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A07-803

STATE OF MINNESOTA
IN COURT OF APPEALS

IN THE MATTER OF THE CLAIM FOR BENEFITS
BY DAVID M. JERVE

RELATOR'S REPLY BRIEF

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ARGUMENT

In its Brief and Appendix, respondent makes off-record factual claims, it engages in improper legislative historical analysis and it engages in legal sophistry. Relator wishes to address the same in this Reply Brief.

I. Inappropriate Off-Record Factual Claims. While Respondent's recitation of the facts at pages 4 and 5 of their Brief make appropriate record citations, the Argument section of their Brief includes laudatory biographical data respecting panel members at pages 7 and 8. There is no citation to any part of the record for the latter.

Then at pages 16 and 17 of their Brief, Respondent makes citations to legislative history including funding appropriations and specific statements made by Bill Gillespie respecting Respondent's enabling legislation. While there is citation to the legislative record for Mr. Gillespie's comments, none of this was made part of the record for purposes of this case.

Relator objects to the use of off-record information for purposes of this appeal. Minnesota Rule of Civil Appellate Procedure 110.01 specifies that the "record" is comprised of "...papers filed in the trial court, the exhibits and the transcript of the proceedings..." and nothing else. Minnesota Rule of Civil Appellate Procedure 128.02 Subd. 1(c) and Subd. 2 requires that "[e]ach statement of a material fact shall be accompanied by a reference to the record, as provided in Rule 128.03."

Respondent has violated these rules by citing to facts obviously considered by it to be material that are not found in the record. Relator asks that they be stricken.

II. <u>Legislative History is Not Relevant</u>. Even if the court refuses to strike off-record facts, respondent's resort to legislative history is statutorily proscribed. Apparently, respondent wishes to demonstrate to this court that the legislature did not intend that Respondent must comply with the Administrative Procedures Act by arguing legislative intent.

But, Minn. Stat. § 645.17 prohibits its use when the statute involved is clear. It states in relevant part:

> When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

Here, Relator argues that Respondent's proceedings are void *ab initio* due to its admitted failure to abide by the Administrative Procedures Act. Minn. Stat. § 299A.465 Subd. 7(c) [2005] unambiguously states:

> ...The panel's proceedings and determinations constitute a quasi-judicial process and its operation must comply with Chapter 14...

Respondent's arguments about legislative history and failure to appropriate funds simply lack any relevance in the face of this clear legislative mandate. Section 299A.465 subd. 7(c) [2005] states what it says regardless of Respondent's protestations.

As noted in Relator's main brief, this Court first questioned jurisdiction based upon the language cited above from Minn. Stat. § 299A.465 Subd. 7(c) [2005]. Even in the Order of May 15, 2007, permitting the appeal to go forward, this Court confirmed that this statute holds the requirement of APA compliance, to include an administrative law judge. [A-32]. The reason given for permitting the appeal to go forward was, essentially, that the applicable period of limitations to appeal defaults to the provisions of Minn. Stat. § 606.01- 02 because Respondent, admittedly, has not complied with the APA. [A-32 to 33]. But, defaulting the appeal limitations period into Chapter 606 does not relieve Respondent from all other statutory obligations and prescriptions.

Given these circumstances, Relator's argument that Respondent's proceedings are void as a matter of law and that the benefits accrue automatically under Minn. Stat. § 299A.465 Subd. 6 is a viable and correct legal analysis.

III. <u>Respondent Simply Cannot Co-opt a Definition from Neighboring Statutory Language in Order to Achieve Its Own Policy-making Goals</u>. Respondent argues for, but has no persuasive authority for, the right to re-write its own enabling statute. That is, literally, what it wishes to do. Minn. Stat. 299A.465 Subd. 5 states that "[f]or purposes of this section" the definition of "Peace officer" or "officer" has the "...meaning given in section 626.84 subd. 1, paragraph (c).".

There is no laxity in that wording. There is no concomitant reference to any other part of § 626.84 Subd. 1. Respondent must wear blinders and read only the wording of Subd. 1,

paragraph (c) when searching for the definition of "peace officer" and/or "officer".

Respondent, nevertheless, argues that the definition provided by § 626.84 Subd. 1(c) "...does not include the term "part-time peace officer". [Respondent's Brief at page 9]. Nor does the statute exclude them. It contains four and only four elements:

1. Employment by a law enforcement agency or political subdivision;

2. Being "licensed by the board";

3. Being charged with the prevention and detection of crime and the enforcement of the general criminal laws of Minnesota; and

4. Having full power of arrest.

It is not disputed that Relator meets all four of these elements. What is disputed is Respondent's ability to subsume a fifth element, i.e., an element of not being "part-time", into the statutory definition that drives Respondent's obligations. Merely because Minn. Stat. § 626.84 Subd. 1(d) provides a definition of "part-time peace officer" has nothing, whatsoever, to do with the definition which the legislature actually and specifically gave Respondent to work.

Finally, Respondent cites no authority for its argument that other more inclusive definitions of peace officer found elsewhere in the body of the state's statutes must be evidence of the legislature's intent to exclude "part-time" peace officers from the benefits available under Minn. Stat. § 299A.465. In addition, the argument is a *non sequitur*.

CONCLUSION

For these reasons and those stated in Relator's Brief and Appendix, Respondent's Determination Order must be reversed and benefits awarded.

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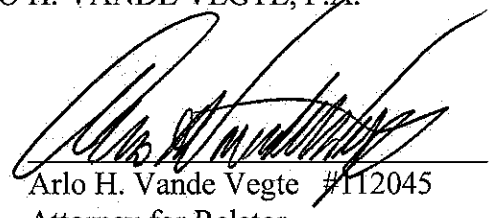
By: 

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