

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE DEPARTMENT OF VETERANS AFFAIRS

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Mark Daniel McGlynn,

Petitioner,

v

City of Fosston,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

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The above entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on November 20 and 21, 2000, at the Fosston City Hall, 220 - First Street East, Fosston, Minnesota. The hearing was held pursuant to a Notice of Petition and Order for Hearing dated September 14, 2000.

Susan Ellison, Ellison Law Office, P.C., 4610 Amber Valley Parkway, Suite E, P.O. Box 9097, Fargo, North Dakota 58106-9097, appeared on behalf of the Petitioner, Mark Daniel McGlynn ("Petitioner"). Carla J. Heyl, League of Minnesota Cities, 145 University Avenue West, Saint Paul, Minnesota 55103, appeared on behalf of the City of Fosston ("the City"). The record closed on December 18, 2000, upon the receipt of the posthearing briefs in this matter.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Veteran's Affairs will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Commissioner Jeffrey L. Olson, Minnesota Department of Veterans Affairs, 206C Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota 55155 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the City abolished Petitioner's Police Officer position in good faith within the meaning of Minn. Stat. §197.46.

FINDINGS OF FACT

1. The Petitioner, Mark Daniel McGlynn, served in the U.S. Army on active duty from July 5, 1977 to July 4, 1980.^[1] He received an honorable discharge.^[2]

2. In 1988, Petitioner began working full time for the City as a Police Officer. Prior to 1988, the City had a three-officer Police Department. In 1988, the City's Police Department consisted of a Police Chief, Jim Berg ("Chief Berg"), and Petitioner. The City moved to a two-officer Police Department to save money on salaries. Officer Nathan Brouse began working for the City Police Department in a part-time position at the end of 1999. Officer Brouse resigned that position, effective May 12, 2000, to work for the Polk County Sheriff's Office.^[3]

3. On March 14, 1994, the City Council discussed problems with law enforcement coverage involving having both officers in Crookston at a basketball game. The City Council reprimanded Chief Berg and indicated that lack of coverage on a Friday night was the reason for the discipline.^[4]

4. On March 31, 1994, the City Council held a special meeting to discuss law enforcement issues. Call time, use of the City automobile, and visibility were issues discussed.^[5] The City Council required that Chief Berg maintain better public contact by writing a monthly column for the local newspaper, initiate foot patrols, attend council meetings monthly, and carry a cellular telephone at all times.^[6]

5. On February 23, 1998, the City Council held a regularly scheduled meeting. The City Council repeated its requirement that Chief Berg write a monthly column for the local newspaper. The Mayor requested that Chief Berg maintain a log of police activities to inform residents of the City Police Department's activities.^[7]

6. On July 27, 1998, the City Council held a regularly scheduled meeting. The City Council discussed instituting a schedule for the officers of the City Police Department, keeping its office open during the day with temporary staff, adding a part-time police officer, and contracting with the Polk County Sheriff's Office (PCSO) for additional law enforcement coverage.^[8] The Mayor requested that Chief Berg maintain a log of police activities to inform residents of the City Police Department's activities.^[9] The City Council also called a special meeting, held on July 28, 1998 to discuss law enforcement issues. Chief Berg was directed to "research options for covering vacation, military duty and sick time."^[10] The City Council approved hiring the part-time office staff on September 28, 1998.^[11]

7. The City Council became concerned that the City Police Department was not being managed effectively to provide the law enforcement coverage desired for the

City. Specifically, the City Council was concerned that the compensatory time policy was being misused by Chief Berg. On October 12, 1998, the City Council directed that the City Police Department be placed under the supervision of the City Clerk-Administrator.^[12]

8. On February 9, 1999, the City Council held a regularly scheduled meeting and approved hiring a part-time police officer to improve law enforcement coverage.^[13]

9. In April, 1999, the Mayor began discussions with Polk County Sheriff Doug Qualley regarding the possibility of the PCSO providing some or all of the City's law enforcement coverage.^[14] Sheriff Qualley indicated that specific budget figures and levels of coverage needed to be specified before an answer to the issue could be given.^[15]

10. On May 24, 1999, the City Council held a regularly scheduled meeting and approved applying for a federal grant from the "COPS program" to fund a part-time police officer. The City Council was informed that the PCSO was not interested in contracting to provide the City's law enforcement coverage.^[16]

11. At the direction of the City Clerk-Administrator, Chief Berg prepared a memorandum regarding law enforcement coverage on August 6, 1999. That memorandum indicated that the City Police Department could not schedule more than seven days out of every twenty-one where sixteen-hours per day of law enforcement coverage could be provided.^[17] To achieve sixteen hours of law enforcement coverage, Chief Berg indicated that the City Police Department must be expanded to 3.5 full-time equivalent positions (FTEs).^[18]

12. The City's annual operating budget is supported primarily by property taxes and state aids. The only source of revenue available to increase expenditures for the City Police Department is the property tax levy or eliminating other spending. The approved City Police Department budget for 2000 was \$113,638.^[19] There is no cost included in that budget for the cost of the facility occupied by the City Police Department.^[20] The estimated cost for a 3.5 FTE police department was \$174,398.^[21] Due to the age of the police car, an additional capital outlay of \$26,000 was identified as needed for "squad car replacement."^[22]

13. On September 21, 1999, the City Council met and discussed law enforcement issues. Specific areas of coverage, times of coverage, adoption of a schedule, change to the "call out" procedure, elimination of flex shifts, and improvement to communications and public relations were discussed.^[23]

14. On November 8, 1999, the City Council held a regularly scheduled meeting and approved hiring a part-time police officer using the funds from a newly approved COPS program grant. The grant amounted to \$26,955 for a three-year period.^[24] The City Council imposed restrictions on the use of compensatory time, required an advance schedule for law enforcement coverage, specified total amounts of work time and particular shifts that must be covered, and required advance notice to the PCSO, the City Police Department office staff, and the City Clerk-Administrator.^[25]

Chief Berg was directed to improve communication with residents who contact the Police Department and write a monthly column for the local newspaper.^[26]

15. On November 24, 1999, the City Council reprimanded Chief Berg for failing to communicate promptly with residents, failing to write the monthly column for the local newspaper, and failing to notify the PCSO in advance when certain shifts were not staffed.^[27] Specific actions to address these items and others were listed by the City Council.

16. Additional discussions were held with Sheriff Qualley in February, 2000 regarding having the PCSO assume all law enforcement coverage, including the addition of two deputies dedicated to serving the City. A proposed budget was prepared by the City Clerk-Administrator. A proposed agreement was drafted that would require the PCSO to provide 2 FTE police officers based in the current facility occupied by the City Police Department. The City would pay \$101,565 as the "estimated actual costs" of the services.^[28] The costs would be adjusted annually to reflect the actual costs incurred by the PCSO.^[29] Costs for equipment, including police cars, would be borne by the PCSO. The existing equipment used by the City Police Department would become the property of the PCSO.

17. At its regular meeting on May 22, 2000, the City Council was informed that surveys distributed in the spring regarding City services had been collected and were being tabulated.^[30] The Mayor reported that the City Attorney had drafted a preliminary law enforcement contract with the PCSO. The contract would run for three years and cost approximately \$100,000 for the first year. Successive years were anticipated to increase in cost by approximately three percent.^[31]

18. The City Council held a public meeting on June 1, 2000 to discuss the proposal to eliminate the City Police Department and contract with the PCSO for law enforcement coverage. Significant public opposition to the plan was aired by members of the public present at the meeting. Most of that opposition was the concern over losing local control of the law enforcement being conducted in the City.

19. The results of the public services survey were tabulated and released to the public. Of the 626 surveys distributed, 259 surveys were returned. The survey broke down responses into the categories of "Effective" or "Adequate," "Ineffective" or "Inadequate," "No Opinion," and "No Response."^[32] The survey inquired into the areas of government, services, facilities, civic pride, needed improvements, and background information on the persons responding to the survey.

20. The service area enjoying the highest adequacy rating was the volunteer City Fire Department, at 94% of respondents. The area with the lowest adequacy rating was the City Police Department at 40%. The City Police Department was rated inadequate by 41% of the survey respondents.^[33] No other area of inquiry had a higher negative response than favorable response.

21. In addition to the ratings, survey respondents also provided comments on each area. The most comments were made regarding the City Police Department. These comments covered more than three pages and were almost all critical of the

manner in which the City Police Department functioned. Lack of law enforcement coverage, poor visibility of officers, and the substantial level of crime (mostly vandalism) were the most frequent criticisms.^[34]

22. The City Council held a second public meeting on June 22, 2000. The discussion and sentiments expressed were similar to those expressed at the June 1, 2000 meeting.

23. On June 26, 2000, the City Council met and voted to eliminate the City Police Department.^[35]

24. On June 29, 2000, Petitioner was informed that the City Police Department had been abolished by the City Clerk-Administrator.^[36] The letter informing Petitioner of the decision indicated that Petitioner's position was also abolished and his employment with the City was ended.

25. Sheriff Qualley indicated that a deputy would be stationed in the City for eight hours a day and more coverage would be provided when a contract was signed and more deputies hired.^[37]

26. On August 11, 2000, Petitioner filed a petition with the Department of Veterans Affairs alleging that his position was not eliminated in good faith and requesting reinstatement to his prior position and an apology.^[38] This proceeding followed.

27. On August 15, 2000, the City and Polk County signed the contract to have the law enforcement services to the City provided by the PCSO. The terms were essentially those that had been negotiated in February and March, 2000.

28. By abolishing the City Police Department the City can expect to reduce its existing outlay for law enforcement coverage by approximately \$12,000 per year. In addition, a capital expenditure of \$26,000 for a new police car will not be incurred. The City can expect its law enforcement coverage to improve both in the amount of time that officers will be working scheduled shifts in the City and in a reduction in the time elapsed between a call for service and an officer responding to that call. The City can expect to save \$74,833 (and the capital expenditure) over the cost of providing that equivalent level of law enforcement coverage through its own Police Department.

29. When Petitioner's position was abolished, none of the tasks he had performed were assigned to any other City employee. All of the tasks that Petitioner had performed in his position were law enforcement functions. After the elimination of the Petitioner's position, all of the law enforcement functions were performed by the PCSO pursuant to its contract with the City.

30. The City Council determined, in good faith, that the Police Department could not provide adequate law enforcement coverage within the available budget. The decision to abolish the City Police Department was made in good faith.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Veterans Affairs have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 197.481.

2. The parties received proper notice of the issues in this proceeding and this matter is, therefore, properly before the Administrative Law Judge.

3. The Department of Veterans Affairs has complied with all relevant substantive and procedural requirements of law.

4. Petitioner is an honorably discharged veteran within the meaning of Minn. Stat. §§197.46 and 197.447 of the Veterans Preference Act.

5. Minn. Stat. §197.46 prohibits the removal of a veteran from public employment except for incompetency or misconduct shown after a hearing, upon due notice and upon stated charges in writing.

6. Public employers may abolish positions held by veterans notwithstanding the Veterans Preference Act if the abolition of the position is in good faith.^[39]

7. The burden of proof is upon Petitioner to prove by a preponderance of the evidence that he was removed from public employment without a hearing. Once a removal is established, the burden of proof is upon the Employer to prove by a preponderance of the evidence that the veteran's position was abolished in good faith.^[40]

8. Petitioner was removed from his Police Officer position with the city within the meaning of Minn. Stat. §197.46.

9. Petitioner's removal was not for reasons of incompetency or misconduct as those terms are defined by Minn. Stat. §197.46.

10. Petitioner's removal from his Police Officer position was the result of the City's good faith decision to abolish his position.

11. Petitioner's veterans preference rights under Minn. Stat. § 197.46 were not violated by the Respondent because Petitioner's removal was the result of the City Council's good faith decision to abolish the City Police Department and with it, Petitioner's Police Officer position.

12. The City has provided Petitioner with the procedural and substantive rights to which he is entitled.

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

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Veterans Affairs order that the Petition of Mark Daniel McGlynn be DENIED.

Dated this 18th day of January, 2001.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped - Nine Cassettes
No Transcript Prepared

NOTICE

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Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

This proceeding arises out of the Veterans' Preference Act (VPA or Act), Minn. Stat. § 197.46. Petitioner alleges that the City violated the Act, as a matter of law and fact, when it abolished his position and terminated his employment. Petitioner argues that he is, therefore, entitled to reinstatement and compensatory damages that will make him whole.

Minn. Stat. § 197.46 governs a veteran's removal from employment with a city or other public employer. With respect to removals, it states, in part, as follows:

No person holding a position by appointment or employment in the several . . . cities . . . in the state, who is a veteran separated from the military service under honorable conditions, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing.

The courts have held that the statute does not apply to the good faith abolition of a position held by a veteran. In ***State ex rel. Boyd v. Matson***, 155 Minn. 137, 141-142, 193 N.W. 30, 32 (1923) the court discussed this exception to the statute stating:

The purpose of this section [the Veterans' Preference Act] is to take away from the appointing officials the arbitrary power, ordinarily possessed, to remove such appointees at pleasure; and to restrict their power of removal to the making of removals for cause. But it is well settled that statutes forbidding municipal officials from removing appointees except for cause are not intended to take away the power given such officials over the administrative and business affairs of the municipality, and do not prevent them from terminating the employment of an appointee by abolishing the office or position which he held, if the action abolishing it be taken in good faith for some legitimate purpose, and is not a mere subterfuge to oust him from his position. The municipal authorities may abolish the position held by an honorably discharged soldier and thereby terminate his employment, notwithstanding the so-called veterans' preference act.

In **Young** the Minnesota Supreme Court elaborated on the good faith exception to the Act stating:

If the City merely assigned Young's duties to nonveteran employees less senior than he, his position was not abolished in good faith, and he is entitled to reinstatement with back pay. The Veterans' Preference Act is applicable to cases in which public employers reassign duties in times of revenue shortfalls and budget cuts. No exception in the Act exists for such situations. Thus, veterans have a preference over nonveteran employees less senior than they to continue to perform duties for which they are qualified if the public employer continues to need such duties performed. * * *^[41]

Petitioner argues that his removal was in bad faith. The law enforcement function of the City Police Department continues to be performed, now by the PCSO. In **Young**, the Minnesota Supreme Court said:

[W]e have consistently held that a veteran is entitled to a writ of mandamus ordering the public employer to reinstate the veteran to his or her former position with back pay when it is established, after a hearing, that the public employer, under the pretext of abolishing a veteran's position, actually continued it under some other name or reassigned the veteran's duties to some other employee.^[42]

The facts in **Young** differ significantly from the facts in this matter. In **Young**, the veteran's duties were not abolished but rather assigned to employees less senior than Young. Young was terminated to further a policy decision to replace employees being paid the highest salaries with employees being paid less. Rather than abolishing the position, the employer removed the veteran (Young) from the position. In this case, however, the entire Police Department was abolished. No employees of the City were assigned to perform law enforcement tasks.

Petitioner maintains that bad faith can be inferred from a number of facts surrounding his employment with the City. Both Petitioner and Chief Berg are recently divorced. The veracity of a claim, made by Petitioner in a non-law enforcement setting, was disputed and actions were taken to preserve Petitioner's viability as a witness in prosecutions. Petitioner had been disciplined for driving his children in the City police car on their newspaper delivery route.^[43] Chief Berg had been disciplined on several occasions for failing to carry out instructions from the City Council on City Police Department operations.

No competent evidence is present in the record to support a conclusion that any of these facts motivated the City Council to abolish the City Police Department. The City Council and a significant number of the residents of the City expressed legitimate concerns over the lack of law enforcement coverage available. The City Council expressed its unwillingness to increase the property tax levy to obtain additional revenue to hire such additional coverage. With the need for more coverage and the absence of a mechanism to pay for it, the Administrative Law Judge is persuaded that the city's decision to abolish the City Police Department was made in good faith, and not merely to get rid of the Petitioner or to circumvent the hearing requirements of the Act.

In most cases involving the bad faith abolishment of a veteran's position, "it generally has appeared that there was prompt re-creation of the office or position under a different name or assignment of the work thereof to another department, followed by appointment of a new appointee to perform the work formerly done by the incumbent of the office or position claimed to have been abolished."^[44] Petitioner's position has not been re-created under a different name. The PCSO now performs the duties that had been performed by the City Police Department. While the PCSO hired two new deputies to provide the law enforcement coverage provided by the contract with the City, these hires were not done by the City and therefore do not constitute reassignment within the meaning of *Young* or *Thomas*.

Petitioner relies upon the holding in *Taylor v. City of New London*, 536 N.W.2d 901 (Minn. App. 1995), as establishing the standard for good faith in abolition of positions. In *Taylor* the cost savings in abolishing the New London Police Department were undisputed.^[45] In this matter, Petitioner asserts that the disputed nature of the costs to be incurred under the PCSO contract demonstrate bad faith.

The terms of the contract are relied upon as demonstrating that the PCSO contract amount is not a fixed amount. While the final amount the City must pay is unknown, the undisputed testimony of all the persons who negotiated the contract is that no significant additional costs are contemplated, unless the City asks for additional law enforcement coverage on a regular basis.

Petitioner also maintains that the cost of 1.5 FTEs for additional police officers could be obtained by a grant through the COPS program and thereby the need to eliminate the City Police Department could have been avoided. Chief Berg opined that such grants could be obtained in the needed amount to cover 1.5 FTEs for the next five

years. This opinion is mere speculation. There is no guarantee that the COPS program will be maintained by the federal government into the future. Similarly, there is no guarantee that funds would be available or the specific grant would be approved should the program remain in existence. There is no obligation on the City to engage in such a speculative endeavor to demonstrate good faith.

Even assuming that the City could obtain the COPS grant money over the entire five years, as opined by Chief Berg, the COPS grant covers only 75% of the cost of the additional police officers. The City Council's unwillingness to increase the property tax levy is not unreasonable given the economic situation in the City. The expansion of the City Police Department by 1.5 FTEs would impose an additional cost on the City and declining to incur that cost is not evidence of bad faith by the City Council.

Chief Berg's analysis of existing scheduling difficulties demonstrated that the police force needed to be expanded to 3.5 FTEs for police officers to adequately provide law enforcement coverage for the City through the structure of the City Police Department. The same law enforcement coverage can be obtained through contracting with the PCSO for two deputies dedicated to policing the City. The City will save money as a result of abolishing the City Police Department and contracting with the PCSO. The City acted in good faith to meet the public safety needs of the City at the lowest possible cost. There is no evidence suggesting that the City abolished the City Police Department simply to remove the Petitioner.

Three factors have been identified as relevant in determining whether the VPA has been violated in abolishing a position. First, whether the reasons for termination articulated by the employer have a legitimate, factual basis; second, whether the job duties previously performed by the veteran remain to be performed or are being performed by others; and third, whether the methodology used to lay off the veteran was objective and free from manipulation.^[46]

The evidence introduced at the hearing demonstrates that the City Council wanted to obtain adequate law enforcement coverage and pay the least amount necessary to obtain that coverage. The City Council engaged in a searching assessment of the costs for either adding 1.5 FTEs to the City Police Department or contracting with the PCSO. That assessment concluded that contracting with the PCSO would be less expensive in both annual expenses and needed capital expenditures. The process was conducted with ample prior notice and significant public input over a two-year period. Contracting with the PCSO means that no positions with Petitioner's job duties are being filled by other, nonveteran City employees.

There is no evidence that the City Council's decision was the result of manipulation or was not based on the objective facts. The issue of law enforcement coverage had been active for some time in the City. The process of reaching agreement with the PCSO took almost two years to complete. The survey results, while not tabulated when the contract negotiations were being conducted, provide a clear and quantified demonstration that the City residents were dissatisfied with the operation of the City Police Department. There is no evidence that the process was manipulated to

target Petitioner's position. The City Council's action was taken in good faith and not to oust a veteran without providing the protections of the Act.

The Administrative Law Judge is persuaded that the City Council's motives in abolishing the City Police Department were to provide the City with adequate law enforcement coverage without increasing taxes. These two goals were incompatible, if not impossible, with the existing structure of the City Police Department. The City Council chose the option that is likely to both meet the law enforcement coverage needs of the City and reduce the City's costs. No other reasons for the City Council's decision have been shown. There is no evidence that the City was acting in bad faith or abolished the Police Department merely to oust Petitioner from his position. The Petitioner's position of Police Officer was abolished in good faith within the meaning of the Veteran's Preference Act. Therefore, Petitioner's request that the Commissioner reinstate him to his former position should be denied.

S.M.M.

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- [\[1\]](#) Exhibit P-1.
 - [\[2\]](#) Exhibit P-1.
 - [\[3\]](#) Exhibit P-30.
 - [\[4\]](#) Exhibit P-4, at 1.
 - [\[5\]](#) Exhibit P-4, at 2.
 - [\[6\]](#) Exhibit P-4, at 2-3.
 - [\[7\]](#) Exhibit P-4, at 4.
 - [\[8\]](#) Exhibit P-4, at 5.
 - [\[9\]](#) Exhibit P-4, at 5.
 - [\[10\]](#) Exhibit P-4, at 6.
 - [\[11\]](#) Exhibit P-4, at 8.
 - [\[12\]](#) Exhibit P-4, at 9.
 - [\[13\]](#) Exhibit P-4, at 11.
 - [\[14\]](#) Exhibit P-4, at 14.
 - [\[15\]](#) Exhibit P-4, at 14.
 - [\[16\]](#) Exhibit P-4, at 16.
 - [\[17\]](#) Exhibit P-8.
 - [\[18\]](#) *Id.*
 - [\[19\]](#) Exhibit P-31, at 2 (labeled page 17).
 - [\[20\]](#) Exhibit P-32.
 - [\[21\]](#) Exhibit P-32.
 - [\[22\]](#) Exhibit P-32.
 - [\[23\]](#) Exhibit P-4, at 27.
 - [\[24\]](#) Exhibit P-12.
 - [\[25\]](#) Exhibit P-4, at 34.
 - [\[26\]](#) Exhibit P-4, at 34-35.
 - [\[27\]](#) Exhibit P-9.
 - [\[28\]](#) Exhibit P-39.
 - [\[29\]](#) *Id.*
 - [\[30\]](#) Exhibit P-4, at 50-51.
 - [\[31\]](#) *Id.*
 - [\[32\]](#) Exhibit R-11.

^[33] Exhibit R-11.

^[34] Exhibit R-11.

^[35] Exhibit P-4, at 62-65.

^[36] Exhibit P-18.

^[37] Exhibit P-17.

^[38] Petition at 2.

^[39] **Young v. City of Duluth**, 386 N.W.2d 732, 738 (Minn. 1986).

^[40] Minn. R. 1400.7300, subp. 5 (1999); **Holmes v. Board of Commissioners of Wabasha County**, 402 N.W.2d 642 (Minn. App. 1987).

^[41] **Young v. City of Duluth**, 386 N.W.2d 732, 738-39 (Minn. 1986).

^[42] **Young**, 386 N.W.2d 732, 738.

^[43] Exhibit P-21.

^[44] **State ex rel. Niemi v. Thomas**, 223 Minn. 435, 438-39, 27 N.W.2d 155, 158 (1947).

^[45] **Taylor**, 536 N.W.2d at 903.

^[46] **Gorecki v. Ramsey County**, 437 N.W.2d 646 (Minn. 1989); **Ochocki v. Dakota County Sheriff's Department**, 464 N.W.2d 496 (Minn. 1991); **State ex rel. Evens v. City of Duluth**, 195 Minn. 563, 262 N.W.2d 681 (1935).