

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Exempt
Rules of the Minnesota Board of Peace
Officer Standards and Training Governing
Part-Time Peace Officer Licensing and
Examination

**ORDER ON REVIEW
OF RULES UNDER
MINN. STAT. §§ 14.386, .388
AND MINN. R. 1400.2400**

This matter came before Administrative Law Judge Jeffery Oxley upon the application of the Minnesota Board of Peace Officer Standards and Training (Board) for a legal review under Minn. Stat. §§ 14.386, .388 (2014).

On October 2, 2015 the Board filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. §§ 14.386, .388; Minn. R. 1400.2400 (2015).

Based upon a review of the written submissions by the Board, and for the reasons set out in the Memorandum which follows below,

IT IS HEREBY DETERMINED THAT:

1. The Minnesota Legislature mandated certain specific changes in Minnesota Rules and authorized the Board to implement the changes by invoking the good cause exemption to the rulemaking procedures as provided by Minn. Stat. § 14.388, subd. 1(3). The following proposed rules were adopted in compliance with the legislature's directive and with the procedural requirements of Minn. Stat. ch. 14 (2014), and Minn. R. ch. 1400 (2014):

Minn. R. 6700.0600, subp. 2.
Minn. R. 6700.1000, subps. 1 (in part), 7, 9.
Minn. R. 6700.1101, subp. 3.

2. The following proposed rules were not adopted in compliance with the legislature's directive nor with the procedural requirements of Minn. Stat. ch. 14, and Minn. R. ch. 1400:

Minn. R. 6700.1000, subps. 1 (in part), 2, 3.
Minn. R. 6700.1101, subps. 2, 4, 7.

IT IS HEREBY ORDERED THAT:

The adopted rules Minn. R. 6700.0600, subp. 2; Minn. R. 6700.1000, subps. 1 (in part), 7, 9; and Minn. R. 6700.1101, subp. 3 are **APPROVED**.

The adopted rules Minn. R. 6700.1000, 1 (in part), 2, 3; and Minn. R. 6700.1101, subps. 2, 4, 7 are **DISAPPROVED**.

Dated: October 15, 2015

s/Jeffery Oxley
JEFFERY OXLEY
Administrative Law Judge

NOTICE

Minn. R. 1400.2400, subp. 4a provides that when a rule is disapproved, the agency must resubmit the rule to the Administrative Law Judge for review after it has revised the proposed rules. The Administrative Law Judge then has five working days to review and approve or disapprove the rule. Minn. R. 1400.2400, subp. 5 provides that an agency may ask the Chief Administrative Law Judge to review a rule that has been disapproved by a Judge. The request must be made within five working days of receiving the Judge's decision. The Chief Administrative Law Judge must then review the agency's filing, and approve or disapprove the rule within 14 days of receiving it.

MEMORANDUM

Authorization to Undertake Rulemaking

In 2014, the Minnesota Legislature decided to eliminate part-time peace officer licensure after June 30, 2014.¹ To do so, the Legislature amended Minn. Stat. § 626.8468, subd. 1 (2014). The amendment directed the Board to cancel the licenses of part-time peace officers who either were not, or ceased to be, employed as a part-time peace officer after June 30, 2014.² The Legislature also ordered the Board to:

amend Minnesota Rules, parts 6700.0600, subpart 2; 6700.1000, subparts 1, 2, 7, and 9; and 6700.1101, subpart 2, so that new part-time peace officer licenses are not issued and that existing licenses are canceled when a part-time license holder either leaves the officer's agency of employment or is not employed by a law enforcement agency on or after June 30, 2014.³

The Legislature also permitted the Board to use an exemption to the normal rulemaking procedures:

¹ 2014 Minn. Laws, ch. 244.

² *Id.* ch. 244, § 1.

³ *Id.*

The board may invoke the good cause exemption to the rulemaking procedures in Minnesota Statutes, chapter 14, as provided for in Minnesota Statutes, section 14.388, subdivision 1, clause (3), to implement the conforming amendments listed in this section.⁴

Lastly, the Legislature repealed Minn. Stat. §§ 626.8462 (2014); 626.8464 (2014); 626.8465, subd. 3 (2014); and 626.8468, subd. 2 (2014) as well as Minn. R. 6700.1101, subps. 5 and 6 (2014) all of which dealt with the licensure of part-time peace officers.⁵

On October 2, 2015, the Board issued a Notice of Submission of Rules Adopted without a Public Hearing to the Office of Administrative Hearings to “all persons and associations on the Board’s rulemaking mailing list as required by Minn. Stat. § 14.14, subd. 1a.”⁶ On that same date, the Board forwarded its proposed rules to the Office of Administrative Hearings for review.

Review of Exempt Rules

As guided by the Legislature, the Board requests approval of its proposed amendments to its rules under the “good cause exemption” of Minn. Stat. § 14.388, subd. 1(3) (Clause (3)). The Administrative Law Judge reviews proposed exempt rules under Minn. R. 1400.2400. This rule requires that in reviewing a filing, the Administrative Law Judge must decide whether the proposed rule meets the standards of Minn. R. 1400.2100, Items A and D to G, and “whether the agency has established its exemption from rulemaking under Minnesota Statutes, section 14.386 or 14.388.”⁷ The standards of review Items A and D to G are:

A rule must be disapproved by the judge or chief judge if the rule:

A. was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.26, subdivision 3, paragraph (d);

...

D. exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by its enabling statute or other applicable law;

E. is unconstitutional or illegal;

F. improperly delegates the agency’s powers to another agency, person or group;

⁴ *Id.* ch. 244 § 2.

⁵ *Id.* ch. 244 § 3; See also Minnesota Statutes 2013 and Minnesota Rules 2013.

⁶ Certificate of Mailing the Notice of Submission of Rules Adopted without a Public Hearing to the Office of Administrative Hearings; Certificate of Accuracy of the Mailing List. The Office of Administrative Hearings did not receive any comments as a result of the Notice.

⁷ Minn. R. 1400.2400, subp. 3.

G. is not a “rule” as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law. . . .⁸

Use of the Good Cause Exemption

Minnesota Statutes section 14.388 provides that an abbreviated and streamlined set of procedures for promulgating new rules may be used when “good cause” is present. In this instance, the Legislature has determined that good cause is present through its declaration that the “board may invoke the good cause exemption . . . as provided for in Minnesota Statutes section 14.388, subdivision 1, clause (3), to implement the conforming amendments listed in this section.”⁹ Clause (3) states that an agency may avoid the ordinary requirements for rulemaking in order to “incorporate specific changes set forth in applicable statutes when no interpretation of law is required.”

Rules that are promulgated under Clause (3) may stand as permanent rules.¹⁰ Clause (3) contemplates that administrative rules issued under this exemption must implement the substantive policy the Legislature has announced rather than reflect the agency’s choice among policy alternatives. In reviewing the proposed rule amendments, the Administrative Law Judge must determine that the rule amendments strictly implement the Legislature’s directive and do not go beyond it.

Analysis of the Board’s Submissions

The Board proposed a number of amendments to its rules. The Board cited Laws of Minnesota 2014, ch. 244 and its grant of permission to use Clause (3) as its authority for amending certain of its rules. For certain other rule amendments, the Board referred to recommendations the Revisor’s Office made as “necessary for the administration of our [the Board’s] rules.” This justification, however, does not authorize the Board to amend its rules in ways that do not qualify for the Clause (3) exemption. Each proposed rule amendment is reviewed below.

Proposed Amendment to Minn. R. 6700.0600, subp. 2.

The Board amended this subpart by striking the part which set out the fee for the licensing examination for part-time peace officers. Because the Legislature determined not to license part-time peace officers after June 30, 2014, this is a conforming amendment where no interpretation of law is required. Accordingly, it meets the Clause (3) good cause exemption.

The Administrative Law Judge approves this proposed amendment.

⁸ Minn. R. 1400.2100.

⁹ 2014 Minn. Laws, ch. 244, § 2.

¹⁰ *Id.*

Proposed Amendments to Minn. R. 6700.1000, subp. 1.

Laws of Minnesota 2014, ch. 244, § 2, specifically requires the Board to amend subpart 1. The Board proposes to amend subpart 1 of this rule in two ways. First, the Board amends this subpart to invalidate the license of a part-time peace officer when the license becomes inactive. The proposed amendment is indicated by the underlined words:

Part-time peace officer licenses issued by the board pursuant to part 6700.1101 are valid until they expire, are revoked, are surrendered by the licensee, or become inactive.

Second, the Board proposes to strike the portions of this subpart that stagger the renewal dates for licensees alphabetically by the licensees' surnames.¹¹

Although the Legislature decided to end the licensure of part-time peace officers and directed the Board to amend this rule, the Legislature did not specify exactly how the Board should change the rule. The Board's proposed amendment will automatically invalidate an inactive part-time peace officer license without necessitating any action by the Board, a law enforcement agency, or the licensee. This fairly implements the Legislature's decision to end the licensure of part-time peace officers while permitting, as specifically allowed by the Legislature's 2014 amendment to Minn. Stat. § 626.8468, subd. 1, part-time peace officers who were employed by a law enforcement agency prior to July 1, 2014, to hold a valid license as long as they continue in service.¹²

The Administrative Law Judge approves the first proposed amendment to subpart 1.

The second amendment to subpart 1, the elimination of alphabetically staggered license renewal periods, was not authorized by the Legislature. The Legislature did not address the timing of license renewal requirements in Laws of Minnesota 2014, ch. 244. The license renewal requirements apply to all peace officers, not just part-time ones. The Administrative Law Judge cannot approve the second proposed amendment to this subpart as it does not meet the good cause exemption of Clause (3).

The Administrative Law Judge disapproves the second proposed amendment to subpart 1.

Proposed Amendments to Minn. R. 6700.1000, subp. 3

This subpart relates to the continuing education requirements for renewing a peace officer license. The Board proposes to amend this subpart in two ways. First,

¹¹ The Administrative Law Judge notes that the Board provides no explanation for this second proposed amendment to subpart 1 of this rule. The proposed amendments are in the Office of the Revisor of Statutes document entitled "Adopted Exempt Permanent Rules Relating to Part-Time Peace Officers" which bears the notation "The attached rules are approved as to form." The Administrative Law Judge assumes the Board intends to adopt the rules as presented in this document.

¹² 2014 Minn. Laws, ch. 244, § 1.

the Board proposes to replace the phrase “completed the required hours of continuing education” with “completed the 48 hours of required continuing education.” Second, the Board seeks to strike the portion of the rule which prorates the required hours of continuing education according to the length of time an officer has been licensed.

By way of explanation, the Board notes that the Revisor’s Office recommended these amendments as “necessary for the administration of our rules” and as making “the language grammatically correct and more readable.”¹³ The Board further states that “[t]he requirement to prorate the continuing education is no longer the practice of the Board due to the newest computer program” and “[t]he proposed rule change provides consistency with 6700.1000, subpart 1.”

The reasons the Revisor’s Office gave the Board for amending the rule do not qualify for the good cause exemption of Clause (3). The Legislature’s policy directive concerning part-time peace officers does not require eliminating the prorating of continuing education requirements. These amendments were not authorized by the Legislature in Laws of Minnesota 214, ch. 244. Because the Administrative Law Judge disapproved striking the portion of rule 6700.1000, subpart 1 that staggers license renewal dates alphabetically by licensee surname, the problem of consistency of subpart 3 with subpart 1 does not arise.

The Administrative Law Judges disapproves proposed amendments to subpart 3.

Proposed Amendment to Minn. R. 6700.1000, subp. 7.

The proposed rule eliminates the license renewal fee for part-time peace officers, consistent with the Legislature’s decision to eliminate licensure for such officers. The Legislature specifically authorized the Board to amend this subpart. No legal interpretation is required to implement the specific changes the Legislature ordered and accordingly the amendments meet the good cause exemption Clause (3).

The Administrative Law Judge approves the proposed amendment to subpart 7.

Proposed Amendment to Minn. R. 6700.1000, subp. 9.

The proposed rule amendment eliminates reference to the licensing examination for part-time peace officers. The Legislature specifically authorized the Board to amend this subpart. The proposed change conforms this subpart to the Legislature’s decision to eliminate licensure of part-time police officers and does not require legal interpretation. The amendment meets the good cause exemption of Clause (3).

The Administrative Law Judge approves the proposed amendment to subpart 9.

¹³ ORDER ADOPTING RULES, Minnesota Board of Peace Officer Standards and Training.

Proposed Amendments to Minn. R. 6700.1101, subps. 2 and 3.

Subpart 2 of this rule concerns selection and training standards for part-time peace officer licenses. In 2014 Minn. Laws, ch. 244, §§ 2, 3, the Legislature authorized amending subpart 2, did not mention subpart 3, and repealed subparts 5 and 6. That the Legislature specifically repealed subparts 5 and 6 of rule 6700.1101 but directed the Board to amend subpart 2 indicates that if the Legislature had wished to repeal subpart 2, it would have done so. Rather than amend subpart 2, however, the Board proposes to eliminate it. By proposing the repeal of this subpart, the Board goes beyond the Legislature's directive to amend it.

A second difficulty to the elimination of subpart 2 is that the Board proposes to amend subpart 3 so as to explicitly refer to the provisions of the proposed-to-be-stricken subpart 2. Because the Board proposes to eliminate subpart 2, it is compelled to amend subpart 3 to refer to a prior year's rule that includes subpart 2. The Board's proposed amendment to subpart 3 is indicated by the underlined text as follows:

Subp. 3. Documentation. The chief law enforcement officer shall maintain the documentation necessary to show compliance with Minnesota Rules 2014, part 6700.1101, subpart 2, items A to D.

The Legislature did not direct the Board to amend rule 6700.1101, subpart 3. The Legislature desires that part-time peace officers employed by law enforcement agencies on or before June 30, 2014, and continuing in such employment thereafter, be permitted to keep their licenses. The Legislature did not amend or repeal section 626.8463 which provides that part-time peace officers be able to prove they meet certain requirements while so employed. Accordingly, the Board understandably wishes to maintain the requirement that part-time peace officers meet certain "minimum selection and training standards set forth Minnesota Statutes, section 626.8463."¹⁴ However, by eliminating subpart 2, the Board eliminates the "minimum selection and training standards" identified in items A to D in the current year's rule and therefore must amend subpart 3 to refer to the rule as it stood in 2014.

The Administrative Law Judge finds that the Legislature intended the Board to amend subpart 2 so that although new licenses for part-time peace officers would no longer be granted, a holder of a part-time license must continue to be able to prove he or she meets "minimum selection and training standards." Although the Board's proposed rule amendments accomplish that end, the Board does so only by repealing subpart 2, disobeying the Legislature's specific directive to amend it.

The Administrative Law Judge disapproves of the repeal of subpart 2.

The additions the Board proposes to subpart 3 of this rule were not specifically authorized by the Legislature in 2014 Minn. Laws, ch. 244. However, the addition of the underlined language to this subpart as shown above, meets the requirement of a different good cause exemption, the exemption provided by Minn. Stat. § 14.388,

¹⁴ Minn. R. 6700.1101, subp. 2.

subd. 1(4). Subdivision 1(4) permits an exemption for rule changes that “do not alter the sense, meaning, or effect of a rule.”

The Administrative Law Judge approves the proposed amendment to subpart 3 with respect to legality, but suggests striking the reference to “Minnesota Rules 2014.” For example, the amendment could be stated as “necessary to show compliance with subpart 2, items A to D of this rule.” By inserting “Minnesota Rules 2014,” the amendment would direct current readers in year 2015, 2016, and beyond, to the rule of an earlier year. Prior year rules may not be readily available to readers and, in any case, the reference would prove cumbersome for readers.

The Administrative Law Judge is not aware of any rules that refer to prior year versions of the rule. The reason behind the insertion of “Minnesota Rules 2014” in this subpart is because the Board proposes to eliminate subpart 2 of the rule, but needs to retain a reference to the previous rule for the reasons described above. However, because the Administrative Law Judge disapproves the elimination of subpart 2, the insertion of “Minnesota Rules 2014” is unnecessary.

The Administrative Law Judge approves the proposed amendment to subpart 3, but suggests redrafting it without the reference to the prior year’s rule.

Proposed Amendments to Minn. R. 6700.1101, subp. 4.

The Board proposes striking all of subpart 4. This subpart requires chief law enforcement officers to notify the Board before appointing a part-time peace officer. The Legislature did not specifically call out this subpart for repeal or amendment in 2014 Minn. Laws, ch. 244. In Chapter 244, the Legislature noted specific rule subparts to be amended and rule subparts to be repealed and subpart 4 is not mentioned in either category.

Although the Legislature did not direct the Board to amend or repeal subpart 4, doing so comports with the Legislature’s decision to eliminate the licensure of part-time peace officers because no new part-time licenses are to be issued. However, the Administrative Law Judge finds that the good cause exemption of Clause (3) does not apply because the Legislature did not specifically direct the Board to eliminate this subpart. While Laws of Minnesota 2014, ch. 244 renders subpart 4 obsolete, it does not direct the Board to take any action on the subpart. Nor does the existence of subpart 4 result in any new part-time peace officer licenses being issued and therefore it does not contravene the Legislature’s policy decision. Subpart 4 simply becomes obsolete. In enacting Minn. Stat. § 14.3895, which is captioned “Process for Repealing Obsolete Rules,” the Legislature intended a different rulemaking process be used for eliminating obsolete rules.

The Administrative Law Judge disapproves the proposed elimination of subpart 4.

Proposed Amendment to Minn. R. 6700.1101, subp. 7.

Subpart 7 is captioned “Inactive status of part-time peace officer license.” This subpart requires chief law enforcement officers to notify the Board of voluntary and involuntary terminations of part-time peace officers and the Board’s proposed amendments to this part maintain that obligation. Other portions of this subpart deal with part-time peace officers whose license is in “inactive status.” In 2014 Minn. Laws, ch. 244, § 1, the Legislature amended Minn. Stat. 626.8468, subd. 1 to require the Board to cancel the licenses of part-time peace officers who are not employed by a law enforcement agency on or after June 30, 2014, thereby eliminating licenses in “inactive status.”

Although the Legislature did away with inactive part-time peace officer licenses, it did not specifically order the repeal or amendment of this subpart of the rule. As it currently stands, this subpart is not in conflict with the Legislature’s policy decision as announced in 2014 Minn. Laws, ch. 244. Consequently, neither the Legislature’s directives in ch. 244 nor the good cause exemption of Clause (3) authorize the Board to amend subpart 7. As with subpart 4 of this rule, subpart 7 has also become obsolete. The Legislature intends rule-makers to rely on Minn. Stat. § 14.3895 to address obsolete rules.

The Administrative Law Judge disapproves the proposed amendment to subpart 7.

J. O.