6-2400-10224-1

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY

In the Matter of Proposed Adoption of Amendments to Department of Public Safety Rules Governing Deputy Registrars, Minn. Rules, Parts 7406.0100 to 7406.2600.

REPORT OF ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Allan W. Klein on March 5, 1996, in St. Paul, Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20 to hear public comment, to determine whether the Minnesota Department of Public Safety (DPS or Department) has fulfilled all relevant substantive and procedural requirements of law applicable to the adoption of the rules, whether the proposed rules are needed and reasonable and whether or not modifications to the rules proposed by the DPS after initial publication are impermissible, substantial changes.

The Department's hearing panel consisted of Larry Ollila, Catherine A. Moore, Dennis Lacina, Mike Ryan, Dan Floyd, and Maureen Murphy. Assistant Attorney General Steve Alpert also appeared on behalf of the Department. Approximately 30 persons attended the hearing. Twenty-five persons signed the hearing register. The hearing continued until all interested persons, groups or associations had an opportunity to be heard concerning the adoption of these amendments.

The record remained open for the submission of written comments for twenty calendar days following the hearing, to close of business on March 25, 1996. Pursuant to Minn. Stat. § 14.15, subd. 1, five working days were allowed for the filing of responsive comments. At the close of business on April 1, 1996, the rulemaking record closed for all purposes. The Administrative Law Judge received ten written comments from interested persons during the comment period. The Department submitted written comments responding to matters discussed at the hearing and proposing further amendments to the rules.

This Report must be available for review to all interested persons upon request for at least five working days before the agency takes any further action on the rule(s). The agency may then adopt a final rule or modify or withdraw its proposed rule.

When the Department files the rule with the Secretary of State, it shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements.

1. On December 4, 1995, the Department requested the scheduling of a hearing and filed the following documents with the Chief Administrative Law Judge:

A. A copy of the proposed rules certified by the Revisor of Statutes.

B. The Order for Hearing.

C. The dual Notice of Hearing proposed to be issued.

D. The Statement of Need and Reasonableness.

E. A statement of the number of persons expected to attend the hearing, and an estimate of the length of time required.

F. A statement of discretionary additional public notice which the Department would provide.

2. On December 19, 1995, the Department mailed the dual Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

3. On December 19, 1995, the Department mailed the dual Notice of Hearing to all deputy registrars.

4. On December 19, 1995, the Department mailed a copy of the proposed rules, the dual Notice and the Statement of Need and Reasonableness to the Legislative Commission to Review Administrative Rules.

5. On December 26, 1995, the dual Notice of Hearing and a copy of the proposed rules were published at 20 State Register page 1808. Persons had until January 29, 1996, to request a hearing. Numerous persons did request a hearing.

6. On February 5, 1996, the Department filed the following additional documents with the Administrative Law Judge:

A. The Notice of Hearing as mailed and published.

B. The Agency's certificate of mailing the Notice of Hearing and certificate of mailing list.

C. A Certificate of Additional Notice and mailing list (all deputy registrars).

D. The requests for a hearing which were submitted to the Department in response to the dual Notice of Hearing.

E. The list of persons who would testify on behalf of the Department at the hearing.

7. The documents were available for inspection at the Office of Administrative Hearings from the date of filing.

8. The hearing took place on March 5, 1996. The period for submission of written comment and statements after the hearing remained open through March 25, 1996, the period having been extended by order of the Administrative Law Judge to 20 calendar days following the hearing. The record closed for all purposes on April 1, the fifth business day following the close of the comment period for responses to earlier submissions.

9. On April 24, 1996, the Administrative Law Judge notified the Department that certain documents had not been filed with the Office of Administrative Hearings as required by rule. The Department immediately located them and filed them on that date. The documents were copies of the Notices of Intent to Solicit Outside Opinion, published in the State Register on July 8, 1991 and June 26, 1995, as well as the responses from interested persons.

No person had asked to see these documents, nor is there any evidence that any person was prejudiced by the Department's failure to file them in a timely fashion. Given these facts, the failure to timely file is a "harmless error" within the meaning of Minn. Stat. 14.15, subd. 5 (1994).

Nature of the Proposed Rule.

10. The proposed amendments would update the rules for the establishment of a deputy registrar office, appointment of a deputy registrar, operation of a deputy registrar office, reporting and depositing requirements, and enforcement mechanisms for deputy registrar violations. The amendments would define the term "solicitation" as a limitation on a deputy registrar's ability to solicit business outside of a designated service area. In addition, the amendments add variance procedures from the movement of an existing office, and for offices which do not meet certain office requirements.

Statutory Authority.

11. Minn. Stat. § 299A.01, subd. 6, provides that the Commissioner of Public Safety shall have the power to promulgate such rules as are necessary to carry out the purposes of Laws 1969, chapter 1129. Laws 1969, chapter 1129 was a reorganization act, which transferred the authority over the registration of motor vehicles to the Department of Public Safety. The Department has demonstrated its general statutory authority to adopt the proposed rule amendments.

Small Business Considerations in Rulemaking.

12. Minn. Stat. § 14.115, subd. 2, provides that state agencies proposing rules affecting small businesses must document in the SONAR how they have considered methods for reducing adverse impact on small businesses. The statute defines a small business as “business entity, including farming and other agricultural operations and its affiliates, that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000. For the purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small business." Individual deputy registrar offices are independent operations. Some are privately owned, while others are a part of a governmental office. None of the deputy registrars can be said to dominate the field. They do not employ over 50 employees, nor do they have gross annual sales over the statutory amount. Therefore, most, if not all, private deputy registrar offices qualify as small businesses within the meaning of Minn. Stat. § 14.115. As such, the Department must consider methods for reducing the rules’ impact upon individual deputy registrar offices. The SONAR documents how the Department has allowed for variances and has clarified rules to simplify compliance. The Department has complied with the small business statute.

Proposed Rule 7604.0100 - Definitions.

13. After the hearing, the Department proposed a change to subparts 13 and 16 in response to concerns expressed by David Hyduke and Ken Havemeier. Mr. Hyduke was concerned that upon the sale of a corporate deputy registrar, or upon a change in its shareholders or its officers, a variance granted to the corporation would not remain in force. At the hearing, the Department stated that this effect was not its intent. To ensure that a corporate deputy registrar would not lose its variance upon sale, the Department deleted the sentence "to include its owners, officers, and five percent shareholders" from the definition of deputy registrar in subpart 13. Additionally, subpart 16, dealing with the definition of a five percent shareholder, was deleted in its entirety. The changes do comport with the Department's original intent and do not constitute a substantial change.

Proposed Rule 7406.0300 - Establishing Location of Deputy Registrar Office.

14. The existing rule, in force since 1983, has limited the establishment of new offices to situations where there is likely to be enough demand to sustain one. This has been measured by a variety of factors, which change depending upon whether the proposed location is in Hennepin or Ramsey Counties, whether it is in an urban setting, or whether it is in a smaller municipality. Those factors have included the mileage from existing offices, the number of transactions expected (based on a specified formula), the expected impact on existing offices (again, a specified formula), and the number of existing offices in a municipality. The general concept of limiting the number of new offices was determined to be needed and reasonable in 1983, and the general concept is not "fair game" for review in this proceeding, because the changes proposed by the Department to this rule are relatively minor changes to the standards applicable to various situations. At the hearing and in subsequent comments, Mr. Patrick Burke objected to the minimum distances between deputy registrar offices as not being a good measure of public need and convenience. As stated in the SONAR, the Department and the advisory committee decided that the current method of proscribing minimum distances worked well enough to maintain an appropriate balance of viable deputy registrar offices. This objective is in keeping with the goal of providing efficient public service for varying populations. The Department has shown from its factual presentation that the rule is needed and reasonable.

Subpart 2 -- Other Areas.

15. Mr. Burke has expressed concern with the 15-mile radius requirement under Item A, and with the 5-mile minimum distance standard under subitem 1 as both being unreasonable and against legislative intent. These items will be discussed below. The other subparts are found to be needed and reasonable.

Item A - 15 Mile Radius.

16. Comments by Mr. Burke cited the 15 mile radius requirement between a proposed new office location and an existing office for communities under 50,000 population as contrary to the legislative intent of Minn. Stat. § 168.33, subd. 2. Mr. Burke misreads the intent of the statute.

17. Minn. Stat. § 168.33, subd. 2 provides that the registrar may appoint, and for cause discontinue, a deputy registrar as the public interest and convenience may require. (Emphasis added.) The very nature of that standard allows the registrar to use his discretion when assessing the public need and convenience. These rules are an exercise of the permitted discretion. The objective mileage standards set out as a prerequisite in the appointment process take into account the needs of the public, the viability of existing and proposed offices, and costs of establishing a new office. The proposed rule has been demonstrated to be needed and reasonable.

Subitem 1 - 5 Mile Radius.

18. The Department has amended this subitem by reducing the original radius requirement from five miles to three miles in cities with populations between 25,000 and 50,000. The proposed change was made in response to Mr. Burke's statement that a five-mile minimum distance is incompatible with the geographic size and commercial zoning of such cities. The Department reasoned that the change will allow municipalities with smaller geographical areas to have two deputy registrar offices within city limits, while maintaining enough distance between them to serve different populations. The Departments proposal is consistent with servicing the needs of the public and does not substantially change the original intent of the rule.

19. Mr. Burke has equated the arbitrariness of the minimum distance requirement with an attempt to protect the profits of existing deputy registrars. In response, the Department validly argues that the primary objective of the minimum distance requirement is to assure the viability of enough offices to serve the general public, not to maximize a deputy registrar's profit. The rule as amended is needed and reasonable.

Proposed Rule 7406.0350 -- County Auditor Appointment as Deputy Registrar; Procedure.

20. By written comment, Mr. Burke has alleged that the entire section is contrary to the legislative authority granted to the Registrar (the Commissioner) with respect to the appointment authority vis-a-vis the appointment authority of County Auditors. Each subpart dealing with appointment authority will be discussed below. The remaining subparts not discussed have been found to be needed and reasonable.

Subpart 1 -- In General.

21. Subpart 1 provides that the County Auditor shall be allowed the first opportunity to make an appointment when the location requirements of part 7406.0300 of the proposed rule have been met. The Department is correct in stating that both the Registrar and a County Auditor have appointment authority as expressed in Minn. Stat. § 168.33, subd. 2. The Department simply intended to clarify the circumstances in which the Registrar and the County Auditor would make such appointments. The rule has been demonstrated to be needed and reasonable.

Subpart 2 -- County Auditor Appointment.

22. This subpart gives the County Auditor five appointment options under items A through E once the Registrar has notified the Auditor of a qualifying location in the County. The individual options will now be discussed.

Item A

23. When the County Auditor has not been appointed as a deputy registrar, the County Auditor may be appointed as a deputy registrar by the Registrar. Although not mentioned by the Department, this authority is expressly vested in the Registrar by Minn. Stat. § 168.33, subd. 2 and is therefore needed and reasonable.

Item B

24. This item gives a County Auditor who has not previously been appointed a deputy registrar the choice of accepting appointment as a deputy registrar and agreeing to appoint a city clerk or equivalent officer, or other person, as a deputy registrar. The County Auditor's appointment of another as deputy registrar is subject to approval by the Director of the Division of Motor Vehicles and the County Board as expressly stated in Minn. Stat § 168.33, subd. 2. The rule is needed and reasonable.

Item C

25. This item states that the County Auditor may operate the location as County Auditor if previously appointed a deputy registrar. The rule is needed and reasonable.

Item D

26. Where the County Auditor has previously been appointed a deputy registrar but does not wish to run the office, this item would then allow the County Auditor to appoint a city clerk or equivalent officer, or other person, as a deputy registrar upon approval by the Director of the Division of Motor Vehicles and the County Board. The authority for this rule is expressly stated in Minn. Stat § 168.33, subd. 2 and is needed and reasonable.

Item E

27. This item provides the County Auditor with the option of declining the deputy registrar appointment, as specified in Minn. Stat. § 168.33, subd. 2. The Department has proposed amending the item so as to delete "or decline to appoint a deputy registrar." The Department believed the change was necessary because the authority to decline arises only after the County Auditor has accepted the appointment. This change would not substantially affect the intent of the original rule and is needed and reasonable.

Subpart 4 -- Failure to Notify Registrar; Consequences.

28. The Department has proposed various changes to this subpart. The Department felt it necessary to make these changes in order to reflect the fact that the County Auditor does not have exclusive appointment authority. Also, if a County Auditor declines such an appointment, the Registrar may appoint another as deputy

registrar. In the SONAR, the Department stated that the Registrar may consider appointing another as deputy registrar if the County Auditor failed to notify the Registrar within 30 days of his or her decision. The changes proposed merely clarify the subparts original intent, as well as clarify the legislative intent expressed in Minn. Stat. § 168.33, subd. 2, by adding detail to the subpart without substantially changing its original meaning. The rule is needed and reasonable.

Subpart 5 -- General Authority of County Auditor as Deputy Registrar.

29. After the hearing, the Department proposed to amend this subpart by deleting the word "exclusive" and inserting a sentence after the first period to read: "[t]he Commissioner may make subsequent appointments if the County Auditor declines to do so." This change was made in response to Mr. Burke's comments concerning the legislature's intent not to give exclusive appointment authority to a County Auditor. The Department asserts that these changes will more accurately reflect the Department's past and present practice of allowing a County Auditor the right of first refusal for an appointment, without relinquishing the appointment authority of the Commissioner. Moreover, the proposed new language would not only align this subpart's intent with the intent of the preceding rule provisions within 7406.0350, but would align this subpart's intent with that of the legislature, as expressed in Minn. Stat. § 168.33, subd. 2. The proposed new language is not a substantial change.

Proposed Rule 7406.0400 -- Deputy Registrar Office Requirements.

30. The Department has proposed changes to subpart 1a.(D) and will be discussed separately. The remainder of this section has been found to be needed and reasonable.

Subpart 1a.(D) -- Variance.

31. The Department has proposed changes to this subpart in response to Mr. Hyduke's testimony at the hearing regarding the cessation of a corporate deputy registrar's variance upon the sale or ownership transfer of the corporation. These changes would clarify the Department's original intent of having a variance on a corporate deputy registrar cease only upon the dissolution of the corporation. Otherwise, the selling of a corporate deputy registrar will not void a variance. Furthermore, the new wording would align this subpart with the definition of a deputy registrar in 7406.0100, subpart 13. As a result, the changes proposed would not constitute a substantial change from that originally intended by the Department.

32. The Department proposes adding new language which states that "[i]f the deputy registrar office moves, any variances granted with respect to the office space requirements of subparts 4 and 7 expire." This new language merely restates what was originally proposed under this subpart and explained in the SONAR: new offices should comply with the new rules and a gradual phasing out of offices that are not in compliance thereof. The new language is not a substantial change.

Proposed Rule 7406.0450 - Reporting and Depositing Practices.

33. The Department has proposed amending subpart 1 by deleting the word "office" and inserting the word "records". The Department states that this more accurately reflects what is currently done since the closing and depositing requirements are based on the time the records are closed, not when the office is closed. The change is not a substantial change.

Proposed Rule 7406.0500 -- General Operating Rules for Deputy Registrars.

34. Many subparts of this rule received comment and each subpart in dispute will be discussed in detail. Those subparts which did not receive comment have been reviewed and found to be needed and reasonable.

Subpart 2 -- Hours.

35. This subpart requires that a deputy registrar remain open for business at least 40 hours per week, with the exception of holidays. Mr. Burke proposes the addition of language which would expressly allow a deputy registrar to remain open for periods over the 40-hour minimum. In response, the Department contends that this language is unnecessary because the subpart imposes only a minimum requirement and therefore, deputy registrars have the option of remaining open for longer periods of time. This contention is accurate and the subpart need not be amended further in order to convey such an intent. The rule is needed and reasonable.

Subpart 3 - Solicitation.

36. This subpart is proposed for repeal by the Department to be replaced with subparts 3a through c. The existing rule prohibits a deputy registrar from soliciting or seeking to provide service beyond 75 percent of the distance between his or her office and the office of another deputy. The replacement rule is discussed below. There were problems of interpretation and enforcement of the existing rule. It was uncertain, for example, whether a deputy registrar could pick up and deliver beyond its area. The new rule addresses these uncertainties.

Subpart 3a. - Service Area.

37. Subpart 3a. provides that a deputy registrar may promote or provide service within an area not to exceed 75 percent of the distance to another deputy registrar. The subpart does not prohibit customers from delivering their business to any deputy registrar office of their choice. In post-hearing comments, the Department asserted that the proposed rule does not prohibit a customer from using an employee or an independent contractor to pick up and deliver documents to a distant deputy registrar. It does prohibit a distant deputy registrar from providing the pickup and delivery service.

At the hearing and in subsequent written comment, Mr. George Frisch expressed five concerns relating to this subpart. Each concern will be addressed separately.

38. First, Mr. Frisch contends that the proposed rule is arbitrary and thus unreasonable. He argues that the 75 percent figure was taken from a standard used to decide whether there was enough business to support a new office, and has been transported, arbitrarily, into a different setting. He suggests that the standard is inappropriate in this new setting (the no solicitation setting) because in this new setting, new offices have been allowed to be established based on high volumes at older offices which did provide services to distant customers, primarily dealerships. In other words, an older office had a high volume of transactions because it provided services to distant dealerships. That high volume allowed for the creation of new registrars near the old one. Mr. Frisch fears that implementation of this rule, with its prohibition against obtaining new business by servicing distant dealerships, might leave the older registrar with an insufficient area to support its operations. The Department responds by indicating in its SONAR that the reasonableness of the solicitation rule, and the 75 percent standard, was previously established in the 1983 proceeding. It argues that the changes in this proceeding only clarify the current rule by articulating identifiable, objective standards to clarify its intended meaning. The Administrative Law Judge agrees, and would add that the variance provision that would allow Mr. Frisch (and others) to continue to service distant dealerships should alleviate the concerns expressed above. It is true that Minnesota case law has equated an unreasonable rule with an arbitrary rule. In re Hansen, 275 N.W.2d 790 (Minn. 1978). However, a rule is reasonable if it is rationally related to the end sought to be achieved. Broen Memorial Home v. Minnesota Dep't of Human Serv., 364 N.W.2d 436, 490 (Minn. Ct. App. 1985). In this case, the clarification of the existing rule is not arbitrary, because it is rationally related to the goal to be served.

39. Second, Mr. Frisch expressed concern with the unnecessary burdens the proposed rule would place on the public. In particular, he focused on the burdens the rule would place on automobile dealerships, who would incur increased costs if they desired to use distant deputy registrars. His reasoning was that if a dealer used a nearby deputy, the pickup and delivery would be free to the dealer, whereas if the dealer wanted to use a distant registrar, the dealer would have to bear the cost of the pickup and delivery. The Department responded by noting that the rule permits dealers or other customers to take their business to whichever deputy registrar they choose. If they want the deputy registrar to pick up and deliver, they must use a deputy registrar in their service area. If they want to use a distant one, the dealer must get the paperwork back and forth. The Administrative Law Judge believes that reducing dealers choices, or making one choice less convenient than another, is an unavoidable consequence of this type of economic regulation. For years, the state has regulated numerous businesses where a consequence of the regulation is that consumers have fewer choices, or have to bear some inconvenience. The rule does further a legitimate purpose, and is not unreasonably burdensome on the public.

40. Third, Mr. Frisch states that the proposed rule is unreasonable since it is contrary to public policy. He states that the statutes impose no geographical restrictions on the provision of services by deputy registrars. In addition, he claims that the legislature choose not to impose such restrictions after reading the legislative auditor's report.[1] The Department has already established its authority to make rules as pertaining to the regulation of deputy registrars and this point need not be belabored. As to Mr. Frisch's argument concerning legislative acquiescence, the Department responds by stating that at the time of the legislative auditors report, geographical limitations, including the concept of service areas and the no-solicitation rule, were already in place. The Department has demonstrated that the proposed rule is not against public policy and is needed and reasonable.

41. Fourth, Mr. Frisch argues that the proposed rule is unreasonable because it imposes burdens on the public that, by statute, the Commissioner may not impose. He states that the statutory authority given to the Commissioner does not empower him to regulate the business affairs of automobile dealerships by creating and enforcing protected territories for suppliers. The Department responded that the Commissioner is authorized to establish standards for the conduct of deputy registrar offices and that the proposed rule does just that: it places restrictions upon the actions of deputy registrars by establishing standards of conduct. The Administrative Law Judge agrees. The proposed rule does not regulate the conduct of automobile dealers. The proposed rule's effect on dealerships would be peripheral at best, and the rule does not fail because of it. The Department has shown that the proposed rule is within its statutory authority.

42. Ms. Lois Byron, Saturn of St. Paul, Ace Trailer Sales, and Harold Chevrolet have all indicated their preference for allowing the public to maintain the ability to choose a deputy registrar with whom to do business. The Department has demonstrated that the proposed rule does not prevent the public from making such a choice. Indeed, as noted below, there is a variance procedure that would allow these persons to continue their current relationships.

Subpart 3b. -- Variance.

43. Subpart 3b. sets forth the procedures which allows a deputy registrar to apply to the registrar for a variance from subpart 3a. It basically would "grandfather in" existing practices (including pickup and delivery by a distant deputy registrar) under certain specified conditions. Items E and G under this subpart, and subpart 8, received comment and will therefore be discussed individually. The remaining subparts within this rule have been found to be needed and reasonable.

Item E -- Customer Affidavit.

44. Mr. Frisch's final concern is with the requirement that an automobile dealership furnish an affidavit in order to obtain a variance. He states that this requirement is unnecessary and burdensome. He further suggests that the Department can determine from its own records which deputy registrar has processed applications from a particular dealership. The Department may also access the deputy registrar's transaction records, which are maintained for well over one year. In the SONAR, the Department asserts that affidavits from the customer are necessary in order to provide credibility in the variance procedure, and as a check on the trustworthiness of the deputy registrar's statement of an existing relationship. In a subsequent comment, the Department points out that the affidavit is required only once.

45. The Administrative Law Judge does not believe that the Department's proposal places an unreasonable burden upon dealers. As a practical matter, it is likely that the deputy registrars will draft the affidavits, and the dealers will merely sign them. If dealers feel strongly about continuing to do business with a deputy registrar who is located at some distance, the signing of an affidavit is not a great burden. The Administrative Law Judge concludes that the Department has justified its proposal.

Item G, Subitem (1).

46. The Department proposes several changes to this subitem in response to Mr. Hyduke's concern with the corporate deputy registrar being able to maintain a variance once it is sold or transferred. The changes clarify the meaning of the subitem, as well as allow a variance to remain with a corporate deputy registrar in the event the corporation is sold. These changes make this subitem conform to the Department's original intent and are not substantial changes.

Subpart 8 - Inventory To Remain In Office.

47. The statute (Minn. Stat. § 168.33, subd. 2) contains the following language:

> The deputy registrar shall keep records and make reports to the registrar as the registrar, from time to time, may require. The records must be maintained at the facility of the deputy registrar. The records and facilities of the deputy registrar must at all times must be open to the inspection of the registrar or the registrar's agents.

The existing rules, at Minn. Rule pt. 7406.0500, subp. 4, provide as follows:

> A deputy registrar appointment is for operating an office in the specific location named by the registrar. A deputy registrar may not change the office location without approval of the registrar.

48. Proposed subpart 8 would require that unsold inventory must remain in the office. Inventory is defined as license plates, temporary registration permits, month

stickers, and a number of other items. From time to time, questions have arisen regarding the ability of deputy registrars to set up temporary "offices". For example, Ms. Kathy Smith has been a deputy registrar in South St. Paul since 1972. Since 1986, however, she has gone to the 3M headquarters in Maplewood on a weekly basis, where she sets up shop in an area which includes a bank, the employees' club ticket window, a pharmacy, a gift shop, and the company cafeteria. She maintains office hours there from 10:00 a.m. to 2:00 p.m. She conducts approximately 6,400 transactions there each year. She asserts that this activity was undertaken at the request of 3M, and with the concurrence of deputy registrars in Maplewood and St. Paul, as well as the person who was at the time the Director of Motor Vehicle Services for the Department. The Department has no record of the request or the agreement.

49. The Department's proposed rule would prohibit this activity, at least in the manner it is currently being performed. At the current time, Ms. Smith takes "inventory" with her to 3M, and then dispenses it there as people request. Any unused inventory is returned to her regular office at the end of the day. The Department's proposal would allow her to continue to make transactions at 3M, but it would require her to maintain the inventory at her regular office, and either mail it to the customers upon her return to the office or, as an alternative, she could complete the transactions in her office and then take the inventory to 3M with her the next week and distribute it to the customers at that time. Ms. Smith responds that either of these alternatives is an inconvenience to the customer, and has not been justified to the Department.

50. The Department's rationale for the proposed rule is on three grounds. The first is difficulty with auditing. The second is security of inventory. The third is a fear that such practices could allow numerous "mobile" offices that would effectively defeat the geographic and transaction-based limitation on the location of deputy registrar offices.

51. The Administrative Law Judge finds that the Department has justified the need for and reasonableness of its proposed rule. Its three justifications all have merit, and the rule is a rational response to them. Moreover, the Administrative Law Judge does not believe that the alternatives proposed by the Department are unrealistic. In particular, there is no reason why Ms. Smith's customers could not receive their materials by mail. If they are concerned about the security of the mail, they could arrange with Ms. Smith to pick up the materials the next week. The Department may adopt the proposed rule.

<u>Proposed Rule 7406.0700 - Exemption</u>.

52. After the hearing, the Department proposed two changes to the proposed language. These changes in language would not affect the original intent and impact of the proposed rule on newly appointed deputy registrars and is not a substantial change.

53. Mr. Burke argues that the proposed rule does not include language to deal with appointment applications received before the effective date of these amendments.

He recommends the addition of language which in effect allows for the consideration of an appointment application under existing laws. The Department is correct in stating that the language is not needed, that all applications are considered under laws in force at the time of their receipt. The Department takes the position that applications will be considered under the rules in force at the time the application was received. No change is needed, therefore, to accomplish Mr. Burke's desire.

54. The rule as proposed with the additional amendments is needed and reasonable.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Department of Public Safety (DPS) gave proper notice of this rulemaking hearing.

2. DPS has fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule as to allow it to adopt the proposed rules.

3. DPS has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (1) and (11).

4. DPS has demonstrated the need and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii).

5. The additions and amendments to the proposed rules which were suggested by DPS after publication of the proposed rules in the state register do not result in rules which are substantially different from the proposed rules as published in the state register within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.1000, subp. 1 and 1400.1100.

6. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

7. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage DPS from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated this 1st of May, 1996.

s/ Allan W. Klein
ALLAN W. KLEIN
Administrative Law Judge

Reported: Tape Recorded.

[1] In 1994, the Legislative Auditor issued a report, "Motor Vehicle Deputy Registrars" which raised issues about private deputies, protected service areas, solicitation prohibitions, etc.