



Office of the Revisor of Statutes
Minnesota Legislature

The Revisor of Statutes' Court Opinion Report

Revisor-Sponsored CLE Series – December 11, 2024

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How Does This Relate to the Revisor's Court Opinions Report?



- 1) The Importance of Clear Roles and Responsibilities
- 2) Unexpected Consequences of a “Temporary Fix”
- 3) The Dangers of Overlooking the Problem
- 4) The Role of Oversight and Accountability
- 5) Humor as a Vehicle for Introducing More Weighty Topics



Introduction and Overview

- 1) Historical Perspective and Context
- 2) How to Understand and Engage with the Report
- 3) Current State of the Report
- 4) Why Have a Court Opinions Report?
- 5) Evolution of the Report
- 6) Deeper Dive into Interesting Cases
- 7) Wrap Up and Questions



Historical Perspective: A Quick Time Travel Journey



- 1939: Legislature creates Office of the Revisor of Statutes
- 1945: Legislature directs revisor to prepare annotation publications for Minnesota Statutes
- 1957: Legislature repeals revisor's duty to prepare the annotation publications and directs the revisor to report biennially on "statutory deficiencies" noted by the courts
- 1959: First Revisor's Court Opinions Report is released



(Other stuff happens)



(Other stuff happens)



- 2024: 33rd Revisor's Court Opinions Report is released



How to Understand and Engage with the Court Opinions Report



- The report has changed over time – Why?
 - Changes in volume of statutory law
 - Changes in specificity and complexity of statutory law
 - Changes in judicial approach to construing statutes
- What hasn't changed?
 - Summaries of cases noting “statutory deficiencies”
 - Understanding the commentary and content of report requires understanding the context of the entire legislative enactment, executive implementation, and judicial review process



Current State of Report

3C.04 , subdivision 3 states:

Subd. 3. **Report to legislature.** The revisor's office shall report to the legislature any statutory changes recommended or discussed or statutory deficiencies noted in any opinion of the Supreme Court or the Court of Appeals of Minnesota. The report must be made by November 15 of each even-numbered year. It must treat opinions filed during the two-year period immediately preceding September 30 of the year before the year in which the session is held. It must include any comment necessary to outline clearly the legislative problem reported.

We interpret “deficiency” to mean ambiguous, vague, preempted, constitutionally suspect, or otherwise legally deficient statutes (i.e. lack of remedy, statutory conflict, grammatical issues, etc.)

Current State of Report



Actions Taken

There are three court cases that would have merited inclusion in the 2024 Court Opinions Report because the opinions each identified a statutory deficiency. However, the legislature subsequently amended the statute at issue or related statutes to remove, address, or otherwise remedy the deficiency. The cases are summarized very briefly below, organized in order by statute at issue.

Minnesota Statutes, section 282.08, clause (4)

Subject: *Tax-forfeited property; apportionment of proceeds*

Court Opinion: *Tyler v. Hennepin County, Minnesota, 598 U.S. 631 (2023) (No. 22-166)*

Issue: The Supreme Court of the United States considered the constitutionality of the apportionment provisions of the statute where it directed the balance of excess proceeds from a sale of tax-forfeited property to be sent to local jurisdictions.³² The court held that this arrangement, where the government is allowed to retain proceeds in excess of a former property owner's tax debt, is a violation of the Takings Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment of the Constitution.

Action: The legislature responded in Laws 2024, chapter 113, and Laws 2024, chapter 127, article 70. The legislature created a \$109 million fund for the use of counties to settle litigation related to the state's retention of tax-forfeited lands, surplus proceeds from the sale of tax-forfeited lands, and mineral rights in those lands. Additionally, the legislature established a housing support account and created new statutes to provide a mechanism for providing notice to interested parties and a claims procedure for interested parties to receive their portion of any excess proceeds from a sale of tax-forfeited property.

Current State of Report



Court Opinions Report Table

Statute	Issue	Court Opinion
Section 3.732, subdivision 1, clause (2)	Are county officers and employees “persons acting on behalf of the state in an official capacity” for purposes of indemnification under the State Tort Claims Act? (ambiguity)	<i>Walsh v. State</i> 975 N.W.2d 118 (Minn. 2022) (A20-1083)
Section 103D.311, subdivision 3	Must a county appoint a metropolitan area watershed district manager from nominees on an aggregate list of nominees submitted by cities, or may the county disregard city-submitted nominees and appoint another fairly representative watershed district manager? (ambiguity)	<i>City of Circle Pines v. County of Anoka</i> 977 N.W.2d 816 (Minn. 2022) (A20-1637)
Section 103D.545, subdivision 3	When does a civil action arise from or relate to a violation of a watershed district rule? (ambiguity)	<i>Roach v. County of Becker</i> 962 N.W.2d 313 (Minn. 2021) (A19-2083)
Section 176.135, subdivision 1	Does the requirement for an employer to “furnish any medical...treatment” reasonably necessary to treat a work-related injury conflict with federal law that prohibits the possession of cannabis when the employer would be required to pay for the expense of treatment using medical cannabis? (preemption)	<i>Musta v. Mendota Heights Dental Center</i> 965 N.W.2d 312 (Minn. 2021) (A20-1551)
Section 177.23, subdivision 10	Under the Minnesota Fair Labor Standards Act, is on-call time for live-in apartment caretakers compensable as work time, or noncompensable as time merely available to work? (ambiguity)	<i>Hagen v. Steven Scott Management, Inc.</i> 963 N.W.2d 164 (Minn. 2021) (A19-1224)
Section 245A.03, subdivision 7, paragraph (a)	Must the commissioner of human services consider certain listed factors when mandatorily revoking an adult foster care license? (ambiguity)	<i>Matter of Casterton</i> 2022 WL 2912152 (Minn. Ct. App. 2022) (A21-1393)



Current State of Report

Each case summary includes the following (from 2024 report, *Matter of Yanez*, 983 N.W.2d 89, (Minn. Ct. App. 2022))

- Text of the deficient statutory provision

Applicable text of section 122A.20, subd. 1, para. (a), clause (1):

(a) The Professional Educator Licensing and Standards Board or Board of School Administrators, whichever has jurisdiction over a teacher's licensure, may, on the written complaint of the school board employing a teacher, a teacher organization, or any other interested person, refuse to issue, refuse to renew, suspend, or revoke a teacher's license to teach for any of the following causes:

(1) immoral character or conduct;
[...]

- Statement of the deficiency (ambiguous, vague, preempted, constitutionally suspect, etc)

Statutory Issue:

Is the phrase "immoral character or conduct," when used as a cause to disqualify a candidate applying for a professional educator license, unconstitutionally vague?



Current State of Report

- The canons of construction discussed by the court

Canons of Construction Used by the Court:

Constitutional-doubt canon; constitutional avoidance canon.

- Facts scenario necessary to explain the statutory deficiency

Facts and Case Procedure:

In July 2016, while working as a police officer with the city of St. Anthony, Jeronimo Yanez fatally shot Philando Castile. In February 2020, Yanez applied to the Minnesota Professional Educator Licensing and Standards Board (the board) for a substitute teaching license. In response to the board's questions on the application, Yanez indicated that he had been involved in a deadly use of force situation when he was a police officer. Yanez indicated that he was criminally charged but acquitted. Also in response to a question, Yanez indicated on the application that he had voluntarily surrendered his peace officer's license.

After a recommended investigation by the board's disciplinary committee, the committee notified Yanez that it would recommend his application be denied. The denial was based on Yanez's disclosures, which the committee considered disqualifying misconduct. Yanez appealed to an administrative law judge. Following a hearing with testimony and other evidence, the administrative law judge determined that Yanez's killing of Castile was immoral and recommended that the board affirm the committee's denial of Yanez's application.

Yanez sent written exceptions to the board. In December 2021, the board adopted the administrative law judge's findings and denied Yanez's application. The board agreed in its decision that Yanez's application should "be denied for immoral conduct pursuant to Minnesota Statutes section 122A.20, subdivision 1(a)(1)." Yanez appealed to the court of appeals.

Current State of Report



- Discussion

In the case of *Yanez* the court determined that:

- “immoral character or conduct” is not defined by statute or by common law
- the statute was impermissibly vague because it fails to give fair warning of conduct meant to be prohibited and would allow for biased prejudiced enforcement.
- the statute could be saved by a narrow construction, implicitly employing the constitutional-doubt canon and constitutional avoidance canon. Analogous to lawyers who must be of good “moral character”

- Focused selection of legislative remedies



Current State of Report

- Recent Enhancements
 - Expanded prefatory material
 - Useful finding aids
 - Separating Tax Court cases
 - Separating CoA “nonprecedential” cases
 - Expanded footnotes to primary and secondary sources
 - Additional short summaries of “Recent Actions”
 - Cumulative table and glossary

Why have a report?



- 1) Continual Law Revision
- 2) Facilitate Judicial/Legislative Dialogue
- 3) How can the revisor's office use the report to support better services for the legislature?



Evolution of the Report

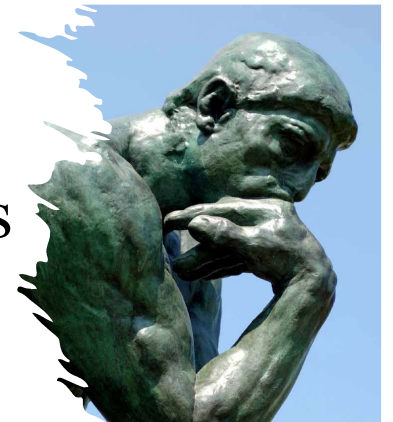
What questions arise after 65+ years?

- What is a “statutory deficiency”?
- Which constitutional cases should be included in the report?
- Ambiguity vs. vagueness vs. everything else
- Does the report require mutual engagement? Or facilitate mutual engagement?
 - With the courts? With the legislature? Between the two?
- How do we know what should be in the report?

Evolution of the Report

Thinking About Recent Enhancements

- Over-inclusiveness and under-inclusiveness
- Disagreements between district, appeals, and supreme court and what that may indicate
- Tax Court exclusive jurisdiction over tax statutes
- Utility of enhancements: e.g. cumulative table
- Canons of construction – patterns over time





Evolution of the Report

Vision for the Report (Back to the Future?)

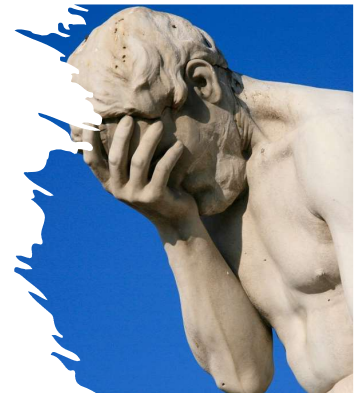
- How *should* “statutory deficiency” be defined?
- Is there a way to better categorize whether a court opinion should be summarized in the report?
- How can the report best highlight deficient statutory language for the legislature’s attention?
- Is there use for the report in:
 - the drafting process?
 - the publication process?



Deeper Dive into Interesting Cases

What makes a case about a “statutory deficiency” noteworthy?

- Constitutionality:
 - ✓ All cases, but some more than others
- Ambiguity or vagueness (or something else):
 - ✓ When the options for interpretation all have shortfalls for the resolution of the case
- Is there even a deficiency? Is there even a “fix”?



Deeper Dive into Interesting Cases

State v. Hayes, 826 N.W.2d 799 (Minn. 2013)



- Why noteworthy? - Is there a “deficiency”? - Does the court’s resolution seem reasonable?

Section 609.66

Subd. 1e. **Felony; drive-by shooting.** (a) Whoever, while in or having just exited from a motor vehicle, **recklessly discharges a firearm at or toward another motor vehicle or a building** is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$6,000, or both.

(b) **Any person who violates this subdivision by firing at or toward a person**, or an occupied building or motor vehicle, may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

(c) For purposes of this subdivision, "motor vehicle" has the meaning given in section 609.52, subdivision 1, and "building" has the meaning given in section 609.581, subdivision 2. by shooting

Deeper Dive into Interesting Cases

What does section 609.66, subd. 1e, say now?



Laws 2021, 1st Special Session, chapter 11, section 42:

Subd. 1e. Felony; drive-by shooting.

(a) ~~Whoever~~. A person is guilty of a felony who, while in or having just exited from a motor vehicle, recklessly discharges a firearm at or toward ~~another~~:

(1) an unoccupied motor vehicle or a building is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$6,000, or both;

(2) an occupied motor vehicle or building; or

(3) a person.

~~(b) Any person who violates this subdivision by firing at or toward a person, or an occupied building or motor vehicle, may be sentenced~~ A person convicted under paragraph (a), clause (1), may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$6,000, or both. A person convicted under paragraph (a), clause (2) or (3), may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

(c) For purposes of this subdivision, "motor vehicle" has the meaning given in section 609.52, subdivision 1, and "building" has the meaning given in section 609.581, subdivision 2.

Deeper Dive into Interesting Cases

Marks v. Commissioner of Revenue, 875 N.W.2d 321 (Minn. 2015)



- Why noteworthy?
 - Definition section is at issue
 - Contextual ambiguity in list of elements
 - Reference to and interaction with other statutes
 - Relevant administrative rules provisions
 - Eventual reliance on certain canons of construction

Section 290.01, subdivision 7

- (a) The term "resident" means any individual domiciled in Minnesota, [unless exceptions apply].
- (b) "Resident" also means any individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year [183 days or more] in Minnesota [unless exceptions apply].

Deeper Dive into Interesting Cases

Marks v. Commissioner of Revenue, 875 N.W.2d 321 (Minn. 2015)



- What was really at issue in *Marks*?
 - What happens when an individual is domiciled both “in Minnesota” and “outside the state” during a given tax year?
- Minnesota Rules, Part 8001.0300, subpart 8:

Domiciliary residents.

Persons domiciled in Minnesota who move their domiciles outside Minnesota during the tax year and persons domiciled outside Minnesota who move their domiciles to Minnesota during the tax year are part year residents of Minnesota. The physical presence test does not apply to such persons unless a Minnesota abode is maintained during the period domiciled outside of Minnesota.

- Question: Which days count towards the 183 days (i.e physical presence test)?
 - Days when a domiciliary and a non-domiciliary? Or just days as a non-domiciliary?

Deeper Dive into Interesting Cases



Section 290.01, subdivision 7, has not been amended since the *Marks* decision

Example of how majority and dissent each result in something probably not contemplated by the drafter.

Majority result:

Domiciled for 70 percent of the year and nothing else = part-year resident. (directly from MN Rule).
vs.

Domiciled 50 percent of the year and non-domiciled, with abode, and present in state 1 day = full year resident (dissent example).

Is this fair? Is this what the legislature intended? Does it matter?

Deeper Dive into Interesting Cases



Section 290.01, subdivision 7, has not been amended since the *Marks* decision

Example of how majority and dissent each result in something probably not contemplated by the drafter.

Dissent result:

Domiciled 70 percent of the year and 30 percent domiciled elsewhere but present in MN and kept abode = part year resident. Can't get to 183 days as non-domiciliary.

vs.

Domiciled 10 percent of the year and 90 percent domiciled elsewhere but present in MN and kept abode for 50 percent of year while not domiciled = full-year resident.

Is this fair? Is this what the legislature intended? Does it matter?

Deeper Dive into Interesting Cases

What questions are raised by these cases?



- What is the worth of including a case in the report?
- Is there a better threshold for what cases should be included? What is it? Should different things be done with different cases?
- What would you do if you had to draft a “fix” for the *Marks* case?
 - The legislature could clarify the definition of “resident” in section 290.01, subdivision 7, by:
 - 1) Providing that the physical presence test applies to all days spent in Minnesota regardless of domicile? (This would confirm the court’s opinion.)
 - 2) Provide that the physical presence test applies only to days spent in Minnesota while domiciled in another state (This would confirm the dissenting opinion.)
 - 3) Something else?
- What, if anything, could future drafters do when they draft something like this?
- Does the answer to these questions depend on your theory of statutory interpretation (textualism, purposivism, pragmatism, intentionalism) ... or something else?

Wrap-up and Questions

- What can you take with you from the CLE today?
- Questions?
 - We're ready to answer the call!

