1997-98 SESSION COMMITTEE HEARING RECORDS

Committee Name:

Joint Committee for Review of Administrative Rules (JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- *Appointments ... Appt*
-
- *Clearinghouse Rules ... CRule*
-
- *Committee Hearings ... CH*
-
- *Committee Reports ... CR*
-
- *Executive Sessions ... ES*
-
- *Hearing Records ... HR*
-
- *Miscellaneous ... Misc*
- *97hr_JCR-AR_Misc_pt32d_Test*
- *Record of Comm. Proceedings ... RCP*
-

JUL 18 1997

KIMBERLY M. PLACHE

STATE SENATOR • TWENTY FIRST SENATE DISTRICT

July 18, 1997

Linda Stewart, Secretary
Department of Workforce Development
Room 400X
201 E. Washington Avenue
Madison, WI 53702

RE: Clearinghouse Rule 96-151

Dear Secretary Stewart:

As you may be aware, on June 19, 1997, Clearinghouse Rule 96-151, relating to fee changes, penalty fee assessments and corrective amendments to the migrant labor code, was referred to the Senate Committee on Labor, Transportation and Financial Institutions for legislative review.

Pursuant to s. 227.19(4)(b)a, Stats., I am notifying you of my interest in meeting with you and or representatives of your agency to discuss provisions of this rule. That meeting may be conducted as a public hearing. As soon as a date, time and location for this meeting or hearing is determined, I will notify you.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Kim Plache

Kimberly M. Plache, Chairperson
Senate Committee on Labor,
Transportation and Financial Institutions

c Donald Schneider, Senate Chief Clerk
Committee Members
Rep. Dan Vrakas
Sen. Richard Grobschmidt
Rep. Glenn Grothman
Dan Fernbach

KP:ja

STATE CAPITOL: P.O. BOX 7882, MADISON, WI 53707-7882 □ (608) 266-1832 □ 1-800-362-9472 □ EMAIL: USWLSS21@IBMMAIL.COM
HOME: 2614 17TH STREET, RACINE, WISCONSIN 53405 □ (414) 634-3948

State Senator
GWENDOLYNNE MOORE
PRESIDENT PRO TEMPORE

District Office:
210 W. Capitol Drive, Milwaukee, WI 53212
(414) 229-0100
Capitol Office:
P. O. Box 7882, Madison, WI 53707-7882
Phone: (608) 266-5810 Fax: (608) 267-2353
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E-Mail:
sen.moore@legis.state.wi.us

July 18, 1997

Cate Zeuske, Secretary
Department of Revenue
Room 244, State Education Building
125 South Webster
Madison, WI 53702

RE: Clearinghouse Rule 97-044

Dear Secretary Zeuske:

On June 26, 1997 Clearinghouse Rule 97-044 relating to continuing education requirements for assessors was referred to the Senate Committee on Economic Development, Housing and Government Affairs for legislative approval.

Pursuant to s. 227.19 (4) (b)a, Stats., I am notifying you of my interest to meet with you or representatives of your agency to discuss provisions of this rule. That meeting may be conducted as a public hearing. I will notify you as soon as a date, time and location for this meeting or hearing is determined.

I have enclosed a memorandum from Legislative Council attorney, Dan Fernbach, regarding the rule.

If the department intends to withdraw the rule, please let me know.

Sincerely,

GWENDOLYNNE S. MOORE, Chair
Senate Committee on Economic Development, Housing and Government Affairs

c: Donald Schneider, Senate Chief Clerk
Committee: Sen Plache
Sen. Grobschmidt
Sen. Weeden
Sen. Fitzgerald
Dan Fernbach

SENATOR
RICK GROBSCHMIDT
404 H

AUG 05 1997

KIMBERLY M. PLACHE

STATE SENATOR • TWENTY FIRST SENATE DISTRICT

August 4, 1997

Linda Stewart, Secretary
Department of Workforce Development
Room 400X
201 E. Washington Avenue
Madison, WI 53702

Dear Secretary Stewart:

Clearinghouse Rule 97-033, the prevailing wage rule, was referred to the Senate Committee on Labor, Transportation and Financial Institutions on June 4, 1997. The extended review period has ended with the committee taking no action on the rule.

We appreciate the efforts you and members of your department have made in attempting to develop a rule which both the labor groups and the contractors could accept. I realize neither side is especially pleased with the outcome.

While the committee did not formally object to any parts of the proposed permanent rule, I have some concerns I wish to share with you.

1) The rule fails to tie the use of all subjourney workers to the number of apprentices on public work sites.

2) Using subjourney workers at 65% of the journey worker rate without the link to the number of apprentices on the work site is not consistent with the Governor's policy to develop a better prepared and better trained workforce in the state.

3) There is no mechanism for enforcing the rule regarding subjourney workers. I am concerned that we will not know who is working as a subjourney worker, how long they have been working in that capacity or when they will be eligible for an increase to the 65% rate.

STATE CAPITOL: P.O. BOX 7882, MADISON, WI 53707-7882 □ (608) 266-1832 □ 1-800-362-9472 □ EMAIL: USWLSS21@IBMMAIL.COM
HOME: 2614 17TH STREET, RACINE, WISCONSIN 53405 □ (414) 634-3948

The committee will be monitoring the implementation of this rule with an interest in its effect on subjourney workers. At some point in the future, I intend to hold a public hearing on the prevailing wage rule to determine what changes, if any, are necessary.

Sincerely,

Kimberly M. Plache, Chairperson
Senate Committee on Labor,
Transportation and Financial Institutions

c Donald Schneider, Senate Chief Clerk
Committee Members
Rep. Dan Vrakas
Sen. Richard Grobschmidt
Rep. Glenn Grothman
Dan Fernbach

KP:ja

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN
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REPRESENTATIVE GLENN GROTHMAN
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

August 11, 1997

Secretary Joe Leann
Department of Health and Family Services
1 West Wilson Street
P.O. Box 309
Madison, WI 53701-0309

Dear Secretary Leann:

As you may know, the Joint Committee for Review of Administrative Rules has received a request from the co-chairpersons of the Legislative Council Special Committee on Programs for Developmentally Disabled Persons, urging the Joint Committee "to direct that certain 'policies' adopted by the DHFS Bureau of Health Care Financing . . . be promulgated as administrative rules . . . and that such rules then be suspended . . . ." The request of the Legislative Council Special Committee is aimed specifically at Division "policies" relating to the provision of skilled private duty nursing care to medically fragile children eligible for Federal Medical Assistance.

The Special Committee alleges in its letter that the Department has engaged in *de facto* rulemaking exclusive of the statutorily-defined rulemaking process under Chapter 227, stats, to wit:

- "The BHCF has consistently refused to issue prior authorizations for private duty nursing care under ss. HFS 107.02 (3) to (f) and 107.12, Wis. Adm. Code, for any period of 24 consecutive hours because such care is not deemed 'medically necessary,' as defined in s. HFS 101.03 (96m), Wis. Adm. Code, if the parents are capable of learning nursing-level tasks."

- "The BHCF has established a 'parenting' requirement for these children . . . such as four hours or more (per day), when a parent is expected to provide for the child's needs, including complex medical care, regardless of the other duties parents must perform. During these periods, the BHCF will not authorize state-funded care."

- "The BHCF has adopted a 'policy' that prior authorizations for private duty nursing care for children must be made weekly . . . even though the needs of many of these children are not likely to change."

The Special Committee further alleges that the Department has enforced these policies in violation of s. 227.10, stats, which requires an agency to engage in formal rulemaking if a policy it enforces meets the definition of a "rule" as set forth in s. 227.01 (13), stats.

The co-chairs respectfully request the Department to answer the specific charges leveled by the Special Committee, in correspondence to be returned to the co-chairs at the Department's earliest possible convenience. Your attention to this correspondence is greatly appreciated.

Senator Richard Grobschmidt
Senate Co-Chairperson

Representative Glenn Grothman
Assembly Co-Chairperson

cc: Members, Special Committee on Programs for Developmentally Disabled Persons

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

August 13, 1997

Charles Thompson, Secretary
Wisconsin Department of Transportation
4802 Sheboygan Avenue
Madison, WI 53707

Dear Secretary Thompson:

We have received an inquiry from a legislator regarding the requirements imposed by the Department of Transportation for the emission testing of certain vehicles.

The legislator in question noted a contact to his office in which a constituent purchased a vehicle in October of 1996, and submitted the newly-purchased vehicle for the IM - 240 vehicle emissions program inspection. The license plates on the vehicle were renewed on January 1, 1997, and the owner was again required to submit the vehicle for an emissions test. The constituent was told that, due to administrative rules promulgated by the Department, any vehicles purchased more than 90 days in advance of their next scheduled plate renewal cycle must be re-tested at the time of renewal. The legislator, upon researching the constituent's complaint, found that almost 35,000 vehicles in our state fall under the same category as the constituent's vehicle.

It seems to us that the state could save a great deal of money by changing the administrative code so as to require only one emissions test within a calendar year for vehicles passing the test. Certainly, the argument cannot be made that vehicles which pass the stringent IM - 240 test in October will degrade so rapidly that they are in any danger of failing the test in January of the following year.

We would urge the Department to review this situation, and to consider a rule change which would serve the needs of the IM - 240 program, and the state's Clean Air Act compliance, without entangling Wisconsin's citizens in miles of red tape. The folks who live in the nonattainment area already have to bear the burden of lengthy annual lines at the emission test station, reformulated fuel, and other regulations. There isn't much benefit to be derived from further inflaming local passions with unnecessary testing.

Your feedback is greatly anticipated.

Sincerely,

Senator Richard Grobschmidt
Senate Co-Chairperson

Representative Glenn Grothman
Assembly Co-Chairperson

GG:RG:swk

Grobschmidt

SENATOR RICHARD GROBSCHMIDT
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

August 18, 1997

Mr. Jerry Saenz
DOC #100239-A
Waupun Correctional Institution
P. O. Box 351
Waupun, WI 53963-0351

Dear Mr. Saenz:

Thank you for your letter of August 8, 1997, requesting information on "a complete copy of the propose (sic) rules by the DOC's (sic) relating to W.A.C. DOC 310."

According to the Department of Corrections, there are two rulemaking orders currently in process which relate to Chapter DOC 310 of the Wisconsin Administrative Code. We have enclosed them for your review.

The first is an emergency rule, which took effect on August 4, 1997. Pursuant to s. 227.24, stats., this rule will remain in effect for 150 days, at which time the Department may petition the Joint Committee for Review of Administrative Rules to extend the effective date by up to another 60 days. This process may occur as many times as the Department wishes, as long as the total extension does not exceed 120 days.

The other enclosure comes from the Wisconsin Administrative Register of August 15, 1997. On July 30, the Department of Corrections submitted the language for a proposed permanent rule to the Legislative Council Clearinghouse for initial review. This is the very beginning of the permanent rulemaking process, and the proposed rule does not yet even have a Clearinghouse Rule number. This rule is the permanent replacement language for the emergency rule described above. It must go through public hearings within the agency, another Legislative Council review, and review before the Legislature.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Senator Richard Grobschmidt
Senate Co-Chairman

Representative Glenn Grothman
Assembly Co-Chairman

RG:GG:swk

Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF THE SECRETARY
P. O. Box 7910
Madison, WI 53707-7910

SEP 0 2 1997

August 27, 1997

The Honorable Richard Grobschmidt
Wisconsin State Senator
100 North Hamilton, Suite 404
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Grobschmidt:

Thank you for your letter concerning the change of vehicle ownership provisions related to emission inspection requirements under our IM 240 testing program.

We believe that extending the current 90-day window to 180 days will improve customer convenience with only a marginal loss of emission credits. Staff from the Departments of Transportation and Natural Resources concur that revising the current change of ownership requirements in this manner represents a practical compromise that is in the best interest of the public and the I/M program. We will,therefore, soon begin the process to modify our administrative rule, Trans. 131.

Thank you for taking the time to write.

Sincerely,

C. H. Thompson

Charles H. Thompson
Secretary

CHT:jk

cc: Representative Glenn Grothman

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN
ROOM 404 • 100 NORTH HAMILTON
MADISON, WI 53707
(608) 266-7505

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

September 29, 1997

Representative Ben Brancel
Assembly Speaker
Room 211 West, State Capitol
Madison, WI 53708

Dear Speaker Brancel:

It has recently come to our attention that Assembly Bill 254, relating to the partial extension of emergency rules, has been referred to the Assembly Committee on Government Operations.

As you may know, this legislation was introduced by the Joint Committee for Review of Administrative Rules, and was referred back to our committee after introduction for review and recommendation. The Joint Committee held a public hearing on the bill on September 3, 1997, and was reported out with a recommendation for passage on September 16th.

It was our intention that the bill be referred directly to the Assembly Committee on Rules for possible floor action, as is the standard procedure with most other Assembly bills. Rep. Grothman has discussed the issue with Rep. Dobyns, who chairs Government Operations, and Rep. Dobyns has indicated that he is amenable to a withdrawal of the measure from his committee and a subsequent referral to the Assembly Committee on Rules. We respectfully request that Assembly Bill 254 be withdrawn from Government Operations and be made available for scheduling in the Assembly.

Thank you for your attention to this matter. If you wish to discuss the issue further, please feel free to contact us.

Sincerely,

Senator Richard Grobschmidt
Senate Co-Chairman

Representative Glenn Grothman
Assembly Co-Chairman

GG:RG:swk

Told
Send follow up letter
to Shirley
Sent 10-2-97 fib

OCT 0 1 1997

SHIRLEY
KRUG
STATE
REPRESENTATIVE

September 29, 1997

Senator Richard Grobschmidt, Co-chairman
Joint Committee for Review of Administrative Rules
100 North Hamilton Avenue Room 404
Madison, WI

Dear Senator ~~Grobschmidt~~ Rick:

I am writing to pass along the concerns of one of my constituents and to alert you to a proposed change in an administrative rule which will be coming your way.

A gentleman from my district purchased a used car in April. He transferred his license plates from his old vehicle onto the new car. Because the car was more than five years old, he was required to get an emissions test, which he did in June. His license plate registration will expire in October. In order to renew his registration, he must again get an emissions test. A Department of Transportation administrative rule says that if a vehicle owner had an emissions test within the previous 90 days, he doesn't have to have another one in order to renew his registration. But in this case, it was about 120 days.

To have two emissions tests within a four-month period does not make sense, considering that emissions tests are normally required every two years.

The Department of Transportation (DOT) also believes the interval should be longer. Therefore the DOT, with the consent of the Department of Natural Resources, is re-writing the rule so that if a vehicle owner had an emissions test within the previous *180* days, he doesn't have to have another one in order to renew his registration.

My understanding is the proposed rule change will go to your committee early next year. I support this rule change and I hope when you consider it, you will keep these comments in mind.

Sincerely,

Shirley Krug
State Representative
12th Assembly District

SK:kf

Office:
P.O. Box 8952
State Capitol
Madison, WI 53708
(608) 266-5813

Home:
6105 W. Hope Ave.
Milwaukee, WI 53216
(414) 461-2223

Legislative Hotline:
(Toll-free)
1-800-362-9472

FAX:
(608) 266-7038

REVITALIZE

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN
ROOM 404 • 100 NORTH HAMILTON
MADISON, WI 53707
(608) 266-7505

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN
ROOM 125 WEST • STATE CAPITOL
MADISON, WI 53702
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

October 2, 1997

Representative Shirley Krug
Room 209 North, State Capitol
Madison, WI 53702

Dear Representative Krug:

Thank you for your letter of September 29, 1997, expressing support for the emissions testing rule change proposed by the state Department of Transportation.

As you may know, we received a similar letter from Rep. Marc Duff in January. In August, we sent a joint letter to the Secretary of the Department, urging him to adjust the testing interval to a more reasonable length of time. The Secretary responded within weeks, indicating that he would initiate the rulemaking process needed to change the length of time from 90 days to 180 days. I have enclosed copy of the above-referenced correspondence for your review.

We support the rule change, and will be pleased to work with you to assure that it progresses successfully through the process.

Thank you again for contacting us on this issue. If we can be of further service, please do not hesitate to contact us.

Sincerely,

Richard Grobschmidt
Senate Co-Chair

Glenn Grothman
Assembly Co-Chair

GG:swk

10-30-97

Dear Senator,

sent copy of rule 1-16-98

Could you please send me a copy of the proposed rules relating to DOC 310 and the Inmate Complaint procedures. Thank you!

Gary Andrashko #119460
W.C.I.
PO Box 351
Waupun, WI 53963

cc: Co-Chairs
JCRAR

910 West Bridge Street
Wausau, Wisc. 54401
October 29, 1997

NOV 0 3 1997

The Honorable Judge Patrick Madden
Iron County Courthouse
Hurley, Wisc. 54534

Re: Case No-96-CM-12
Price County

Dear Judge Madden:

I am inquiring about a motion hearing to reopen my case which I am presently doing on my own.

One of the reasons I feel it should be reopened is because of information I have read and heard about through numerous discussions with other people regarding the special t-zone hunt held in southern Wisconsin in the fall of 1996 for does only.

There were reports of 213 bucks confiscated during this hunt and reports that some or the majority if not all did not have their privileges revoked for 3 years or fined $2,060.00. I believe Price county game warden Kendall Frederick, Lincoln county game warden Tom Wenninger or the Wisconsin Department of Natural Resources can attest to this.

If these bucks during a special doe only season were confiscated, this represents an illegal deer and should have been in the same category as an individual moving, dragging or possessing an untagged deer during the regular gun deer season such as what happened to me in November of 1995 where I was charged with possession of an untagged deer while hunting with a group.

I think this penalty and fine is way out of line because it occurred during the regular gun deer season during daylight hours. The same fines and penalties are imposed on the person who shines/and or shoots deer out of season or who flagrantly shoots deer out of season with the aid of a light at night. There are different degrees of violations here and I think a violation should be dealt with depending on whether this was done during the daylight hours during the regular gun deer season or a much more serious violation, such as shining deer, etc. It is my understanding that in the past, if a person had an untagged deer during the regular gun deer season, there was sometimes just a fine but this changed a few years back to the same penalties and fines as what was imposed on more serious violations.

Regarding the approximately 213 bucks that were confiscated. It is my understanding a few of these hunters were cited and paid fines etc., but the majority if not all of the rest of them did not have their privileges revoked for 3 years nor were they fined $2,060.00.

This "reeks" of discrimination against other hunters and me where some hunters were given "special treatment" during the special t-hunt while others during the regular gun deer season were not. I understand these hunters were given special treatment regarding their illegal deer because it was the lst year of the special hunt. An illegal deer is an illegal deer no matter what kind of hunt it is. It is no different than an out of state hunter or some other hunter hunting for the lst time during the regular gun deer season and not being completely familiar with the regulations. They would be cited for having an illegal deer and be subject to the maximum fines and penalties. There certainly is discrimination here where other hunters and me were cited and paid the maximum penalties and fines while a lot of t-zone hunters were given special treatment.

My main concern at age 63 and retired is getting my privileges back in less than 3 years which started 8/21/96. If my privileges have to remain suspended for the full 3 year period which runs from 8/21/96-8/20/99, the same penalties and fines should be made against the approximately 213 hunters during the special t-zone hunt where an illegal deer was confiscated. I would then have no qualms about my penalty and fine being what it was.

As I have stated before, I am pursuing this on my own at the present. Because of a possibility of discrimination here, I am sending copies of this letter to other concerned parties. Some of these people are involved in making the laws which you go by. It is also my understanding that they are going to greatly expand the t-zone hunt this year.

Thanking you for your time, I remain.

Sincerely yours,

Fabian Shulta
(715) 842-7338
cc:
Senator Russell Decker, Room 337 South, State Capitol, PO Box 7882, Madison, Wisc. 53707-7882
State Assemblyman Greg Huber, Room 6 North, State Capitol, PO Box 8952, Madison, Wisc. 53708
Price Co. District Attorney Patrick Schilling, Court House, Phillips, Wisc. 54555

cc:
Price Co. Clerk of Courts, Court House, Phillips, Wisc. 54555
Price Co. Game Warden Kendall Frederick, DNR Office, Normal Bldg., Phillips, Wisc. 54555
Lincoln Country Game Warden Thomas Wenninger, DNR Office, 518 West Somo Ave., Tomahawk, Wisc. 54487
Senator Alice Clausing, Chairperson, Agriculture & Enviromental Resources, PO Box 7882, Madison, Wisc. 53707-7882
Assemblyman Duane Johnsrud, Chairperson, Natural Resources Committee, PO Box 8952, Madison, Wisc. 53708-8952
Assemblyman Glen Grothman, Co-chair, Joint Committee for Review of Administrative Rules, PO Box 8952, Madison, Wisc. 53708-8952
Senator Richard Grobschmidt, Co-chair, Joint Committee for Review of Administrative Rules, PO Box 8952, Madison, Wisc. 53708-8952
DNR Secretary George Meyer, State Natural Resources Board, 101 South Webster St., Madison, Wisc. 53703
Attorney David Deda, 215 N. Lake Ave., PO Box 7, Phillips, Wisc. 54555-0007

COPY

NOV 10 1997

Price County District Attorney

Courthouse - Phillips, Wisconsin 54555
Telephone (715) 339-3095

Patrick G. Schilling
District Attorney

Jackie Popko
Legal Assistant

Jacqueline Adams
Legal Secretary

Jane E. Kundinger
Victim/Witness Coordinator

November 5, 1997

Honorable Patrick J. Madden
Circuit Court Judge
Iron County Courthouse
Hurley, WI 54534

Re: State of Wisconsin vs. Fabian F. Shulta
Price County Case No. 96-CM-12

Dear Judge Madden:

Please consider this the State's response to the recent letter of the Defendant dated October 29, 1997.

While the Defendant claims he is "inquiring about a motion hearing to reopen my case" it seems clear from his letter that what he actually wishes is permission from the Court to withdraw his no contest plea. A review of the record and the plea questionnaire filed by the Defendant clearly shows that, at the time the plea was entered, it was entered by the Defendant freely, knowingly and voluntarily with full knowledge of his constitutional rights consistent with the requirements of § 971.08, STATS. Once a Defendant has pleaded no contest and been sentenced, he carries a heavy burden of establishing, by clear and convincing evidence, that the Trial Court should permit him to withdraw the plea to correct a manifest injustice. **State vs. Washington**, 176 Wis. 2d 205, 500 N.W. 2d 331 (Court App. 1993). Since this motion comes after the Defendant has been sentenced, it is within the Trial Court's discretion to determine whether or not the Defendant should be granted a hearing. **Nelson vs. State**, 54 Wis. 2d 489, 195 N.W. 2d 629 (1972). If the Defendant's motion to withdraw his plea alleges facts which, if true, would entitle the Defendant to withdraw his plea, the Trial Court would need to hold an evidentiary hearing on the Defendant's motion. However, if the motion fails to allege sufficient facts to raise a question of fact or if the record demonstrates that the Defendant is not entitled to relief, the Trial Court may exercise its discretion and deny the motion without a hearing. In a case where the Trial Court denies the motion without hearing, the Court must form its independent

judgment after a review of the record and pleadings and support its decision by written opinion. **Nelson** at 497-98.

In this case, the Defendant raises the following bases upon which the Court should allow him to withdraw his plea: 1) He was the subject of discrimination because some people in Southern Wisconsin were not charged with the same crime when they shot a buck during a special doe season in 1996; 2) The penalty and fine is too high in this case; and 3) Since he was hunting with a group, that somehow mitigates the offense.

Each of these contentions is without merit. This Defendant was not subject to any discrimination and has set forth no facts which would indicate that he was. For him to raise a claim of discrimination against Fabian Shulta, he would have to show that my office prosecuted other people differently than Fabian Shulta only because of some axe to grind with Mr. Shulta. That was not the case here and the Defendant could make no such showing. What other prosecutors or game wardens do in other areas of the state in different times of the year is not something which the Court or I can control. The only thing I can control is the prosecution practice in my office and this particular Defendant was treated no differently than anyone else. A mere conclusionary allegation unsupported by substantial factual averments does not entitle a Defendant to a hearing. **Nelson** at 498.

The Defendant's claim that the three year license revocation and $2060.00 fine including costs is "way out of line" is without merit on its face. That penalty is the absolute minimum which the Court can impose for the charge to which the Defendant pleaded no contest. Therefore, since the record conclusively demonstrates that he is not entitled to relief on this claim, the Court need not hold a hearing.

While the Defendant claims that his "group hunting" is a mitigating factor, that does not entitle him to a hearing either for two separate reasons. First, since the Court already sentenced him to the minimum mandatory penalty, a mitigating factor would not justify a lower sentence. He already got the lowest sentence he possibly could. Second, the Defendant was not group hunting. Pursuant to § 29.405(2), STATS.:

> Any member of a group deer hunting party may kill a deer for another member of the group deer hunting party if both of the following conditions exist:
>
> (a) At the time and place of the kill, the person who

> kills the deer is in contact with the person for whom the deer is killed.
>
> (b) The person for whom the deer is killed possesses a current unused deer carcass tag which is authorized for use on the deer killed.

Pursuant to § 29.405(1)(a), STATS.:

> "Contact" means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid.

The criminal complaint in this matter shows that the Defendant was not in "contact" within the meaning of the statute, he did not have prior authorization from the other members of his hunting party to shoot their deer for them and, clearly, the person that he called from Wausau to come and tag one of the three deer that he shot that day was not a member of the group hunting party. Therefore, this claim does not have any arguable merit and the Court need not hold an evidentiary hearing with regard to any of the claims made by the Defendant.

Copies of this letter and the criminal complaint will be sent to each of the parties copied by Mr. Shulta in his original letter. Because of the allegations made in Mr. Shulta's letter against the Court and my office, I feel it only fair to respond. The investigation in this matter showed that in prior years, the Defendant would hunt deer with his friends and, without any prior agreement, shoot a number of deer and use up all the tags. During the hunting season in question here, it appeared that his friends became tired of this and wanted a chance to shoot their own deer. The criminal complaint shows that the Defendant knew that what he was doing was completely improper and illegal in that he made a failed attempt to hide one of the two deer that he was dragging behind his ATV and tried to prevent the warden from discovering that second deer after he hid it. The Defendant in this case knew the rules and willingly chose not to follow them. The law requires that, once a deer is killed, it must be tagged immediately. You cannot borrow tags and you cannot switch tags from deer to deer and you cannot transport untagged deer and you cannot possess untagged deer, all of which Mr. Shulta did in this case. He was not discriminated against. To the contrary, he was charged with only one violation rather than many.

Enclosed for the Court's consideration is a proposed written Order. Once the Court has had a chance to review the file in this matter,

if the Court chooses to sign it, It can return the signed Order to me in the enclosed envelope for distribution.

If the Court has any questions about this, please do not hesitate to contact me.

Very truly yours,

Patrick G. Schilling

ja

enclosures

cc letter and criminal complaint:
Mr. Fabian Shulta (and Order)
Senator Russell Decker
State Assemblyman Greg Huber
Lincoln County Warden Thomas Wenninger
Senator Alice Clausing
Assemblyman Duane Johnsrud
Assemblyman Glen Grothman
Senator Richard Grobschmidt
DNR Secretary George Meyer

cc letter only: Warden Kendall Frederick

cc letter and Order:
Attorney David Deda
Price County Clerk of Circuit Court

Truth Bible Church

P.O. Box 2290 • Waukesha, WI • 53187-2290

Richard Tenaglia • Pastor

(414)-548-0389

Secretary Michael J.Sullivan
Department of Corrections
148 East Wilson Street
Madison, WI 53709

11-12-97

Dear Secretary Sullivan,

I came across the enclosed Shepherd Express article just recently, and was appalled at what the DOC wants to do as regards rule 309, according to this article, which, if true, is in defiance of the Federal Constitution 1st Amendment Rights, Wisconsin Constitution, Section 18, and WI Stats.46.07. I see no legal reason to change 309.16 whether it was made 14 years ago or 40.

I object to such a heavy-handed rule change and its disregard for human rights, especially concerning religious education, and moral, development. I certainly do not agree with all religions, but each religion acts, in its own way, as a **retraining factor** on society, and as a control against worse behaviors. I am quite sure that I would be speaking for all religious groups, churches, and so on, as regards the absolute necessity to have religion's positive effect on behavioral self control for inmates,(and society),and also the effect religions have on criminal rehabilitation.
There is adequare proof that confirms this belief (See JAILHOUSE RELIGION-enclos.) Why try to erase the religious factor out of jails? Psychiatry and psychological programs can go only so far, ,but religious groups can carry on outside of prison as a support group as an adjunct to the probationary process.

Both Christian and non-Christian religions do promote good standards of behavior, family values, and act as a reprimand and control on their membership,to observe a better deportment in society when they get out. Christian values certainly make a difference in the life of prisoners and their families also.

I urge you to re-think any rule changes that would negatively alter, erase, or weaken the effect of religion on prison inmates, many, who first have <u>found</u> moral values through their incarceration. So far,we have learned how to live with church and State working together within their proper legal positions. This rule sounds like the Stste wants to eradicate religion. God forbid.
Jail religion---all kinds---does make a lasting difference, and we should treasure that relationship between church and State as partners,and not as adversaries

I will pray for you on this issue.

Sincerely in Christ,

Reverend Richard Tenaglia

5 Enclosures

cc:Governor Tommy G. Thompson
Senator Gwendolynne S.Moore
Warden Gerald Berge
Christopher Ahmuty
Fernando Escobar
File

P.O. Box 147
Fox Lake, Wisconsin
53933

November 25, 1997

Ben Brancel, Speaker
Wisconsin State Assembly
211 West State Capital
Madison, Wisconsin 53702

Fred Risser, President
Wisconsin State Senate
119 Martin Luther King Blvd.
Madison, Wisconsin 53702

Gentlemen:

On behalf of **Fernando Escobar, Rev. Richard Tenaglia**, and **myself**, I am writing to urge you to reject any requests from the Wisconsin Department of Corrections to limit our right to religion. There is positively no need for changes in the DOC 309.61.

Religion has provided thousands of incarcerated inmates, including **myself** and fellow church members, an avenue to a **healthier** future. While it is understandable to the majority of most religious practitioners that we are incarcerated for past misconducts, we are laboring on our spiritual growth with confidence in God to insure a deeper **commitment** of **moral** and **ethical values** upon release from prison.

Again, I urge you to reject D.O.C. requests to amend DOC 309.61. The changes they wish to compose conflicts with a recent court decision issued by our State Supreme Court. See **State v. Miller, 202 Wis. 2d 56, 549 N.W. 2d 235 (Wis. 1996).**

We thank you in advance for your time and we pray that this letter is taken under consideration.

Sincerely,

Deron L. Johnson

DJ:dj

cc: Senator Richard Grobschmidt, JCRAR
Representative Glenn S. Grothman, JCRAR
Senator Gwendolynne S. Moore
Senator Roger Breske
DOC Secretary Michael J. Sullivan
Governor Tommy Thompson
ACLU Legal Director Peter M. Koneazny
Reverend Richard Tenaglia
Mr. Fernando Escobar
Family
File

Truth Bible Church

P.O. Box 2290 • Waukesha, WI • 53187-2290

Richard Tenaglia • Pastor

BEN BRANCEL, SPEAKER
WISCONSIN STATE ASSEMBLY
State Capitol 211 West
MADISON, WISCONSIN 53702

11-28-97
DEC 0 1 1997

FRED RISSER, PRESIDENT
WISCONSIN STATE SENATE
Room 102
119 Martin Luther King Blvd.
MADISON, WISCONSIN 53707

Re: Clearing House Rule 96-185

Honorable Gentlemen,

My name is Rev.Richard Tenaglia, Pastor of TRUTH BIBLE CHURCH, a small prison ministry church, in Waukesha, WI.I am writing to object to the revision of DOC 309, relating to Leisure Time Activities,...and Religious Beliefs and Practices for inmates, on the following grounds:

1. Our country and State were founded on the precept of freedom of religious choice----with no State interference, which we call the 1st Amendment rights. Likewise, our Wisconsin State Constitution, Section 18, also provides freedom of worship and religious rights with warnings to the State not to interfere with those rights, **"which shall never be infringed."**

I believe the attempt to eliminate religion from the prison system, violates both Constitutions, and needs your immediate attention. The WISCONSIN CONSTITUTION specifically says:"...nor shall any control of, or interference with the rights of conscience be permitted." The DOC's re-write of 309.61 literally destroys these rights, and thumbs its nose at both Constitutions.

2.The enclosure of the SHEPHERD EXPRESS article explains what the DOC is attempting to do, and what I am trying to say in this letter.(See enclosure).

3.The taking away of religions, per se, out of the jails, runs counter to evidence that religion---in jails---is a **positive** reinforcer of good behavior. In the enclosure called, JAILHOUSE RELIGION PROVES TO MAKE A LASTING DIFFERENCE, a scientific study was taken to find if prison religion has any values. The study concluded that religion in jails:

1.Had a lower rate of recidivism
2.Had a larger crime-free period following release
3.Had a decrease in crime-severity (as compared to the original offense), while the control group had an increase in crime-severity.

[It would also be interesting to see some scientific studies done comparatively on the efficacy of the psychological programs used in jails---in the light of the increasingly high crime rate and high recidivism over the past 20 years or so, of using such "treatment" programs].

4.I object to the apparent disregard of religious education, and moral development by this rule change, which is not a change for the better of the inmates, but for the worse, and seems to have a "convenience" motive for the administrators, to provide an expanded "comfort zone" for them. This rule change should cause a lot of bells to go off for clearer-minded, thinking people...and politicians.

5.While there are many religions---and I do not agree with all of them---they do act, in their own way, as a **restraining factor** on society, and as an important behavior control on jail inmates. I object to the DOC's blindness to this fact,

6.Since all religions would be involved in this "purging" of religion out of the prisons, I believe I can speak in this case, because pastors, ministers, chaplains, and priests would certainly agree that religion is a **basic** necessity for inmates in prisons, as well as for society "outside the walls." I believe they would all object to any attempt to secularize the prisons.

7.Besides the positive control religion has on inmates (and society), it also acts positively on criminal rehabilitation, both as a moral guide, and as a possible support group on the outside.

8.Non-Christian religions, as well as Christian religions do teach and promote good standards of behavior, family values,and can act as a disciplinary control on their members. The DOC has forgotten the religious roots of our forefathers who created this great country and State.

9.The adoption of religious values by inmates, who lacked such values on "the outside", certainly does make a difference in the lives of the prisoners, as well as their families,too. To remove religion from the prisons is an insult to those parents and families that worked hard to train their children in religious values.

10. I have church members at COLUMBIA CORRECTIONAL INST., FOX LAKE C.I., OSHKOSH C.I., FLAMBEAU CORR.CTR.,WISCONSIN RESOURCE CENTER, and RACINE C.I. I object to the DOC's intention of erasing religion from my men, who depend on me for their spiritual counsel. One of my Christian members,

is Mr.Fernando Escobar who is willing to testify about the negative effect that repealing rule 309.61 will have on many prisoners. Mr.Escobar has been successfully litigating against the DOC for 8 years, and has personally witnessed how Corrections has violated the right of religion to all groups. His address is:

FERNANDO ESCOBAR #184268 P.O.BOX 147, FOX LAKE, WI 53933-0147

11.Removal of one's religion, along with its practices, can possibly cause an unreligious reaction. Many would get upset and/or depressed, or lose hope, and that, of course, would be a tragedy.The psychologists might say, "Well, we have anti-depressants that could help your depressions," but that is merely a shallow Orwellian solution to a deeper problem---that man needs God, and his own religion.

12.And if the DOC's motives are "downsizing" religion and possibly their chaplains to save money---they would be 100% wrong, because they are still violating Constitutional law--at the expense of selling out on human souls.

13.I strongly object to the attempt to negatively alter, erase, line-out, or weaken the effect of religion on inmates, **many, who first have found moral values as a result of their incarceration.**

14.If we have learned anything at all since our Federal and State Constitutions went into effect, we should have learned by now how to live in peace, with church and State, working together in their proper, legal positions (which is what 309.61 is all about), instead of trying to kill or weaken that relationship.

15.Jail religion---all kinds---is the basis of "free exercise of" religion as the 1st Amendment sees it. Jail religion does make a difference. We have evidence to that. But does the DOC have evidence for what they want to do? How can they close their eyes to **two** Constitutions? We should treasure that relationship between church and State as partners, and not as adversaries. These 15 points are my grounds for objecting to the DOC intentions on 309.

Thankyou for any help you can offer to all the inmates, all the chaplains, all the visiting or corresponding pastors, ministers, and priests, and of course---to the DOC.

Sincerely,

Reverend Richard Tenaglia

Reverend Richard Tenaglia

Enclosures

c:encl: Ben Brancel, Speaker, Wis. State Assembly
Fred Risser, President, Wis. State Senate
Senator Richard Grobschmidt, JCRAR
Representative Gless S.Grothman, JCRAR
Senator Joanne Huelsman
Scott Jensen, Assembly
Michael J.Sullivan
Governor Tommy G Thompson
Fernando Escobar
Peter M.Koneazny, ACLU Director
Joyce D. Wahlfeld
File

NEWS & COMMENTARY

Losing Their Religion

Prisons crack down on prayer, worship

BY DOUG HISSOM

In a letter to Department of Corrections chief Michael Sullivan, state Sen. Gwen Moore (D-Milwaukee) wrote that she wanted the state's prison system to allow a Nation of Islam minister access to two prisons—the Oshkosh Correctional Institute and Fox Lake Correctional Institute—in order to preach to members behind bars.

Moore didn't think much of the request since the minister, William Mohammad, was already conducting services at three other state prisons. But when Sullivan denied the request, he told Moore that the prison's system for dealing with religious inmates was up for review and some new rules would come down.

It was the first the senator heard of the plan, and not because she's out of the loop—Moore sits on the state Senate's Department of Corrections oversight committee.

When the new rules were issued and Moore saw essentially a ban on all religious activities behind bars, she had her committee hold a public hearing on the matter last week.

"In effect this rule would allow wardens to determine who is and who isn't truly religious," Moore said. "It would deny religious groups the opportunity to pray together. It denies Christians the right to wear a cross and followers of Judaism the right to wear the Star of David."

The rule change also has civil libertarians wondering about the status of inmates' rights to freedom of religion.

Before the rule switch, groups of inmates declaring the same denomination could meet as a whole in a prison room with a chaplain. If their numbers weren't large enough, preachers would be called in to meet with inmates individually. The DOC is now heading toward more of the individual touch.

The DOC rule would eliminate the definition of the word "religious" from group activities, eliminate chaplains' training requirements, would not allow inmates to wear religious symbols and eliminate certain dietary provisions based on religious beliefs.

Since the DOC will no longer define what is religious, the wardens will act as the prison's pope, deciding who gets what religion, or if they even have religion at all. The criteria seems straight out of the Roman Golden Age of Pontius Pilate's religious persecution. In giving certain religions the official stamp of approval, the warden can take into account the number of people who participate in the religion, the newness of the beliefs or practices, the absence of a supreme being in the religion and whether the beliefs are unpopular.

The popularity criteria was conjured up to address the potential for white supremacists declaring their religion and then being able to shout racial slurs, said Oak Hill Correctional Institute Warden Cathy Farrey. Oak Hill is a minimum security facility with 530 inmates in a 300-bed building. Farrey has been the department's point person on this issue, testifying at the public hearing that the rule was not what it seemed.

"No one's ever escaped from prison because of religion, except perhaps in a spiritual sense."

The DOC loosely defends the rule, citing overcrowding and safety issues. "Any group gatherings ... strain scarce prison resources," Sullivan wrote to Moore. DOC officials were unavailable for further comment.

Farrey said in an interview that the rules are being rewritten because some are simply out of date and others redundant.

She said Oak Hill allows congregational hearings for members of the Native American, Muslim, Catholic and Protestant faiths. Several practicing Buddhists are visited individually, she said. "We have about 120 volunteers who come in and attend to our inmates' needs."

Of course, maximum security facilities like Waupun and Green Bay would restrict access to the public much more than a place like Oak Hill, which even provides horticultural programs for prisoners. Maximum security inmates see fewer volunteers roaming the halls attending to their religious needs, which has inmate rehabilitation workers concerned that it's one less avenue an inmate can have toward release.

In denying Minister William Mohammad access, Sullivan wrote that the prison system could not allow sects of each faith to practice individually, implying that the Nation of Islam was a sect of the Muslim religion. "If we expand [group] worship opportunities beyond the [group] services now provided, this could mean that we would have to add dozens of [group] services systemwide. Institutions do not have the space nor the resources to accommodate or supervise separate worship services for each of the various religious sects."

Farrey denies that inmates won't be able to wear religious symbols under the new rule or that special diets are being reconsidered. She said Oak Hill allows a Jewish inmate a special diet.

Moore aide Kelly Bablitch said that Farrey is not correct. Religious symbols are banned. Farrey said at the hearing that she'd be willing to accommodate crucifixes.

Nonetheless, Christopher Ahmuty, executive director of the state American Civil Liberties Union, says the DOC doesn't pass constitutional muster in this religion grab. The DOC is interpreting its Supreme Court religious freedoms cases wrong, he said.

"Institutional security and other legitimate penal concerns may constitute a compelling state interest [under a state Supreme Court ruling] but these concerns have to be balanced with the prisoners' legitimate exercise of their right to religious freedom," Ahmuty wrote to the committee.

"No one's ever escaped from prison because of religion, except perhaps in a spiritual sense," Ahmuty said in an interview. "Religious symbols and I think some of the dietary concerns have been sort of a nuisance for them and now they're trying to get after them."

Committee clerk Melissa White expects the DOC to moderate its stance on the issue when a meeting is scheduled at the end of October.

Ahmuty said to expect a lawsuit from the ACLU and prisoners if the DOC doesn't back off.

Jailhouse religion proves to make lasting difference

WASHINGTON, DC — A new study by a group of social scientists finds evidence that religious experience can, indeed, have a positive effect on criminal rehabilitation.

The study followed over a 10-year period 180 federal inmates who had participated in 21 Prison Fellowship seminars in the early years of that Christian organization. They were compared with a matched control group based on race, gender, age at release, and on a scale developed by the U.S. Parole Commission based on criminal, drug and employment history.

Researchers concluded that the Prison Fellowship group compared to the control group:

1) Had a lower rate of recidivism

2) Had a longer crime-free period following release; and

3) Had a decrease in crime-severity (as compared to the original offense) when they did recidivate, *while the control group had an increase in crime-severity.*

"I can't stress enough the importance of these findings," said Charles Colson, chairman of Prison Fellowship and advocate for prisoners and prison reform. "What this study does is to show, by objective and scientific means, that prison ministry brings about lasting change in individuals."

While the study itself provided encouraging results, just the fact that religious factors are being studied is news, according to Dr. David Larson, one of the leaders in the study.

U.S. CONSTITUTION

Ten Original Amendments: The Bill of Rights

In force Dec. 15, 1791

(The First Congress, at its first session in the City of New York, Sept. 25, 1789, submitted to the states 12 amendments to clarify certain individual and state rights not named in the Constitution. They are generally called the Bill of Rights.

(Influential in framing these amendments was the Declaration of Rights of Virginia, written by George Mason (1725-1792) in 1776. Mason, a Virginia delegate to the Constitutional Convention, did not sign the Constitution and opposed its ratification on the ground that it did not sufficiently oppose slavery or safeguard individual rights.

(In the preamble to the resolution offering the proposed amendments, Congress said: "The conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, and as extending the ground of public confidence in the government will best insure the beneficent ends of its institution, be it resolved," etc.

(Ten of these amendments now commonly known as one to 10 inclusive, but originally 3 to 12 inclusive, were ratified by the states as follows: New Jersey, Nov. 20, 1789; Maryland, Dec. 19, 1789; North Carolina, Dec. 22, 1789; South Carolina, Jan. 19, 1790; New Hampshire, Jan 25, 1790; Delaware, Jan 28, 1790; New York, Feb. 24, 1790; Pennsylvania, Mar. 10, 1790; Rhode Island, June 7, 1790; Vermont, Nov 3, 1791; Virginia, Dec. 15, 1791; Massachusetts, Mar. 2, 1939; Georgia, Mar. 18, 1939; Connecticut, Apr. 19, 1939. These original 10 ratified amendments follow as Amendments I to X inclusive.

(Of the two original proposed amendments which were not ratified by the necessary number of states, the first related to apportionment of Representatives; the second, to compensation of members. See p. 451.)

AMENDMENT I.

Religious establishment prohibited. Freedom of speech, of the press, and right to petition.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II.

Right to keep and bear arms.

A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

AMENDMENT III.

Conditions for quarters for soldiers.

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV.

Right of search and seizure regulated.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V.

Provisions concerning prosecution. Trial and punishment—private property not to be taken for public use without compensation.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT VI.

Right to speedy trial, witnesses, etc.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT VII.

Right of trial by jury.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

AMENDMENT VIII.

Excessive bail or fines and cruel punishment prohibited.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX.

Rule of construction of Constitution.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X.

Rights of States under Constitution.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATE CONSTITUTION

Where probation statute was amended after crime was committed but before accused pled guilty and was placed on probation, application of amended statute to probation revocation proceedings offended ex post facto clause. State v. White, 97 W (2d) 517, 294 NW (2d) 36 (Ct. App. 1979).

Challenge to legislation must prove 1) legislation impairs existing contractual relationship; 2) impairment is substantial; and 3) if substantial, impairment is not justified by purpose of legislation. Reserve Life Ins. Co. v. La Follette, 108 W (2d) 637, 323 NW (2d) 173 (Ct. App. 1982).

See note to 846.103, citing Burke v. E.L.C. Investors, Inc. 110 W (2d) 406, 329 NW (2d) 275 (Ct. App. 1982).

Retroactive application of 102.43 (7), 1979 stats., doesn't violate contract clause or due process clause of constitution. Chappy v. LIRC, 136 W (2d) 172, 401 NW (2d) 568 (1987).

Retroactive application of 46.03 (22) doesn't violate this section. Overlook Farms v. Alternative Living, 143 W (2d) 485, 422 NW (2d) 131 (Ct. App. 1988).

Constitutionality of rent control discussed. 62 Atty. Gen. 276.

Private property for public use. SECTION 13. The property of no person shall be taken for public use without just compensation therefor.

A dismissal of an appeal for lack of prosecution in a condemnation action does not violate condemnee's right to just compensation. Taylor v. State Highway Comm. 45 W (2d) 490, 173 NW (2d) 707.

Total rental loss occasioned by the condemnation is compensable, and the limitation to one year's loss in 32.19 (4), 1969 Stats., is invalid. Luber v. Milwaukee County, 47 W (2d) 271, 177 NW (2d) 380.

A prohibition against filling in wetlands pursuant to an ordinance adopted under 59.971 and 144.26 does not amount to a taking of property unconstitutionally. Police powers vs. eminent domain discussed. Just v. Marinette County, 56 W (2d) 7, 201 NW (2d) 761.

A special assessment against a railroad for a sanitary sewer laid along the railroad's right-of-way, admittedly of no immediate use or benefit to the railroad, does not constitute a violation of this section. Soo Line RR. Co v. Neenah, 64 W (2d) 665, 221 NW (2d) 907.

In order for the petitioner to succeed in the initial stages of the inverse condemnation proceeding, it must allege facts that, prima facie at least, show there has been either an occupation of its property under 32.10, or a taking, which must be compensated under the terms of the Wisconsin Constitution. Howell Plaza, Inc. v. State Highway Comm. 66 W (2d) 720, 226 NW (2d) 185.

The owners of private wells ordered by the department of natural resources to seal them because of bacteriological danger are not entitled to compensation, because such orders were a proper exercise of the state's police power to prevent a public harm, for which compensation is not required. Village of Sussex v. Dept. of Natural Resources, 68 W (2d) 187, 228 NW (2d) 173.

There must be a "taking" of property to justify compensation. DeBruin v. Green County, 72 W (2d) 464, 241 NW (2d) 167.

Condemnation power discussed. See also notes to 32.06 and 32.07 citing this case. Falkner v. Northern States Power Co. 75 W (2d) 116, 248 NW (2d) 885.

Ordering utility to place its power lines underground in order to expand airport constituted a taking because the public benefited from the enlarged airport. Public Service Corp. v. Marathon County, 75 W (2d) 442, 249 NW (2d) 543.

For inverse condemnation purposes, taking can occur absent physical invasion only where there is legally imposed restriction upon property's use. Howell Plaza, Inc. v. State Highway Comm. 92 W (2d) 74, 284 NW (2d) 887 (1979).

Doctrine of sovereign immunity cannot bar action for just compensation based on taking of private property for public use even though legislature has failed to establish specific provisions for recovery of just compensation. Zinn v. State, 112 W (2d) 417, 334 NW (2d) 67 (1983).

Zoning classification unconstitutionally deprived owners of property without due process of law. State ex rel. Nagawicka Is. Corp. v. Delafield, 117 W (2d) 23, 343 NW (2d) 816 (Ct. App. 1983).

Ordering riparian owner to excavate and maintain ditch to regulate lake level was unconstitutional taking of property. Otte v. DNR, 142 W (2d) 222, 418 NW (2d) 16 (Ct. App. 1987).

New York law that landlord must permit cable television company to install cable facilities upon property was compensable taking. Loretto v. Teleprompter Manhattan CATV Corp. 458 US 419 (1982).

The backing of water so as to overflow the lands of an individual, or any other superinduced addition of water, earth, sand, or other material, if done under statutes authorizing it for the public benefit, is a taking within the meaning of Art. I, sec. 13. Pumpelly v. Green Bay and Miss. Canal Co. 13 Wall. (U.S.) 166.

Compensation for lost rents. 1971 WLR 657.

Feudal tenures; leases; alienation. SECTION 14. All lands within the state are declared to be allodial, and feudal tenures are prohibited. Leases and grants of agricultural land for a longer term than fifteen years in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation reserved in any grant of land, hereafter made, are declared to be void.

Equal property rights for aliens and citizens. SECTION 15. No distinction shall ever be made by law between resident aliens and citizens, in reference to the possession, enjoyment or descent of property.

Imprisonment for debt. SECTION 16. No person shall be imprisoned for debt arising out of or founded on a contract, expressed or implied.

See note to 943.24, citing Locklear v. State, 86 W (2d) 603, 273 NW (2d) 334 (1979).

Sec. 943.20 (1) (e) does not unconstitutionally imprison one for debt. State v. Roth, 115 W (2d) 163, 339 NW (2d) 807 (Ct. App. 1983).

Exemption of property of debtors. SECTION 17. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted.

Section 815.18 (31) does not violate this section. North Side Bank v. Gentile, 129 W (2d) 208, 385 NW (2d) 133 (1986).

Freedom of worship; liberty of conscience; state religion; public funds. SECTION 18. *[As amended Nov. 1982]* The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries. *[1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982]*

The contract requiring the state to pay an amount to Marquette University for the education of dental students (ch. 44, Laws 1971) violates the constitution. State ex rel. Warren v. Nusbaum, 55 W (2d) 316, 198 NW (2d) 650.

It is outside the province of a civil court to review the merits of a determination of a duly authorized ecclesiastical tribunal which has adhered to prescribed canonical procedure and which results in terminating a clergyman's relationship with his church. Olston v. Hallock, 55 W (2d) 687, 201 NW (2d) 35.

Section 115.85 (2) (d) does not violate this section since the primary effect is not the advancement of a religious organization but to provide special educational services to the handicapped children of Wisconsin, a clearly secular purpose. State ex rel. Warren v. Nusbaum, 64 W (2d) 314, 219 NW (2d) 577.

This section is not violated by the released time provisions of 118.155, where the statute accommodates rather than restricts the right of students to religious instruction, does not compel any student to participate in religious training, and does not involve the use or expenditure of public funds especially where the electorate approved an amendment to art. X, sec. 3, specifically authorizing enactment of a released time statute. State ex rel. Holt v. Thompson, 66 W (2d) 659, 225 NW (2d) 678.

For purposes of 121.51 (4) and in the absence of fraud or collusion, where a religious school demonstrates by its corporate charter and bylaws that it is independent of, and unaffiliated with, a religious denomination, further inquiry by the state would violate Art. I, sec. 18. Holy Trinity Community School v. Kahl, 82 W (2d) 139, 262 NW (2d) 210.

Refusal on religious grounds to send children to school was held to be a personal, philosophical choice by parents, rather than a protected religious expression. State v. Kasuboski, 87 W (2d) 407, 275 NW (2d) 101 (Ct. App. 1978).

Primary effect of health facilities authority under ch. 231 does not advance religion, nor does chapter foster excessive entanglement between church and state. State ex rel. Wis. Health Fac. Auth. v. Lindner, 91 W (2d) 145, 280 NW (2d) 773 (1979).

Meals served by religious order, in carrying out their religious work, were not, under circumstances, subject to Wisconsin sales tax for that portion of charges made to guests for lodging, food, and use of order's facilities. Kollasch v. Adamany, 104 W (2d) 552, 313 NW (2d) 47 (1981).

Constitutionality of state tuition grants to parents of resident pupils enrolled in private elementary or high schools discussed. 58 Atty. Gen. 163.

1971 Assembly Bill 1577 would violate the establishment clause of the First Amendment to the U.S. Const. and sec. 18. Guidelines to possibly avoid constitutional objection to CESA service contracts with private schools discussed. 62 Atty. Gen. 75.

Leasing of university buildings to a religious congregation during non-school days and hours on a temporary basis while the congregation's existing facility is being renovated and leasing convention space to a church conference would not violate separation of church and state provisions of the First Amendment to U.S. Const. and sec. 18. 63 Atty. Gen. 374.

The department of public instruction may, if so authorized under 16.54, implement the school lunch program and special food service plan for children in secular and sectarian private schools and child-care institutions without violating the U.S. or Wisconsin Constitutions. 63 Atty. Gen. 473.

Funds received under Title I of the Elementary and Secondary Education Act may not be used to pay salaries of public school teachers teaching in church affiliated private schools. See 64 Atty. Gen. 139 64 Atty. Gen. 136.

Establishment clause and this section prohibit public schools leasing classrooms from parochial schools to provide educational programs for parochial students. 67 Atty. Gen. 283.

See note to 16.845, citing 68 Atty. Gen. 217.

See note to 115.34, citing 69 Atty. Gen. 109.

Sent Copy
of DOC 310
E-Rule on
12-23-97
JM

DEC 04 1997

William N. Radford #80495
Wisconsin Resource Center
P.O. Box 16
Winnebago, Wisconsin 54985

November 26, 1997

Senator Richard Grobschmidt, Co-Chair
Joint Committee for Review of Administrative Rules
Room 404, 100 North Hamilton Street
Madison, Wisconsin 53707

Representative Glen L. Grothman, Co-Chair
Joint Committee for Review of Administrative Rules
State Capitol, Room 125 West
Madison, Wisconsin 53708

Dear Sen. Grobschmidt and Rep. Grothman:

Recently a full "due process" disciplinary hearing was held on Conduct Reports #639419 & 846723. During this hearing I attempted to present a written statement & objections and exhibits consisting of clinical / medical records and a past Program Review Committee (PRC) summary.

Two members of the committee, Dr. Bruce Reynolds and Supervisor Dave Schlichting

represented that pursuant to recent court decisions that they are no longer required to accept any written objections, statements, affidavits, or exhibits (any kind of exhibits), and that all defenses submitted must be verbal in nature and we must rely on the committee to record that material as they see fit.

These individuals also represented that the provision under DOC 303.76(1) relating to the right to present a defense, which specifically includes the right to documentary evidence, and the DOC-71, "Notice of Major Disciplinary Hearing Rights . . . ." form relating to the same, are no longer in effect and have not been "updated" by the DOC as yet.

By dint of personal need and necessity, and personal interest, I receive copies of all Wisconsin opinions relating to prison litigation and/or disciplinary proceedings (both published and unpublished) through advance sheets and services such as Wisconsin Opinions and others. I also network with my own attorneys and other interested attorneys and prisoners and organizations. I am not aware of any such decisions disallowing written, documentary, or physical evidence in these proceedings.

Neither am I aware of any major revisions, beyond Sandin v. Conner (U.S. Supreme Court) in U.S. Supreme Court decisions; or of any major (or even minor) revisions from the JCRAR.

Nonetheless, the Security Director at USC, according to Dr. Reynolds and Mr. Schlechting, has represented this to be the law and refuses to allow written, documentary, or physical evidence to submitted in support of any defense. The Security Director, a Cpt. Henry Klemmer, also according to the two committee members, has required that all staff acting as disciplinary committee members to "sign off" on this policy or "legal decisions."

Therefore, by this letter, would you please provide me with copies of any such rule revisions, requests therefore, and related court decisions upon which any such revisions are based.

Thank you for your kind attention.

Sincerely yours,

William N. Ledford

William N. Ledford

cc: Cpt. Henry H. Klemmer, USC
Jail/CR's #639419 & 846723

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 17 | DANE COUNTY

WISCONSIN'S ENVIRONMENTAL DECADE, INC., a Wisconsin Corporation, and
RENEW WISCONSIN, a Wisconsin Corporation, and
CITIZENS UTILITY BOARD, a Wisconsin Corporation,

Plaintiffs-Petitioners

v.

CASE NO. 96-CV-1298

STATE OF WISCONSIN DEPARTMENT OF COMMERCE,

Declaratory Judgment:
Case Code No.: 30701

WILLIAM MCCOSHEN, SECRETARY, STATE OF WISCONSIN DEPARTMENT OF COMMERCE,

Other Injunction:
Case Code No.: 30704

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES, and

ASSOCIATED GENERAL CONTRACTORS, et. al.

Defendants-Respondents

INJUNCTION

Upon review of all records of this proceeding, the court issues the following injunctive orders:

1. All Defendants are enjoined from treating Clearinghouse Rule 96-080 as though it is, or ever was, valid;

2. All defendants are enjoined from treating the preexisting energy conservation requirements of Chapters ILHR 63 and 64 that were displaced by Clearinghouse Rule 94-116, and which the Department has continued to apply, as though those requirements continue to be sufficient to meet the Department of Commerce's assigned energy conservation responsibilities for public buildings and places of employment;

3. All defendants are enjoined from treating the preexisting ventilation requirements of Chapters ILHR 63 and 64 that were displaced by

Clearinghouse Rule 94-116, which the Department has continued to apply, as though those requirements continue to be sufficient to meet the Department of Commerce's assigned ventilation, health related, responsibilities;

4. The Department of Commerce is enjoined from applying energy conservation requirements for public buildings or places of employment that are not consistent with the applicable substantive commercial building energy conservation standards, specifically ASHRAE 90.1-1989 mandated by 42 USC 6431 §304(b) and §101.127 Wis. Stats.;

5. The Department of Commerce is enjoined from applying to public buildings and places of employment ventilation standards found to be inadequate in this proceeding.

Dated this _____ day of _____, 1997.

By the Court.

_____

Paul B. Higginbotham, Judge
Circuit Court, Br. 17, Dane County