02. If a

party notifies the panel or board that the party will be represented, all documents required to be served on the party will also be served on the party's representative.

5217.0060 FILING.

All documents required under parts 5217.0010 to 5217.0270 shall be filed with the executive secretary. Filing is complete when received by the executive secretary. The date received is established by the date stamped on the document by the Department of Labor and Industry. An affidavit of service stating that the document has been served on all other parties must be attached to the document filed.

5217.0070 SERVICE.

All documents filed with the board or panel must be served on all other parties and their representatives, if any. Service may be made by personal delivery or by postage prepaid, first class mail to the party's last known address. Service is complete at the time of mailing or personal delivery.

5217.0080 TIME.

In computing any period of time in parts 5217.0010 to 5217.0270, the first day of the time period will not be included. The last day of the period will be included unless it is a Saturday, Sunday, or a state or federal holiday. If the last day is a Saturday, Sunday, or holiday, the next day which is not a Saturday, Sunday, or holiday will be the last day of the period. All references to days are to calendar days unless otherwise specified in parts 5217.0010 to 5217.0270.

5217.0090 EXAMINATION OF PANEL OR BOARD FILES.

Access to files maintained by the panel or board is allowed under the same conditions set forth in part 1415.0600.

5217.0100 PREHEARING PROCEDURES.

Subpart 1. Time for filing statement of position and witness list. An appellant shall file a statement of position and a witness list within 30 days after filing the notice of appeal. The executive secretary is not required to schedule a hearing before the appellant files a statement of position and witness list. The respondent must file a statement of position and witness list within ten days after filing of the appellant's statement of position and witness list.

Subp. 2. Witness list. The witness list shall contain the names and addresses of all potential witnesses. All witnesses unknown at the time of filing of the witness list must be disclosed as they become known. Witnesses not included on the witness list or disclosed to opposing parties at least ten days before the hearing date may testify at the hearing only upon agreement of the parties.

Subp. 3. Statement of position. A party filing a statement of position with the panel must file the original and five copies; a party filing a statement of position with the board must file the original and three copies. The statement of position must contain:

- A. a concise statement of the issues;
- B. a brief statement of the party's position on each issue; and
- C. legal authority in support of the party's position.

5217.0100 SUBPOENAS.

Subpart 1. Form; service; and fees. Subpoenas for the attendance of witnesses or the production of documents must be in writing. The subpoena shall contain a brief statement demonstrating the materiality of the testimony or documents sought. The subpoena must specifically identify any documents or witnesses sought.

A subpoena shall be personally served. The person serving the subpoena shall prove service by filing the subpoena with the executive secretary, together with an affidavit of service. Notwithstanding part 5217.0060, the filing party is not required to serve copies of the subpoena and affidavit on other parties.

The cost of service, fees pursuant to Minnesota Statutes, section 357.22, and expenses of any witnesses subpoenaed and any documents produced, shall be paid by the party requesting the subpoena.

Subp. 2. Petition to quash. Upon the petition of a party, the presiding officer shall quash or modify the subpoena if it is unreasonable or oppressive.

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PROPOSED RULES

5217.0120 PETITIONS.

All petitions filed under parts 5217.0010 to 5217.0270 must conform to the requirements of this part. The petition must state with particularity its grounds and the order sought. If the petition is supported by briefs, affidavits, or other papers, they must be filed with the petition. Any party may file a response within ten days after filing of the petition. Any reply must be filed within five days after filing of a response. If the petition is to the board, an original and three copies of all documents filed under this part must be filed. If the petition is to the panel, an original and five copies of all documents filed under this rule must be filed.

5217.0130 INTERVENTION.

The presiding officer shall grant a petition to intervene if:

A. the petition shows how the moving party's interests may be determined or affected by the case, states the reasons for which intervention is sought, and indicates the moving party's statutory right to intervene; and

B. the presiding officer determines that the rights of the existing parties will not be prejudiced and that the existing parties are not likely to adequately protect the rights of the moving party.

Notwithstanding the requirements of items A and B, the commissioner may intervene by showing an interest in administering, enforcing, or defending the rule or law which is being challenged in the proceeding.

5217.0140 DISMISSAL.

The panel or board shall dismiss an appeal with prejudice when:

A. a stipulation for settlement has been approved by a settlement or compensation judge;

B. a written withdrawal of the appeal signed by the appellant or a representative has been filed;

C. an appeal is filed after the expiration of the appeal period;

D. the appellant has failed to respond to requests for information or documents by the panel or board within the time period specified in the requests for information or documents; or

E. the appellant or a representative fails to appear at the hearing and a continuance under part 5217.0220 has not been granted.

5217.0150 DEFAULT.

If a respondent fails to attend a hearing and the appellant has established a right to the relief requested, the presiding officer shall serve upon the parties written notice of a proposed default order, including the reasons for the order, unless a continuance is granted under part 5217.0220. Within eight days after service of a proposed default order, the party against whom the default is sought may file a written response detailing the reasons a default order should not be granted. The presiding officer shall either issue a default order promptly after expiration of the response period or continue the matter to a future hearing date if the requirements of part 5217.0220, subpart 2 are met. The future hearing date shall be scheduled as provided in part 5217.0220, subpart 4.

5217.0160 CONSOLIDATION.

The chairperson shall grant a petition for consolidation of two or more related cases if the cases present substantially the same issues, the consolidation would not prejudice the rights of any party and consolidation is administratively practical. Separate findings and decisions will be made in each case consolidated for hearing. In addition, the chairpersons of the panel and board may, upon agreement of the parties, consolidate matters before the panel and board into one hearing where the appeals involve the same parties. In those cases, evidence will be presented to the panel and board simultaneously and the panel and board will issue their respective decisions.

5217.0170 SETTLEMENT.

Subpart 1. Settlement conferences. The board and panel shall refer matters on appeal to a settlement judge after the parties have filed their statements of position. If a settlement conference is appropriate, it shall be scheduled within 30 days of referral of the matter by the board or panel. Otherwise the matter shall be immediately referred back to the panel or board.

Written notice must be served on the parties at least ten working days before the conference. The notice shall indicate whether attendance of an intervenor is required. All parties, including intervenors, shall attend unless otherwise excused. If a party fails to attend a settlement conference, the matter may be stricken from the active hearing calendar, a penalty for delay may be imposed under Minnesota Statutes, section 176.225, or the failure to attend may be considered as an additional factor in awarding attorney fees.

All parties shall be prepared to engage in meaningful settlement negotiations and must have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement. At the settlement conference:

A. Parties shall state the issues.

B. Parties shall identify witnesses not listed on the witness list.

C. Parties shall file copies of all medical reports not already on file. If a party plans to introduce medical or hospital records into evidence, the party shall provide written authorizations allowing the opposing party to examine those records if the authorizations have not previously been provided.

D. Each party shall state what exhibits are intended to be used at the hearing.

E. If a party is claiming medical or other treatment expenses, the party shall state those expenses at the conference and shall furnish the opposing party with copies of itemized bills for the expenses.

F. The parties shall state whether payment of disability benefits, medical treatment, or funeral expenses has been made by a party other than the workers' compensation disability carrier, and whether the Division of Vocational Rehabilitation has provided rehabilitation services. If payment has been made, the name and address of the party making payment must be furnished, together with any identifying claim or policy numbers.

Subp. 2. Approval of settlements. Parties may enter into stipulations for settlement of all or some of the issues in dispute. Stipulations for settlement must be in writing and signed by the parties. They are subject to approval under Minnesota Statutes, section 176.521. If the stipulation is approved, an order shall be issued which confirms those matters agreed upon.

5217.0180 PRESIDING OFFICERS.

Subpart 1. Assignment and duties. The panel or board members shall serve as presiding officers on a rotating basis as assigned by the chairperson. The presiding officer shall administer oaths or direct another member to do so, rule on the admissibility of evidence according to part 5217.0210, and ensure the orderly process of the hearing.

Subp. 2. Communication with panel or board. Parties and their representatives shall not communicate with members of the panel or board concerning a pending case except during the hearing.

Subp. 3. Disqualification. A panel or board member who is in any way prejudiced or biased with respect to a party, or who has an interest in the matter pending before the panel or board, shall disqualify himself or herself from any involvement in the case. A party may file a request for disqualification which states the reason for the request. The request must be in writing and filed no later than 15 days before the hearing.

HEARING

5217.0190 RIGHTS OF PARTIES.

All parties shall have the right to present evidence, rebuttal testimony, and argument with respect only to the issues listed on the notice of appeal and to cross-examine witnesses.

5217.0200 WITNESSES.

Any party may be a witness or may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing must be under oath or affirmation. At the request of a party, the presiding officer may exclude witnesses, except for parties testifying as witnesses, from the hearing room so that they cannot hear the testimony of other witnesses.

5217.0210 RULES OF EVIDENCE.

Subpart 1. General rules. The presiding officer shall admit all relevant, competent evidence that is not unduly repetitious, including hearsay, if it is the type of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence relating to issues not included in the notice of appeal may be admitted only if the parties and the presiding officer agree to its admission. The presiding officer shall apply the rules of privilege recognized by law.

Subp. 2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the commissioner, or a true and accurate photocopy, must be offered and made a part of the record in the case. Only factual information or evidence entered into the record shall be considered in the determination of the case.

Subp. 3. Documentary evidence. Documentary evidence may be submitted at the hearing or after the hearing as provided in part 5217.0230, item I. To be received into evidence it must be marked as an exhibit and identified by a witness who has

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PROPOSED RULES

personal knowledge of it. The parties may agree to waive personal identification of a document. A party must provide six copies of documents to be offered into evidence before the panel and four copies of documents to be offered into evidence before the board. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the presiding officer or upon agreement of the parties.

Subp. 4. Deposition of unavailable witness. A party wishing to present a deposition of an unavailable witness shall depose the witness before the hearing except where the presiding officer orders otherwise.

Subp. 5. Deposition prior to close of record. Where a party has not submitted all of its testimony during the time allotted for the hearing, the presiding officer, at the request of a party, may order the taking of a deposition for inclusion in the record. The deposition may include questions asked by the panel or board. The questions of the panel or board shall be set forth on the record at the hearing or by written interrogatory.

Subp. 6. Notice of facts. The presiding officer may take notice of general, technical, or scientific facts within the special knowledge of the panel or board. A noticed fact must be one not subject to reasonable dispute in that it is either generally known within the profession, or is capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. Notice shall be taken on the record after any party has had the opportunity to contest the facts to be noticed.

Subp. 7. Burden and standard of proof. Issues of fact shall be proven by a preponderance of the evidence as defined in Minnesota Statutes, section 176.021, subdivision 1a. Questions of law shall be determined on an even-handed basis in accordance with the principles of Minnesota Statutes, section 176.021, subdivision 1a.

5217.0220 CONTINUANCES.

A petition for continuance must be writing, and must fully set forth all facts tending to establish good cause.

A. A petition for continuance filed 15 or more days before the hearing shall be granted upon a showing of good cause. The presiding officer shall consider the ability of the party requesting a continuance to effectively proceed without a continuance.

B. A petition for continuance filed less than 15 days before the hearing shall be granted by the presiding officer only if good cause for a continuance is shown, no prejudice will result from the continuance, and the petition could not have been made at an earlier time.

C. During a hearing, if it appears in the interest of justice that further testimony should be received, the presiding officer shall continue the hearing to a future date. If continued, it shall be either continued to a certain time and day, announced at the hearing and made a part of the record; or continued to a date to be determined after the hearing. If a time is not set at the hearing, written notice must be served on the parties at least eight days before the hearing is reconvened.

D. Where a continuance has been granted under item A or B, the executive secretary shall schedule the case for hearing on the back-up calendar when calendar openings occur due to the cancellation or continuation of other scheduled hearings. Written notice of the back-up hearing dates shall be served on the parties at least ten working days prior to the dates available for hearing on the back-up calendar. The executive secretary shall provide at least one-day telephone notice to the parties of the date selected.

E. Good cause does not include:

(1) the unavailability of counsel assigned to the case where an insurer retains more than one counsel on its own payroll who practices workers' compensation law, unless all other workers' compensation counsel of the insurer are committed elsewhere;

(2) the unavailability of counsel assigned to the case where a law firm consists of more than one member who practices workers' compensation law, unless all other workers' compensation counsel in the firm are committed elsewhere;

(3) the unavailability of an individual law practitioner because of engagement in another court, if counsel has failed to notify the judge in charge of the trial court calendar of that court that counsel has been assigned to a date and time certain in a workers' compensation case; or

(4) the unavailability of a medical or other witness if the deposition of the witness could have been taken after receipt of the notice of hearing date and before the hearing.

5217.0230 HEARING PROCEDURE.

The hearing will be conducted substantially in the following manner:

A. After opening the hearing, the presiding officer shall inquire whether the parties have any questions regarding the rules governing the hearing and shall state the following:

(1) The scope of issues under the jurisdiction of the panel or board.

(2) The parties may present oral and written evidence and cross-examine witnesses. The presiding officer shall make rulings necessary to ensure that only relevant, competent evidence is admitted.

(3) The parties have a right to be represented by an attorney or other representative at the hearing.

B. Any stipulations or settlement agreements entered into by the parties before the hearing concerning the issues before the panel or board will be entered into the record.

C. The appellant may make an opening statement. All other parties may follow with their statements in a sequence determined by the presiding officer. Opening statements are limited to five minutes, unless additional time is allowed by the presiding officer, in which case all other parties are allowed equivalent additional time.

D. After opening statements, the appellant shall present evidence, followed by the other parties in a sequence determined by the presiding officer.

E. Cross-examination of witnesses will be conducted in a sequence determined by the presiding officer.

F. When all parties and witnesses have been heard, the parties may present final argument. The appellant shall present final argument last. Arguments are limited to five minutes, unless additional time is allowed by the presiding officer, in which case all parties are allowed equivalent additional time.

G. A party may submit a brief, or proposed findings of fact with proposed decision and order, subsequent to the hearing if a request to do so is made before the hearing is concluded. The presiding officer shall fix a reasonable period of time for such filing.

H. After final argument, the hearing will be concluded.

I. The record will be closed upon conclusion of the hearing or upon receipt of the final briefs, findings, transcript, post hearing depositions, or late filed exhibits, if any, which the parties and the presiding officer have agreed or the presiding officer has ordered should be received into the record, whichever occurs later.

5217.0240 RECORD.

Subpart 1. Contents. The panel or board shall establish the official record in each case. After the conclusion of the case, the record shall be returned to the commissioner. The record consists of:

A. correspondence received by the panel or board in connection with the case;

B. orders issued by the presiding officer or chairperson;

C. evidence received;

D. the panel or board's findings of fact, decision, and order;

E. depositions, briefs, proposed findings, or other data submitted by a party in connection with the case;

F. a verbatim record of the hearing; and

G. a transcript of the hearing, if one was prepared.

Subp. 2. Transcript. The verbatim record shall be transcribed if requested by a party or other person. The requesting party and other persons who request copies of the transcript shall pay a reasonable fee to cover the cost of the transcript.

5217.0250 DECISION.

Subpart 1. Basis for decision. Only factual information or evidence which is contained in the record may be considered by the panel or board in the determination of a case.

The panel or board may take notice of general, technical, or scientific facts within their specialized knowledge as described in part 5217.0210, subpart 6.

Subp. 2. Findings of fact, decision, and order. Following the close of the record, the panel or board shall promptly issue its written findings of fact, decision and order. The presiding officer or the officer's designee shall write the decision of the panel or board. A copy of the findings, decision, and order must be served on the parties and their representatives.

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PROPOSED RULES

Subp. 3. Contents. The panel or board's decision must include:

- A. the date and location of the hearing and the names of the panel or board members who heard the case;
- B. appearances by parties or their representatives, with the full name and mailing address of each;
- C. the date the record of the hearing was closed;
- D. a notice of the right of parties to appeal and how the appeal can be perfected;
- E. findings, made pursuant to part 5217.0210, subpart 7, describing all facts relied upon in the decision, including those made under part 5217.0210, subpart 6;
- F. an order containing a determination of each contested issue of fact or law; and
- G. a memorandum explaining the reasons for the decision.

5217.0260 SUSPENSION OF RULES.

Upon a clear showing of extraordinary circumstances not contemplated by parts 5217.0010 to 5217.0270, the panel or board may, upon petition of a party, or upon its own petition five days after serving notice on the parties, suspend any requirements of parts 5217.0010 to 5217.0270. Parts 5217.0030, subpart 2; and 5217.0220, subpart 4, and other rules implementing requirements imposed by law, shall not be suspended even upon a clear showing of extraordinary circumstances.

5217.0270 SEVERABILITY.

If any provision of parts 5217.0010 to 5217.0270 is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be valid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the part shall in no manner be affected.

EFFECTIVE DATE. Parts 5217.0010 to 5217.0270 are effective on the date specified in Minnesota Statutes, chapter 14, and govern all proceedings pending or commenced on or after that date.

Department of Public Service Weights and Measures Division

Proposed Rule Governing Licensing Fees for Weights and Measures Inspectors

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Department of Public Service proposes to adopt the above-entitled rules without a public hearing. The Director of the Department has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 14.21 to 14.28 (1983 Supp.), except that pursuant to Minnesota Statutes section 16A.128, subd. 2(a) (1984 Supp.), no public hearing will be held.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. 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.

Persons submitting comments should identify the portion of the rule addressed, the reason for the comment, and any change proposed.

Persons who wish to submit comments should submit such comments to:

Michael Blacik
Regional Supervisor
Department of Public Service
Weights and Measures Division
Minneapolis, Minnesota 55403
Telephone: (612) 341-7200

Authority for the adoption of these rules is contained in Minnesota Statutes section 239.10 (1984 Supp.). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Blacik upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, 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. The Attorney General will also determine whether the Department has the authority to adopt the rules, and whether the record demonstrates a rational basis for the need for and reasonableness of the rules. 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 Mr. Blacik.

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

The rules will not require the expenditure of moneys by local public bodies.

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

Ray Bohn, Director
Department of Public Service

Rule as Proposed (all new material)

7650.0100 INSPECTION FEES.

Subpart 1. Generally. The Weights and Measures Division of the Department of Public Service shall charge the following fees for all regular and special inspections as required by Minnesota Statutes, sections 239.10 and 239.52:

- A. For small scales classified by capacity;
 - (1) \$11 for scales up to and including 250 pounds capacity;
 - (2) \$18 for scales of 251 pounds capacity up to and including 1,000 pounds capacity; and
 - (3) \$45 for scales of 1,001 pounds capacity up to and including 4,000 pounds capacity.
- B. For specific classes of scales;
 - (1) \$120 for a two section vehicle scale;
 - (2) \$150 for a three section vehicle scale;
 - (3) \$165 for a four section vehicle scale;
 - (4) \$175 for a five section vehicle scale;
 - (5) \$250 for a railroad track scale;
 - (6) \$180 for a heavy capacity hopper scale located at a terminal grain elevator;
 - (7) \$100 for a fertilizer, grain, or other hopper scale;
 - (8) \$100 for a livestock scale;
 - (9) \$60 for a wheel load weigher used for law enforcement purposes; and
 - (10) \$50 for a jeweler's, pharmaceutical, or analytical balance.
- C. For liquid measuring devices;
 - (1) \$13 for a petroleum product pump;
 - (2) \$40 for a vehicle tank meter or bulk meter; and
 - (3) \$50 for a liquified petroleum gas meter or stationary dispenser of liquified petroleum gas.
- D. For a linear measuring machine, \$15.
- E. For issuance or renewal of a placing-in-service permit, \$40. This fee includes administrative costs, supplies to registered agents, and 20 minutes of equipment calibration time. Where calibration costs exceed this limit, the regular laboratory calibration rate will be charged.

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

Subp. 2. Other rates. The fees in subpart 1 are based on the average amount of time required for an individual inspection and test. This average includes travel, equipment, and administrative costs. For a nonroutine inspection and test, or when a device is not specified in subpart 1, the inspector shall calculate the total charge based on the following hourly rates:

- A. \$45 for one inspector and appropriate test equipment designated for light capacity scale and volumetric equipment testing;
- B. \$60 for one inspector and appropriate test equipment designated for heavy capacity scale testing; and
- C. \$75 for laboratory calibration time.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Economic Security

Adopted Rule Relating to Opportunities Industrialization Centers; Job Training

The rule proposed and published at *State Register*, Volume 8, Number 50, pages 2647-2648, June 11, 1984 (8 S.R. 2647) is adopted as proposed.

Pollution Control Agency

Adopted Emergency Amendments to Rules and Adopted Emergency Rules Governing Water Pollution Control Fund and Federal Grants

The rules proposed and published at *State Register*, Volume 8, Number 51, pages 2698-2712, June 18, 1984 (8 S.R. 2698) are adopted with the following modifications:

Emergency Amendments to Rules as Adopted

7075.0409 MUNICIPAL PROJECT LIST.

Subp. 2. Submissions by municipality. A municipality that requests project placement on the municipal project list shall submit to the agency by July 1 prior to the beginning of the fiscal year for which the municipal project list is prepared, an approvable facilities plan if the grant sought is a Step 2 + 3 grant, and approvable plans and specifications based on a facilities plan previously certified by this agency if the grant sought is a Step 3 grant. Each municipality requesting placement on the municipal project list shall also indicate its preferred funding source, if it has one. No municipality may be listed on the municipal project list unless the municipality has submitted the necessary facilities plan or plans and specifications.

7075.0419 ADVANCES OF ALLOWANCE.

Subp. 2. Advance of allowance. A municipality on the municipal needs list with a population in the service area of less than 10,000 people is eligible to apply for an advance of allowance. The application shall be submitted by July 1 prior to the beginning of the federal fiscal year for which the municipal project list will be prepared within 60 days after the date on which the agency informs the city in writing of its intent to offer an advance.

Subp. 3a. Submittal of facilities plan. In order to receive a Step 2 advance, a city must submit, by July 1 prior to the fiscal year in which the advance is awarded, an approvable facilities plan. The facilities plan must be approved before the advance will be awarded.

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 Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Financial Institutions and Deposits Placed by Deposit Brokers Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing the use of brokered funds by depository financial institutions. Promulgation of these rules is authorized by Minnesota Statutes, Section 46.01, Subd. 2.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes, Section 14.115, Subd. 1.

The Department of Commerce 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 to: David A. Shern, Deputy Commissioner of Commerce, 500 Metro Square Building, St. Paul, MN 55101. (612) 296-2715.

All statements of information and comment shall be accepted until September 28, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Economic Security

Outside Opinion Sought Regarding Rules Governing Services to Persons with Severe Disabilities Through Long-Term Sheltered Workshops and Work Activity Programs, and Governing Allocations to Sheltered Workshops and Work Activity Programs Based Upon Evaluated Effectiveness

A Notice of Intent to Solicit Outside Opinion was previously published on the rules governing services to persons with severe disabilities through long-term sheltered workshops and work activity programs. It appeared in the *State Register*, volume 9, number 5, page 261, on July 30, 1984. Please note that the time period during which statements of information and opinion may be submitted has been shortened. The new deadline is 4:30 p.m., October 5, 1985.

Notice is hereby given that the Department of Economic Security, Division of Vocational Rehabilitation, is seeking information and opinion from sources outside the department in preparing to adopt rules governing services to persons with severe disabilities through long-term sheltered workshops and work activity programs, and governing allocations to sheltered workshops and work activity programs, pursuant to Minnesota Statutes, section 14.10.

Adoption of the rules is authorized by Minnesota Statutes, chapter 129A, which requires the department to develop and support sheltered workshops and work activity programs as a means of providing rehabilitation services to the severely disabled in Minnesota. Adoption of the rules is also authorized by Laws of Minnesota 1984, chapter 627, which requires the department to allocate funds to sheltered workshops and work activity programs based upon an evaluation of effectiveness.

The proposed rules will have an impact on small businesses. The impact on small businesses will be considered as required by Minnesota Statutes, section 14.115.

The department requests information and opinion concerning the subject matter of the rules. Interested or affected persons or groups may submit statements of information or opinion in writing.

Written comments should be addressed to:

Roger Sorbel
Division of Vocational Rehabilitation
Department of Economic Security
Third Floor, Space Center
444 Lafayette Road
St. Paul, MN. 55101

OFFICIAL NOTICES

Any written material received by the department shall become part of the rulemaking record to be submitted to the Administrative Division of the Office of the Attorney General, or to the Administrative Law Judge, in the event that the rules are adopted.

All statements of information and opinion shall be accepted until 4:30 p.m. October 5, 1985.

Michael J. Fratto
Rules Coordinator
Department of Economic Security

Department of Energy and Economic Development Economic Development Division

Notice of Public Hearing on Selection of a City to Host the Minnesota Convention Facility

A public hearing on the selection of a city to host the Minnesota Convention Facility will be held on September 5, 1984, at 10:00 a.m. in Conference Room Three, 900 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota. Therefore, persons who are interested in any manner in a selection of a host city are urged to participate in the hearing process.

Following the public hearing, the Minnesota Convention Facility Commission will select a host city.

Statements may be made orally and written material may be submitted. Whether or not an appearance is made at the hearing, written statements or materials may be submitted before the hearing to:

Gerald G. Pecinovsky, Executive Director
Minnesota Convention Facility Commission
Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
612/297-1395.

Department of Energy and Economic Development Energy Division

Notice of Availability of Draft Energy Policy and Conservation Reports

Notice is hereby given that draft copies of the "1984 Energy Policy and Conservation Report" are now available. The report was written by the Energy Division of the Minnesota Department of Energy and Economic Development, in accordance with Minnesota Statute 116J.18. Under the provisions of 1165.18, Subd. 2, one copy of the report can be obtained from:

Energy Information Center
Energy Division
Minnesota Department of Energy and Economic Development
American Center Building, Room 900
150 E. Kellogg Boulevard
St. Paul, Minnesota 55101
296-5175 (Twin Cities)
1-800-652-9747

Department of Human Services Chemical Dependency Program Division Mental Illness Program Division

Notice of Legislative Hearing on the Federal Alcohol, Drug Abuse and Mental Health Block Grant, and the Availability of a Statement Describing the Intended Use of Alcohol and Drug Abuse Funds from the Alcohol, Drug Abuse and Mental Health Block Grant—Federal Fiscal 1985

Notice is hereby given that the Senate Health and Human Services Committee will conduct a hearing on the use of the Federal Alcohol, Drug Abuse and Mental Health Block Grant on Thursday, September 6, 1984, at 10:00 a.m. in Room 15, Minnesota State Capitol. The House of Representatives Health and Welfare Committee will hold a similar hearing on Tuesday, September 18, 1984, time and place pending.

Notice is also given that the Department of Human Services has available a Description of Intended Use for the alcohol and drug abuse funds available to the State of Minnesota from the Federal Fiscal Year 1985 Alcohol, Drug Abuse and Mental Health Block Grant. This description is being made available to the public for comment in accord with Part B, Section 1915(d) of Title IX, Omnibus Budget Reconciliation Act of 1981.

All interested or affected persons or groups are invited to comment. Copies of the description are available from:

Sheila Vadnais
Chemical Dependency Program Division
Department of Human Services
Centennial Office Building, 4th Floor
St. Paul, MN 55155
(612) 296-4618

Comments on the proposed plan may be directed to the same address and phone number. Oral requests and comments will be received during normal business hours.

Department of Human Services Health Care Programs

Notice of Hospital Cost Index

Pursuant to 12 MCAR § 2.05401, D. 1. (Emergency), hospitals participating in the Medical Assistance and General Assistance Medical Care programs are subjected to a Health Cost Index (HCI) that is to be used in the calculation of prospective inpatient hospital rates. Each hospital whose fiscal year starts during a given calendar quarter shall be notified of the HCI to be used 30 days prior to the start of that quarter. It has been determined that the HCI is 7.4 percent according to an independent source, Data Resources, Inc. for Health Care Costs. However, pursuant to Senate File 1234, Article 5, Section 9 (1983), the HCI is subjected to the legislatively imposed limit of 5 percent. Consequently the HCI is 5 percent for hospitals whose fiscal years begin during the calendar quarter beginning October 1, 1984.

Leonard W. Levine, Commissioner
Department of Human Services

State Board of Investment Investment Advisory Council

Notice of Regular Meeting

The State Board of Investment will meet on Wednesday, September 5, 1984 at 9:00 a.m. in Room 118, State Capitol.

The Investment Advisory Council will meet at 2:30 p.m. on Tuesday, September 4, 1984, at the Minneapolis Club, 729 - 2nd Avenue South, Minneapolis, MN.

Metropolitan Council

Public Hearing Amending the Recreation Open Space Development Guide by Changing the Capitol Improvement Program for Acquisition and Development in Regional Recreation Open Space

The Metropolitan Council will conduct a public hearing on Monday, September 17, 1984, at 4:00 p.m., to hear public comment on a proposed amendment to the 1983-84 Regional Recreation Open Space Capital Improvement Program. The proposal would transfer \$300,000 from a Bryant Lake Regional Park allocation by the Hennepin County Park Reserve District to a development program in Minneapolis Chain of Lakes Regional Park by the Minneapolis Park and Recreation Board.

All interested persons are encouraged to comment on the amendment. Persons may register to speak by contacting the Council's Public Hearing Coordinator at 291-6482. Copies of the proposed amendment may be obtained free of charge from the Council's Parks department at 291-6401.

Metropolitan Council

Public Hearing Amending the Recreation Open Space Development Guide by Changing the System Plan for Regional Recreation Open Space

The Metropolitan Council will conduct a public hearing on Monday, September 17, 1984, at 4:00 p.m., to hear public comment on a proposed amendment to the Regional Recreation Open Space System Plan. The amendment would designate the publicly owned land on Big Island in Lake Minnetonka as a regional park and add it to the regional system.

All interested persons are encouraged to comment on the amendment. Persons may register to speak by contacting the Council's Public Hearing Coordinator at 291-6482. Copies of the proposal may be obtained free of charge from the Council's Parks department at 291-6401.

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.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-2513. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Procurement Division Commodities Contracts Currently Open for Bidding

| Requisition # | Item | Ordering Division | Delivery Point | Estimated Dollar Amount |
|--------------------|--|---|---------------------------|-------------------------|
| 29-003-07970 | Handicapped Vault Toilets—Willow River | Natural Resources Div. of Forestry | Willow River Campground | Contact buyer |
| 12-400-20441, 1963 | PKU/Calactosemia/Hypothroidism | Health | Mpls. | Contact buyer |
| 79-050-15654 | Materials for Pole Building | Transportation Administration— | Morris | Contact buyer |
| 02-410-43793 | Courier Service | Information Services Bureau | Various | Contact buyer |
| 02-410-43581 | Purchase of Computer Switching Device | Administration— Information Services Bureau | St. Paul | Contact buyer |
| 78-630-05973 | Heat Sealer | MN Correctional Facility | Oak Park Heights | Contact buyer |
| 78-620-16526, etc. | Plumbing Supplies | Various | Various | Contact buyer |
| 02-410-43597 | Purchase of Protocol Communicators | Administration— Information Services Bureau | St. Paul | Contact buyer |
| 26-071-14412 | Logic Analyzer | Mankato State University | Mankato | Contact buyer |
| 55-000-89693 | Hematology Analyzer | St. Peter State Hospital | St. Peter | Contact buyer |
| 26-071-14442 | Scanning Auger Microprobe | Mankato State University | Mankato | Contact buyer |
| Contract | Photographic Film Processing (Custom & Prepaid Mailers) | Various | Various | 3,500.-4,000. |
| Contract | Snow Removal | Normandale | Bloomington | Contact buyer |
| 27-148-42128 | Contract—Normandale Accidental Death, Accidental Dismemberment, Accidental Medical Insurance for the Participants at Rochester Community College | Rochester Community College | Rochester | Contact buyer |
| 79-000-44101 | Comn. Recording Equipment | Transportation Administration | St. Paul Capitol Complex, | Contact buyer |
| Contract | Walk Off Matts | | St. Paul | Contact buyer |
| Contract | Welding Wire | MN Correctional Facility | Stillwater | 6,000.-7,000. |

STATE CONTRACTS

| Requisition # | Item | Ordering Division | Delivery Point | Estimated Dollar Amount |
|-------------------------|-----------------------------------|--------------------------|------------------|-------------------------|
| 26-070-10358 | Purchase of Microcomputer | Bemidji State University | Bemidji | Contact buyer |
| 77-000-08826 | Heat Exchanger | MN Zoo | Apple Valley | Contact buyer |
| 07-300-30872, etc. | Cars | Public Safety | St. Paul | Contact buyer |
| 26-071-14556 | Oscilloscopes | Mankato State University | Mankato | Contact buyer |
| Contract | Video Tape Duplicating (2") | Public Safety | St. Paul | 2,000.00-3,000.00 |
| 79-000-43817 | Repower Diesel Engine | Transportation | Various | Contact buyer |
| 26-071-14558 | Conwed Accoustical Screens | Mankato University | Mankato | Contact buyer |
| 55-520-03225 | Refrigeration Compressors—Rebid | Oak Terrace Nursing Home | Minnetonka | Contact buyer |
| 04-121-25030, 1738-9 | Blue & Yellow Seed Tags | Agriculture | St. Paul | Contact buyer |
| 02-410-43638, 1642 | License | Central Stores | St. Paul | Contact buyer |
| 26-071-14494 | Scanning Electron Microscope | Mankato State University | Mankato | Contact buyer |
| Contract | Red Pressboard & Red Wallet Paper | MN Correctional Facility | Oak Park Heights | 19,000.-21,000. |
| 55-201-06036 | Steam Drying Tumbler | Cambridge Hospital | Cambridge | Contact buyer |
| 75-200-06568 | Rental of Photocopy Machine | Veterans Affairs | St. Paul | Contact buyer |

Contact the receptionist at 296-2513 for referral to specific buyers.

Metropolitan Council

Request for Proposal to Assist in Study of Metropolitan Area Telecommunications Infrastructure

The Metropolitan Council is soliciting proposals from qualified firms or individuals to inventory and analyze the telecommunications facilities and services in the Twin Cities area.

The consultant will design a study and develop survey instruments to assess the capacity and geographic distribution of phone, cable, microwave, broadcast and other communications networks in the area. The consultant will also assess trends in the development of these systems, areas of excess capacity and opportunities for coordinated development and use of these technologies.

Proposals must include complete descriptions of the applicant and qualifications particularly as they relate to the design and performance of telecommunications systems analyses. Proposals must also contain a detailed description of work steps, products and budget for each of the major sections of the study as outlined in the request for proposal.

The Metropolitan Council will award the contract based upon recommendations of a special review committee made up of selected Council staff and members of the Council's Telecommunications Task Force.

Copies of the request for proposal can be obtained by contacting:

John McGough
Metropolitan Council
300 Metro Square Building
7th & Robert Streets
St. Paul, MN 55101

Proposals must be received at the address above no later than 4:30 p.m., September 17, 1984.

SUPREME COURT

Decisions of the Court of Appeals Filed Tuesday, August 14, 1984

Compiled by Wayne O. Tschimperle, Clerk

C6-84-691 William Daniels, Relator, v. Gnan Trucking, Commissioner of Economic Security. Department of Economic Security.

When relator knew of the employer's requirement to assist in unloading his semi-trailer, his refusal to unload alone was misconduct disqualifying relator from unemployment compensation benefits pursuant to Minn. Stat. § 268.09, subd. 1(s) (Supp. 1983).

Affirmed. Popovich, C.J.

C6-83-2012 State of Minnesota v. Anthony Frank Fischer, Appellant. Sherburne County.

Appellant was not denied a fair trial by the trial court's admission of a prior conviction and certain *Spreigl* evidence.

The evidence supported the conviction for terroristic threats.

The misdemeanor sentence arising out of appellant's assault of an arresting officer did not arise out of the same behavioral incident as the offense of obstructing legal process.

Affirmed. Parker, J.

C6-83-2043 Robin Cook, Appellant, v. John S. Connolly. Ramsey County.

The doctrine of collateral estoppel bars relitigation of the issue of the adequacy of a minor settlement in a subsequent malpractice action against the attorney for the guardian ad litem.

A minor represented by a guardian is a party to an action through his guardian. Minn. Stat. § 540.08 (1982).

Affirmed. Parker, J.

Concurring Specially, Leslie, J., Popovich, C.J.

Dissenting, Foley, J., Sedgwick, J.

C1-84-534 John L. Wood, Petitioner, v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Hennepin County.

The trial court did not abuse its discretion in ordering petitioner to submit to an adverse medical examination unaccompanied by his attorney.

An order allowing costs for a medical examination and attorney's fees is vacated because these sanctions are available only for violation of a court order.

Writ denied, order modified. Parker, J.

C1-83-1902 Kathy A. Nelson, Appellant, v. Albert Henning and Fairfax Asphalt, Inc. Hennepin County.

Defendant Fairfax is liable as a matter of law for injuries it caused plaintiff in a rear-end collision where it knowingly failed to equip its truck with two systems of braking, in violation of law, and the accident injuring plaintiff would not have happened if the truck had had an adequate emergency brake.

Plaintiff was prejudiced by two errors in the trial court's instructions: (a) the court's instruction on the emergency doctrine where defendant created its own emergency by knowingly driving a truck on the public highways with only one braking system rather than two as required by law; and (b) the court's error in misreading the adequate brake statute in such a way that the jury was told that "a motor vehicle when operated upon a highway," rather than "a motorcycle when operated upon a highway," did not have to meet the statute's requirements for two systems of braking.

The damages awarded here by the jury, which was in the best position to evaluate the evidence of plaintiff's pain and suffering, and disability, are not so inadequate as to be based only on prejudice or compromise.

Reversed. Foley, J.

C6-83-1958 Michael F. Kukowski, a Minor, etc., et al., Appellants, v. Wm. Miller Scrap Iron and Metal Company. Winona County.

Defendant was not entitled to judgment notwithstanding the verdict where plaintiff produced sufficient evidence to support a jury finding of defendant's negligence.

SUPREME COURT

Reversible error is committed when a trial court directs the deputy clerk, over the telephone, to provide certain instructions on substantive law to a deliberating jury.

Reversed and remanded for a new trial on all issues.

Foley, J.

C8-84-367 Brian Bjorkquist, a Minor, by David C. Bjorkquist, His Father and Natural Guardian, Appellants, v. City of Robbinsdale, Defendant and Third Party Plaintiff, v. State of Minnesota, Third Party Defendant. Hennepin County.

The timing of traffic lights is a discretionary act which exempts a municipality from tort liability. Discretionary act immunity does not violate equal protection.

Affirmed. Foley, J.

C5-83-1773 In Re: the Marriage of: Judith Ann Johnson, Petitioner, v. Christopher Ray Johnson, Appellant. Hennepin County.

The trial court must make specific findings of fact to justify an upward departure from the child support guidelines.

Awarding the use of the homestead for five years to the wife and child was not an abuse of discretion.

Affirmed in part; reversed and remanded in part.

Wozniak, J.

C3-84-261 In Re: the Marriage of: Katherine A. Beugen, a/k/a Katherine A. Williams, Petitioner, v. Robert J. Beugen, Appellant. Hennepin County.

The family court does not have authority to modify a dissolution decree for fraud if the motion to modify occurs more than one year after the dissolution decree.

The family court does not have authority to grant relief on an issue that arises after the entry of the dissolution decree if the issue is unrelated to matters contained in the Judgment and Decree.

Reversed. Wozniak, J.

C1-83-1530 State of Minnesota v. Willie James Evans, Appellant. Hennepin County.

Defendant's statutory right to trial by an impartial jury was violated by the trial judge's imposition of a one hour limit on voir dire.

Reversed. Sedgwick, J.

C8-83-1881, C4-84-57, C9-84-233 In Re: the Marriage of Laurel Ann March, etc., Petitioner, Appellant, v. James L. Crockarell. Ramsey County.

The trial court erred in dividing ten contracts for deed between the parties based on their face value instead of considering expert evidence on the present values of the contracts.

The trial court did not err in considering child support arrearages as part of the restitution claims the parties had against each other.

The trial court did not abuse its discretion in reducing the amount of attorney fees awarded petitioner.

The trial court did not abuse its discretion in failing to distribute petitioner's non-marital property.

The trial court erred in refusing to amend the findings of fact to include a "sunset clause" so that the balance of a jointly held second mortgage on appellant's homestead would not indefinitely restrain the alienability of her homestead property.

The trial court did not abuse its discretion in failing to award petitioner restitution for interest paid on a joint debt to preserve marital assets pending the outcome of this action.

Affirmed in part, reversed in part, and remanded with instruction. Sedgwick, J.

C0-84-220 In Re: the Marriage of Patricia A. Burr, Petitioner, v. Frederick J. Burr, Appellant. Houston County.

Appellant's duty to pay spousal maintenance does not terminate upon respondent's remarriage where the parties had freely entered a stipulation, which the decree adopted, providing that payments shall continue until respondent reaches age of 62 or appellant retires at the age of 62.

Affirmed. Sedgwick, J.

C1-84-548 Leonard, Street and Deinard, v. Marquette Associates, Appellants. Hennepin County.

The landlord was not required to consent to the assignment of a law firm's lease to a subtenant who would not use the premises for the practice of law when the assignment clause of the lease required any subtenant to comply with a specific use clause found elsewhere in the lease.

The landlord did not waive its right to refuse consent to the proposed sublease or assignment by offering the leased premises to tenants' proposed subtenant at a rental rate exceeding that at which tenants offered to sublet.

Reversed. Sedgwick, J.

C8-84-319 Donald P. Doty, et al. v. F. Rudi Brueckner, et al., Appellants. Hennepin County.

The evidence was sufficient to support the trial court's finding that appellants materially misrepresented the amount of fill on land sold to respondents.

The evidence was not sufficient to support a finding that the misrepresentation proximately caused all the damage sustained because half the damage was caused by the condition of the underlying soil, rather than the fill.

Affirmed in part, reversed in part, remanded.

Lansing, L.

C6-83-1586 State of Minnesota v. Eleanore Ann Sherwood, Appellant. Hennepin County.

The affidavit supporting the search warrant established probable cause to believe that defendant had stolen property at her home.

Seizure of items not listed on the search warrant was legal under the plain view exception to the warrant requirement.

Affirmed. Huspeni, J.

C1-84-209 In Re: the Marriage of: Shirley A. Koponen, Petitioner, Appellant, v. Irving H. Koponen, Hennepin County.

A recommended order of a family court referee may be reviewed by the family court judge only if that review is timely filed under Minnesota Statutes Section 484.65(9) (1982).

Affirmed. Huspeni, J.

C2-84-719 Hotel Employees and Restaurant Employees Union Local No. 17 v. Criterion Restaurant, Inc., et al., Appellants. Hennepin County.

The arbitrator's decision that the issue was not arbitrable was proper, as was his additional language clarifying the effect of that decision.

Affirmed. Huspeni, J.

C4-84-267 Mary Lou Rindahl v. National Farmers Union Insurance Companies, Appellant, Kittson County.

Plaintiff had full-time responsibility for household services under the No-Fault Act when she performed 28 hours per week of household services while maintaining a full-time position outside the house.

Plaintiff may recover work loss benefits under the No-Fault Act for her inability to continue part-time self-employment even though she did not incur replacement service costs and continues to hold a full-time job.

Affirmed. Leslie, J.

C5-83-1269, C4-83-1733 Glen Dahlbeck v. DICO Company, Inc., et al, Defendants and Third Party Plaintiffs, Appellants, v. New London Concrete and Supply Company, Third Party Defendant. Swift County.

The evidence was sufficient to sustain a verdict of strict liability against the manufacturer of a defective boom hoist.

Employer did not breach its duty to provide a safe workplace and equipment for its employee.

Evidence of fault on the part of certain defendants was insufficient to submit to the jury.

The trial court did not commit reversible error in its evidentiary rulings.

The evidence was sufficient for the jury to determine causation.

Defendant's due process rights were not violated by submitting liability and punitive damages simultaneously.

The assessed costs and disbursements were within the trial court's discretion.

The jury instructions, as a whole, properly stated the applicable law.

Affirmed. Nierengarten, J.

SUPREME COURT

C4-84-396 LOL Finance Company v. Romain Corporation, et al, Appellants. Ramsey County.

A trial court's denial of a motion for an amendment of an answer, which attempts to assert five additional defenses eight days before the scheduled trial, does not constitute a clear abuse of discretion.

A misstatement of law in a trial court memorandum which is not essential to the court's decision does not constitute reversible error.

The trial court did not rely upon the four-factor test set forth in *Controneo v. Pilney*, 343 N.W. 2d 645 (Minn. 1984), when it denied appellants' motion for amendment of its answer.

Affirmed. Nierengarten, J.

C5-84-598 Linda K. Larson v. Pelican Lake Nursing Home, Relator, Commissioner of Economic Security. Department of Economic Security.

Respondent employee was involuntarily separated from her employment when relator employer made no express offer of re-employment that employee could either accept or reject.

Affirmed. Nierengarten, J.

C7-84-392 In Re: the Marriage of: Bruce David Joseph Kelzenberg, Petitioner, v. Jean Mary Kelzenberg, Appellant. Anoka County.

The trial court did not err in reducing respondent's monthly child support payments by \$49.00 and retroactively applying the reduction for three months.

Affirmed. Randall, J.

C9-84-121 Harold Kenney and Yvonne Kenney, Appellants, v. Edward H. Webb and Kathleen V. Webb, William L. Huntington and Forann Huntington. Stearns County.

Evidence was sufficient to support the trial court's determination that appellants failed to establish their right to a prescriptive easement across respondents' land.

Affirmed. Randall, J.

C9-84-71 John Psihos, Relator, v. R & M Manufacturing, Commissioner of Economic Security. Department of Economic Security.

Evidence reasonably sustains a finding that relator's employment was terminated for misconduct.

Affirmed. Crippen, J.

C3-84-230 Mary Christine Martin, Petitioner, Appellant, v. Commissioner of Public Safety. Washington County.

Evidence in the case is sufficient to sustain a finding that the arresting officer had probable grounds to believe appellant was driving under the influence of alcohol.

Affirmed. Crippen, J.

C1-84-470 Annette Kratochwill, Relator, v. Los Primos, Commissioner of Economic Security. Department of Economic Security.

Evidence reasonably sustained a finding that relator voluntarily terminated her employment without good cause attributable to the employer and she is, therefore, disqualified from the receipt of unemployment compensation benefits.

Affirmed. Crippen, J.

C0-84-573 Commissioner of Public Safety, Appellant, v. Steven Paul Barlow. Dakota County.

Because rescission does away with an action from the very beginning, the statutory power of the county court to rescind the revocation of respondent's drivers license permits the court to order that the record of revocation and rescission be expunged.

Affirmed. Crippen, J.

C6-84-982 State of Minnesota, Appellant, v. Arthur Robert Malinski, a/k/a Benjamin Robert Molinski, BENJAMIN ROBERT MALINSKI and Arthur R. Malenski. Redwood County.

Stayed execution of a presumptively executed sentence for property offenses was justified by substantial and compelling circumstances.

Affirmed. Crippen, J.

MEMORANDUM OPINION AND ORDER

C0-84-363 Rosalie Davis and Deborah White, Petitioners, Appellants, v. Minnesota Department of Human Rights, Municipal and Public Services, Inc. Hennepin County.

The failure to file and appeal with the district court prior to August 1, 1983 or with the Court of Appeals thereafter but within 30 days after issuance of the order being appealed deprived both courts of jurisdiction.

Dismissed. Popovich, C.J.

C0-84-492 In Re: Estate of: Christine E. Janda, a/k/a Christine Janda, a/k/a Christina E. Janda, Deceased. Le Sueur County.

When notice of filing of a judgment is served and appellants appeal pursuant to Minn. Stat. § 525.71 (Supp. 1983), the appeal must be filed "within 30 days after service of notice of the filing of the order, judgment, or decree."

Dismissed. Popovich, C.J.

Decisions of the Supreme Court Filed August 17, 1984

Compiled by Wayne O. Tschimperle, Clerk

C8-83-651 State of Minnesota v. Thomas J. Bouwman, Appellant. Hennepin County.

Appellant did not prove by a preponderance of the evidence that he was so mentally ill that he did not know the nature of his acts or was unable to distinguish right from wrong.

The district court's comments concerning the state's case did not constitute an acquittal.

Appellant's absence from the in-chambers discussion held at the close of the state's case was not a denial of due process.

Affirmed. Amdahl, C.J.

C8-83-1122 State of Minnesota v. Bourke John Langley, Appellant. Ramsey County.

Weight of circumstantial evidence of drowning, including water in victim's lungs, edema of her face, lack of burn marks, time frame, and severe battering of the victim just prior to death, viewed in light most favorable to prosecution, is consistent with verdict of guilty of second-degree murder by drowning and inconsistent with any other rational hypothesis.

Evidence of prior assaultive relationship between defendant and victim admissible to show history of highly strained relationship and motive where alibi is constructed by defendant and where *Billstrom* protective procedures have been met.

Hearsay regarding prior assaults made under stress and corroborated by witnesses who saw bruises and by defendant's own admissions had circumstantial guarantees of trustworthiness and were admissible under excited utterance and residual exceptions to hearsay rule.

Hearsay regarding victim's fear of defendant admissible where defense of accident is raised and conduct of victim prior to death put in issue.

Defendant, himself the instrument of the denial of his right to cross-examine deceased, cannot invoke sixth amendment right of confrontation to preclude use of hearsay evidence of prior assaults.

Cross-examination of defense pathologist eliciting opinion as to manner of death permissible under Minn. R. Evid. 704.

Prosecutor's use of "law and order" closing argument improper but not reversible error where counsel failed to object and evidence of guilt was strong.

Affirmed. Amdahl, C.J.

C6-83-17 State of Minnesota v. Gordon Fratzke, Appellant. Mille Lacs County.

When publicity about a crime did not report the opinions of public officials concerning defendant's guilt and the publicity was purely factual and preceded trial by 7 months, the trial court did not abuse its discretion by denying defendant's motion for a change of venue.

Defendant is not entitled to a new trial because of the court's failure to record voir dire examination of the jury when there is nothing in the record to indicate any irregularities in the voir dire proceedings.

The testimony of an accomplice concerning defendant's guilt in this case was corroborated by other evidence, and the evidence as a whole was sufficient to sustain the conviction.

Testimony of an expert psychiatric witness is not admissible to prove that defendant was unable to act with intent because of intoxication.

SUPREME COURT

The admission of evidence concerning defendant's confession to an earlier murder was not reversible error.

An instruction on third-degree murder is not appropriate when the acts of the accused were directed towards a specific person.

Defendant was not convicted of aggravated robbery in addition to first-degree murder.

Affirmed. Yetka, J.

CX-83-1350 In the Matter of an Inquiry Concerning the Honorable Lawrence Agerter. Board on Judicial Standards.

The Board on Judicial Standards has the authority to proceed with a preliminary investigation and cause subpoenas to be issued when, on the information before it, the Board has a reasonable basis to believe that a disciplinary violation exists.

The judge's right of privacy must yield to the Board's inquiry into a disciplinary violation for an alcohol problem; however, in the circumstances presented, the judge's right of privacy outweighs the Board's interest in inquiring into his private sex life.

The writ of prohibition is granted in part and denied in part.

Per Curiam.

Concurring in part and dissenting in part, Peterson, J. & Kelley, J.

Took no part, Todd, J.

C8-83-1718 Complaint Concerning the Honorable John J. Kirby, Municipal Court Judge, Ramsey County, State of Minnesota. Board on Judicial Standards.

Publicly Censured. Per Curiam.

Took no part, Todd, J.

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 Tax Court

Jeffrey and Patricia Micko, Appellants, v. The Commissioner of Revenue, Appellee, Docket No. 3853

Findings of Fact, Conclusions of Law and Order for Judgement

This is an appeal from an Order of the Commissioner of Revenue assessing individual income taxes in the amount of \$35,345.43 for the calendar year 1982. The matter came on for hearing on the merits before Judge Earl B. Gustafson at the Courthouse in Hastings, Minnesota on July 17, 1984.

Deborah Ellis of Thomson and Hawkins, appeared for Appellants.

Neil F. Scott, Special Assistant Attorney General, appeared for Appellee.

Based upon the evidence adduced and all of the files, records and proceedings herein, the Court makes the following:

Findings of Fact

1. The Appellants were Minnesota residents during 1982.
2. On or about February 28, 1983 the Department of Revenue was notified by the Bureau of Criminal Apprehension (BCA) that the Appellant, Jeffrey Micko, had been arrested for receiving and selling stolen property and that cash, property and business records had been seized from his home.
3. Appellants' taxes were not due or owing to the State of Minnesota for the tax year 1982 until April 15, 1983.
4. Christopher G. Sanft, a tax examiner for the Department of Revenue, was assigned to review the Appellants' state tax status.

5. In reviewing the Appellants' income tax status, Sanft determined that the Appellants had not paid their taxes for prior years and the Department of Revenue had been unsuccessful in collecting those delinquent taxes. Those unpaid taxes included penalties for willfully attempting to evade income taxes.

6. On or about March 1, 1983, Sanft reviewed the Appellant Jeffrey Micko's business records which the BCA had seized from the Appellants' home. Those records, including financial statements signed by the Appellant Jeffrey Micko represented that in 1982 he held assets in excess of \$200,000.

7. Sanft was also aware from conversations with the BCA that the Appellant, Patricia Micko, was a Canadian citizen and had relatives in Canada. Sanft also discovered from Appellants' records that the Appellants owned rental property in Ramsey County.

8. On or about March 1, 1983 an individual income tax return was prepared for the Appellants for 1982. The return was prepared by E. L. Evenson, who at the time, was a group chief for the field operations division. E. L. Evenson was duly authorized by the Commissioner of Revenue under Minn. Stat. 270.02, subd. 3 to prepare Commissioner filed tax returns for taxpayers under Minn. Stat. 290.48, commonly known as "jeopardy assessments."

9. On or about March 1, 1983 the Appellee levied on the money and property in the possession of the BCA. The money received from the BCA of approximately \$4,500, was applied against delinquent taxes for prior years and not to the 1982 assessment.

10. Tax liens were filed against the Appellants' non-homestead real property.

11. No seizure of assets or collection action, other than the tax liens, has been taken by the Appellee on the assessment for 1982.

12. The assessed taxes of \$35,345.43 has not been paid by Appellants. The parties agree to have this matter continued without payment of taxes following the filing of a Motion to Continue Prosecution of the Petitioner Without Payment.

13. The Appellants did not file a 1982 return on their own behalf.

14. At the hearing the Appellee presented evidence supporting the assessment including records of Appellants, financial statements signed by the Appellant, Jeffrey Micko, and a bank deposit analysis. The Appellants presented no evidence to disprove the assessment.

Conclusions of Law

1. The Appellee had reasonable grounds under Minn. Stat. 290.48, subd. 4, to believe that the assessment and collection of tax against the Appellant would be jeopardized by delay incident to other methods of collection.

2. The return filed by the Commissioner of Revenue on behalf of the Commissioner of Revenue was prepared by E. L. Evenson, who was properly delegated that authority under Minn. Stat. 270.02, subd. 4.

3. The Commissioner-filed return is prima facie valid under Minn. Stat. 290.47 and the Appellant has not presented evidence sufficient to rebut that presumption.

4. The Order of the Commissioner of Revenue is hereby affirmed.

August 15, 1984.

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

State of Minnesota Tax Court

Dorian W. Zaske, Appellant, v. Commissioner of Revenue, Appellee, Docket No. 3995

Findings of Fact, Conclusions of Law, and Order for Judgment

The above-entitled matter was submitted to the Minnesota Tax Court, Judge Carl A. Jensen presiding, with a Stipulation of Facts and briefs of the parties.

Dorian W. Zaske, Appellant and attorney at law, represented himself.

Thomas K. Overton, Special Assistant Attorney General, represented Appellee.

Syllabus

Ambiguous statutes will be interpreted in accordance with the intent of the legislature which will be determined by a consideration of the history of the legislation, federal interpretations of similar federal statutes, and any other relevant factors. Statutes must be interpreted to provide equality for all taxpayers in similar circumstances.

Findings of Fact

1. The issue in this case is the proper calculation of Appellant's Minnesota individual income tax for the years 1979, 1980 and 1981.
2. Prior to his retirement Appellant was employed by the Minneapolis Police Department. During his employment Appellant made contributions toward his future pension totalling \$9,563.36. Appellant's contributions were not deductible from federal or Minnesota gross income when he made them. (Stip. ¶¶ 2-4.)
3. Appellant retired in 1975 and began receiving his public pension shortly thereafter. (Stip. ¶ 5.)
4. The first \$9,563.36 received by Appellant as pension was excluded from Appellant's federal adjusted gross income under I.R.C. §§ 403 and 72 as a return of Appellant's own contributions. Appellant received part of the \$9,563 in 1975 and the balance in 1976. (Stip. ¶¶ 6 and 7.) All pension amounts received thereafter were included in federal adjusted gross income subject to federal income taxation. I.R.C. §§ 403 and 72.
5. Prior to January 1, 1978, public pensions were not subject to Minnesota income tax. Minn. Stat. 1976 §§ 290.01, subd. 20(b)(7) and 290.08, subd. 6. Effective January 1, 1978, public pension benefits included in federal adjusted gross income were included in Minnesota gross income to the extent they exceeded \$7,200. Minn. Stat. 1978 § 290.01, subd. 20(b) (6).¹
6. On his 1978 Minnesota income tax return Appellant reduced his federal adjusted gross income by the entire amount (\$10,750.20) Appellant received as a public pension in 1978. (Stip. ¶ 8.)
7. By order dated February 26, 1979, the Commissioner disallowed \$3,550 of the reduction taken by Appellant. This \$3,550 is the amount by which the reduction taken by Appellant exceeded the maximum \$7,200 subtraction permitted by Minn. Stat. 1978 § 290.01, subd. 20(b)(6). Appellant appealed to Tax Court. (Stip. ¶¶ 9 and 10.)
8. Following the Tax Court's decision in *Noreen v. Commissioner*, Tax Ct. Dkt. Nos. 2878 and 2944 (Jan. 26, 1981), the Commissioner stipulated with Appellant that he would reverse his original order. The Commissioner did so by order with notice date March 5, 1982. The Commissioner allowed a reduction computed as follows:

| | |
|--|-------------|
| Pension received | \$10,750.20 |
| Exclusion for contributions § 290.08, subd. 4 (d) | - 9,563.36 |
| | \$ 1,186.84 |
| § 290.01, subd. 20(b) (6) subtraction (\$7,200 more) | - 1,186.84 |
| Taxable | -0- |

Stip. ¶¶ 11 and 16, return document 7.

9. On his 1979, 1980 and 1981 Minnesota income tax returns Appellant excluded various amounts from gross income which Appellant claims are returns of his contribution to his pension plan. (Stip. ¶ 3.) Appellant contends that only \$3,550.20 of his total contribution should have been excluded for 1978.
10. The Commissioner denied Appellant's exclusions for 1979, 1980 and 1981 asserting that Appellant's entire \$9,563.36 contribution was properly excluded in 1978 as shown in the calculation in paragraph 8 above.

Conclusions of Law

1. For Minnesota income tax purposes Appellant's entire contribution to his pension in the amount of \$9,563.36 was used up as an exclusion in 1978 and the Commissioner's orders denying any further exclusion for contribution by the Appellant for years after 1978 are hereby affirmed.

It is so ordered. A stay of 15 days is hereby ordered.

August 13, 1984

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

¹ The \$7,200 amount was the maximum subtraction permitted from federal adjusted gross income for 1978. The maximum was reduced if the pensioner's income exceeded specified amounts. For subsequent years the \$7,200 maximum subtraction was increased. In 1979 the maximum subtraction was \$10,000. In 1980 and 1981 the maximum subtraction was \$11,000.

ERRATA

Housing Finance Agency

Correction to Notice of Request for Proposals for Multi-Family Rental Housing Program

In Minnesota Housing Finance Agency's notice of Request for Proposals for its Multi-Family Rental Housing Program, as originally published August 20, 1984, under the *Market Rate Elderly Interest Writedown Rental Program*, the City of Rochester should be included under Financing Conditions, third sentence to read:

—Developments located in Economic Development Region 11 and cities of *Rochester*, Duluth, Moorhead, St. Cloud . . .

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