

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF ADMINISTRATION

In the Matter of the Appeal of the Determination of the Responsible Authority for the Minnesota Department of Revenue that Certain Data about Gary Sobotta are Accurate and/or Complete

**ORDER DENYING
MOTION TO DISMISS**

By a letter dated April 30, 1996, the Department of Revenue moved that this matter be dismissed on the grounds that certain procedural requirements had not been met. There was no reply to the motion by or on behalf of Gary Sobotta.

Richard L. Walzer, Esq., Legal Services Section, Minnesota Department of Revenue, Mail Station 2220, St. Paul, Minnesota 55146-2220, represented the Department of Revenue. Janine L. LePage, Esq., Thomas L. Steffens & Associates, 300 Southdale Place, 3400 West 66th Street, Edina, Minnesota 55435, represents Gary Sobotta.

Based upon the written arguments submitted and upon all of the filings in this case, and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED that the Motion to Dismiss is DENIED.

Dated this 21st day of May, 1996.

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The Department of Revenue seeks dismissal of this matter on the grounds that Minn. Stat. § 13.04, subd. 4(a), has not been complied with. That portion of the statute requires the Commissioner of Administration to try to resolve the dispute through education, conference, conciliation, or persuasion before issuing a Notice of and Order for Hearing. The Notice of and Order for Hearing issued in this matter states that the hearing is being ordered to resolve the matter expeditiously, but does not state that there was any attempt at conciliation. The Department of Revenue indicates that no such attempt was made and believes that the matter can be resolved without a hearing. Based upon these facts, the Department of Revenue argues that the matter should be dismissed since it believes it is premature for the Office of Administrative Hearings to exercise its jurisdiction.

The statute clearly places the decision of whether to initiate a contested case hearing in the discretion of the Commissioner of Administration. The Commissioner also has discretion to determine whether settlement has been attempted. There is no factual record at this point as to whether there was any attempt to resolve the dispute through the Department of Administration. The parties have submitted no affidavits in this regard. It is therefore appropriate to assume that the Commissioner of Administration has complied with the statute in deciding that a contested case hearing should be initiated.

As a practical matter, the parties are still able to resolve this matter without a hearing at this point, either on their own or with the assistance of the Department of Administration. The fact that a contested case proceeding has been initiated should not prejudice these efforts and, in fact, should provide some impetus for them. The Department of Revenue indicated in its April 30, 1996 letter that it has requested specific direction from counsel for the taxpayer as to what actions would be necessary to settle this matter. Accordingly, it is assumed that counsel will pursue settlement prior to the hearing of this matter on May 30, 1996.

G.A.B.