

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Trespass Citation Issued to Merlin S.
Peterson.

NOTICE OF HEARING

PLEASE BE ADVISED that a hearing will be held on May 18, 1999, beginning at 11:00 a.m. in the Old Commissioner's Meeting Room, which is next to the County Auditor's Office in the Freeborn County Courthouse, 411 So. Broadway, in Albert Lea.

Participating in the hearing will be Allan W. Klein, the undersigned Administrative Law Judge, whose office is located at 100 Washington Avenue South, Minneapolis, MN 55401, and whose telephone number is 612-341-7609; the officer who issued the citation, Deputy Neal Pedersen, whose office address is Freeborn County Sheriff's Office, P.O. Box 170, Albert Lea, MN 56007 and whose telephone number is 507-377-5200; and the appellant herein, Merlin Peterson, whose address is Route 5, Box 117, Albert Lea, MN 56007, and whose telephone number is 507-256-7545.

The purpose of the hearing is to determine whether the citation issued to Merlin Peterson should be affirmed or dismissed or modified. The hearing is expected to last between one and two hours.

The citation which is being appealed was issued pursuant to Minn. Stat. § 97B.02. Subdivision 3 of that statute provides that if a person requests a hearing in order to appeal a citation, the hearing shall be held pursuant to procedures set forth in section 116.072, subd. 6. That statute provides an expedited administrative hearing process, and refers to Minnesota Rules, parts 1400.8510 to 1400.8612. These are the rules which will govern the conduct of this appeal. Copies of the above-referenced statutes and rules may be obtained from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155. Statutes and rules may also be found at county law libraries and many other public libraries in the State. The statutes may also be found using the Internet at www.revisor.leg.state.mn.us/stats/. The rules may be found at www.revisor.leg.state.mn.us/arule/.

It is not necessary that a person have an attorney in order to participate in this hearing. Usually in these hearings, both sides appear without an attorney. Any person

may, however, choose to be represented by legal counsel or any other representative of their choice.

The only formal parties in this matter are the State of Minnesota (by the Freeborn County Sheriff's Office) and Mr. Peterson, the appellant. Any other person who desires to become a formal party to this case must submit a timely petition to intervene pursuant to Minn. Rules pt. 1400.8570. This petition must show how that person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought, and shall indicate petitioner's statutory right to intervene if one should exist. If the petition is granted, and the petitioner is given full party privileges, then the petitioner will have the right to present evidence and witnesses, and will also have the right to question witnesses presented by the other parties. Even without filing a petition to intervene, any person may offer testimony or other evidence which is relevant to the case, but they are subject to being questioned by the parties. Generally, non-parties are not allowed to question witnesses provided by the parties.

The Administrative Law Judge will issue Findings of Fact, Conclusions of Law, and a Recommended Disposition to the Freeborn County Board. The County Board will make the final decision. The Administrative Law Judge and the County Board can base their decision only on factual information or evidence that is part of the hearing record. Persons participating in the hearing should have available all documents, records, witnesses and any other evidence they need to present their position. Subpoenas may be available to compel the attendance of witnesses or other production of documents. See Minnesota Rules pt. 1400.8601 for the procedures regarding subpoenas.

After the hearing is over, the Administrative Law Judge will issue a recommended decision. A copy will be sent to each party and to the County Board. After allowing at least five days to pass, the County Board will issue a final order. During the five-day period, the parties may file comments with the County Board regarding the recommended decision.

If the State fails to appear at the hearing, the citation will be dismissed and the fine will not need to be paid. If Mr. Peterson fails to appear at the hearing, the citation will be upheld and the fine will have to be paid within thirty (30) days of the issuance of the County Board's decision, with no further opportunities for administrative appeal.

The appeal hearing will cost the taxpayers more than the amount of the fine imposed by the citation. Appeal hearings should be limited to cases where there is a legitimate, good faith disagreement about the facts or the law. The statute (§ 116.072, subd. 6(d)) provides that if the Administrative Law Judge finds that a hearing was requested solely for purposes of delay or that the hearing request was frivolous, the costs of holding the hearing may be added to the amount of the fine.

Questions concerning settlement of this matter may be directed to Deputy Pedersen or Pat Watts, Policy/Legal Analyst, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4047, telephone (612) 296-4883.

Dated this 23rd day of April 1999.

s/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge