Administrative Law CLE
2013 Case Law Review
June 12, 2013

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II. Administrative Law Trends

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III. Minnesota Supreme Court

A. ***Sawh v. City of Lino Lakes*, 823 N.W.2d 627 (Minn. 2012).**

1. **Facts:** Dog bites man. City designates the former as "potentially dangerous" under local ordinance. After the second bite, the City designated the dog as "dangerous." And after the third bite, the City ordered the dog's destruction. Sawh (dog owner) appealed the City's decisions by writ of certiorari. The court of appeals reversed the City's decisions, holding that Sawh's inability to challenge the "potentially dangerous" designation violated his right to procedural due process. Supreme Court takes review.
2. **Issue:** May the City of Lino Lakes designate a dog who has bitten someone a potentially dangerous animal without providing its owner the opportunity to contest the designation when that labeling of the dog eventually lead to the destruction of the dog by the City after he had bitten three individuals? **No.**
3. **Reasoning:** A two-step analysis is used to determine whether the government has violated an individual's procedural due process rights. First, we must identify whether the government has deprived the individual of a protected life, liberty, or property interest If the government's action does not deprive an individual of such an interest, then no process is due. On the other hand, if the government's action deprives an individual of a protected interest, then the second step requires us to determine "whether the procedures followed by the [government] were constitutionally sufficient. To determine the constitutional adequacy of specific procedures, the Supreme Court of the United States established a three-factor balancing test in *Mathews v. Eldridge,* which requires us to consider:
    a. [f]irst, the private interest that will be affected by the official action;
    b. Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.
    c. Finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.
    d. Under Minnesota law dogs are personal property and therefore Brody's due process rights are implicated. Yet when the City designated the dog as "potentially dangerous," however, it did not deprive Sawh of anything, much less a protected property interest. procedural due process jurisprudence. Once Sawh's property interest in Brody w (as at stake, the City provided Sawh two hearings—one to challenge the City's "dangerous" designation, and a second to challenge the City's decision to destroy the dog. These two hearings were sufficient to meet the due process requirements under *Mathews*.
4. **Why Significant?** Every dog gets one bite, but one bite does not implicate a property right warranting a hearing–it takes two bites (or a dog only his day [in court] after the second bite.

B. ***Nelson v. Commissioner of Revenue*, 822 N.W.2d 654 (Minn. 2012).**

1. **Facts:** Petroleum distributor(Nelson) failed to pay taxes and Department of

Revenue filed tax liens. Subsequently distributor filed for Chapter 11 bankruptcy. Creditors propose plan for reorganization but prior to the confirmation hearing on the joint plan, the Department of Revenue withdrew its tax liens, prompting creditors to withdraw their plan. Nelson believed that [the Commissioner's] unilateral release of the liens and the resulting destruction of the Chapter 11 plan for paying the petroleum taxes at issue resulted in a detrimental reliance on the part of him justifying the application of equitable estoppel. Nelson lost on a summary motion in tax court and appeals.

2. **Issue:** Did a taxpayer suffer harm as a result of the Department of Revenue decision to withdraw tax liens prior to approval of a Chapter 11 bankruptcy hearing because such a decision resulted in creditors withdrawing the plan? **No.**
3. **Reasoning:** For an individual to assert equitable estoppel against the government he must show four things. First, there must be "wrongful conduct" on the part of an authorized government agent. Second, the party seeking equitable relief must reasonably rely on the wrongful conduct. Third, the party must incur a unique expenditure in reliance on the wrongful conduct. Finally, the balance of the equities must weigh in favor of estoppel. Here the Department of Revenue did not engage in any wrongful conduct, the taxpayer did not suffer any harm, and he did not make any unique expenditures and therefore he did not detrimentally rely upon the tax liens.
4. **Why Significant?** A good discussion of when individuals can sue the government for bad behavior, drawing upon contact law/tort analogies.
5. ***See also:*** *Stevens v. Department of Revenue*, 822 N.W.2d 646 (Minn. 2012) (companion case).

IV. Minnesota Court of Appeals

A. *Helmberger v. Johnson Controls*, 821 N.W.2d 831 (Minn. App. 2012)

1. **Facts:** School district contracts with Johnson Controls to provide management, construction, and architectural services. Agreement allows for subcontracting and Johnson Controls subcontracts some work to another company for architectural services. Newspaper publisher seeks a copy of the subcontract from the school district under the Data Practices Act. School district says it does not have a copy and directs publisher to Johnson Controls who denied the request, saying that it was not subject to the Data Practices Act. Petitioner seeks advisory opinion from Department of Administration which rules in his favor. He then filed a complaint with the Office of Administrative Hearings seeking an order compelling Johnson Controls to produce a copy of the subcontract An ALJ dismissed the complaint, concluding that Helmberger (the publisher) failed to demonstrate probable cause that Johnson Controls had violated the Data Practices Act. Upon a petition for rehearing by Helmberger subcontractor files to intervene and it is granted. At the evidentiary hearing, Helmberger offered only his own

testimony and the two contracts between Johnson Controls and the school district. At the close of Helmberger's case, ALJ granted a motion to dismiss the case, contending that the subcontract did not include a performance of a governmental function and was thus outside of the Data Practices Act.

2. **Issue:** Is the subcontract for architectural services let by a party which has a contract from a governmental body to perform these services for a school, the performance of a government function under the Data Practice Act? **Yes.**
3. **Reasoning:** In *WDSI, Inc. v. Cnty. of Steele,* 672 N.W.2d 617 (Minn.App.2003) this court held that constructing a jail and developing qualifications and requirements for the bidding process are governmental functions within the meaning of the Data Practices Act. Based on this decision, the building and maintaining of schools is a governmental function. Court also rejects arguments that subcontractor was not notified of this disclosure and therefore contractor and subcontractor should not have to disclose.
4. **Why Significant?** Sometimes even subcontracts are covered by the Data Practices Act.

B. ***Builders Association of Minnesota v. City of St. Paul*, 819 N.W.2d 172 (Minn App. 2012).**

1. **Facts:** A State Building Code provision set forth minimum sizes and requirements for installing or replacing egress windows. There is also a State Fire Code which appears to specific different requirements for egress windows. The City of St. Paul's Department of Safety and Inspections authors a "Uniform Egress Window Policy" in a memorandum addressed to St. Paul homeowners and interested citizens. The policy was not enacted or adopted by the city council. It purports to resolve the confusion between "various code requirements for egress windows." The policy itself requires replacement egress windows to conform to a minimum size. The sole exception to the minimum-size requirement is for windows installed before the policy's effective date. The policy provides an avenue for appeal to the city council, and requires the council to consider in any appeal the effect on affordable housing, "provided that the spirit of the code is complied with and public safety is secured." Builders Association of Minnesota (BAM) brings declaratory action in district court challenging the St Paul policy and its interpretation regarding how to reconcile the Fire and Build Codes. City challenges BAM standing and says BAM should have gone to the State to resolve this dispute. District court recognizes standing as the association and its members suffered injury but nonetheless rules against BAM. BAM appeals.
2. **Issues:** Did BAM lack standing to challenge an interpretation of an egress policy issued by the City of Saint Paul because it had not suffered an injury and because it had failed to exhaust its administrative remedies? **No.**
3. **Reasoning:** An organization can assert standing if its members' interests are directly at stake or if its members have suffered an injury-in-fact. Here, BAM

submitted evidence that its members had suffered economic detriment as a direct result of the city's egress-window policy. One of BAM's members, the president of a remodeling business, attested to his company's loss of revenue as a result of the policy because customers decided not to replace their egress windows when they learned of the extra time and expense involved in complying with the city's policy. And as a number of BAM's members offered remodeling services in St. Paul, the policy directly affected their interests as well. Thus, because BAM's members suffered economic injuries, BAM itself derived associational standing to bring the action The city also relies on a statute that authorizes the commissioner to administer and enforce the state building code, and therefore BAM should have gone to the commissioner first to resolve the dispute. Here, however, the dispute does not primarily concern the administration or enforcement of the state building code. Rather, it centers on whether the egress-window provisions of the state building code "trump" broader provisions in the state fire code and, if so, whether the state building code also preempts the city's egress-window policy. Although these questions require interpreting the state building code, they also necessitate interpreting the city's policy and the state fire code, neither of which fall within the commissioner's interpretative authority. Thus, no adequate administrative remedies were available for BAM to pursue.

4. **Why Significant?** Exhaustion is not required when there are no adequate administrative remedies, and an association may have standing to represent its members if it can show real harm to it or its members.

C. ***In the Matter of the Pera Salary Determinations Affecting Retired and Active Employees of the City of Duluth,* 820 N.W.2d 563 (Minn. App. 2012).**

1. **Facts:** For two decades Duluth compensates some employees with monthly supplemental payments to their salaries. Beginning in 1997, the city agreed to make similar monthly payments of supplemental compensation to members of four other unions. Initially, the city agreed to make monthly payments of $25 to each represented employee's qualified deferred-compensation plan. In subsequent CBAs, the city increased the monthly payments several times until they reached $229 in 2009. The parties refer to these monthly payments as "deferred compensation" From 1995 to 2007, the city included both the salary-supplement payments and the insurance-supplement payments in its calculations of so-called "PERA salary." The city relied on PERA staff when deciding to include the supplemental payments in PERA salary, following the latter's construction of Minn.Stat. § 353.01, subd. 10 (2010). According to a former payroll employee, Jackie Morris, the city sought guidance from PERA staff when it began making salary-supplement payments in 1995 and was told to include those payments in PERA salary. The city implemented PERA staff's guidance and adopted the same approach two years later with respect to insurance-supplement payments. In July or August of 2007, however, the city auditor, Wayne Parson, contacted PERA staff and was told that the city should *not* include either salary-supplement payments or

insurance-supplement payments in the city's calculations of PERA salary. The city discontinued the practice of including supplemental payments in PERA salary in September 2007. One year later, in September 2008, the city's chief administrative officer, Lisa Potswald, sent a letter to PERA stating that the supplemental payments to employees had been erroneously included in PERA salary. After receiving Potswald's letter, PERA staff and the city conducted a joint investigation to determine the scope of the payments that had been included in PERA salary. This investigation led to the decision by PERA staff that it was necessary to make adjustments to the contributions and benefits of the city's employees. Public Employees Retirement Association (PERA) notifies active and retired employees of the City of Duluth that PERA intended to make adjustments to their defined-benefit retirement plans. PERA decided that adjustments were necessary because it determined that the city had, for more than a decade, miscalculated the amounts of contributions to its employees' retirement plans. PERA's adjustments would result in smaller retirement annuity payments for retired city employees. Some of the persons who received PERA's notices challenged the decision, which led to contested-case proceedings before an administrative law judge. At the culmination of those proceedings, the PERA Board of Trustees reaffirmed the decision to make adjustments to the affected retirement plans. Employees appeal.

2. **Issues:**
   a. Did the PERA board engage in improper rulemaking by interpreting Minn.Stat. § 353.01, subd. 10 (2010), to not include the city's salary-supplement payments in "PERA salary?" **Yes**
   b. Did the PERA board engage in improper rulemaking by interpreting Minn.Stat. § 353.01, subd. 10(b)(2) (2010), to exclude the city's insurance-supplement payments from "PERA salary?" **No.**
3. **Reasoning:** For the purposes of appellate review, a public-retirement-fund board, like the PERA board of trustees, is analogous to an administrative agency. Administrative agencies generally formulate policy by promulgating administrative rules. The requirement that an interpretive rule be promulgated may give rise to one of three possible consequences. First, an administrative rule that is properly promulgated, whether legislative or interpretive, "shall have the force and effect of law. Second, an interpretive rule that has not been properly promulgated may nonetheless be valid in two situations: "if the agency's interpretation of a [statute] corresponds with its plain meaning, or if the [statute] is ambiguous and the agency interpretation is a longstanding one Third, if an agency's interpretation of a statute is not properly promulgated, and if it is not within either of the above-stated exceptions for a valid interpretation of a statute, the rule is "invalid and cannot be used as the basis for agency action." Here, PERA's interpretation of section 353.01, subdivision 10, as it concerns the city's salary-supplement payments, is not a longstanding interpretation of the statute since it has changed over time and

was not committed to writing or formal promulgation. Thus, PERA's interpretative rule excluding the city's salary-supplement payments from relators' PERA salary is an invalid rule. However, the PERA board did not err by adjusting contributions and benefits and recouping overpaid benefits with respect to the city's insurance-supplement payments because its interpretation was consistent with the plain meaning of the word "salary" in the statute.

4. **Why Significant?** A good discussion of formal rule making and when judicial deference is warranted. Also, for public employees, some clarity to what "salary" means.

D. ***Williams v. Commissioner of Public Safety*, _N.W. 2d. _ (Minn. App. 2013).**

1. **Facts:** In two separate cases two drivers were stopped under suspicion of DUI and they submitted to blood or urine tests. Both failed the tests. Each notice of revocation sent by the commissioner provided a date that the revocation was to become effective. Each of those dates fell ten days after the mailing date of the notice, but nine days after the date postmarked on the envelope. Each respondent timely sought judicial review of the revocation in district court claiming that their procedural due process rights were violated because the commissioner's notification, when measured from the postmark, failed to provide a full seven days of driving privileges between receipt of the notice and revocation of the license. Each district court concluded that the commissioner's notices violated respondents' rights to procedural due process and ordered the revocations rescinded.
2. **Issue:** Were respondents' procedural due process rights violated when they received six days' notice before their license revocations became effective instead of seven days' notice? **No.**
3. **Reasoning:** Respondents contend that the legally cognizable harm they suffered is not the revocation of their driving privileges but the *premature* revocation of their driving privileges, and that the denial of just one day of driving privileges is a deprivation of their due process rights. However, there is no statutory basis for requiring the commissioner to provide seven days' notice to licensees receiving notice of revocation by mail. Therefore, there is no due process violation here.
4. **Why Significant?** Court again refers to the *Mathews* test for determining due process violations. Court also distinguishes between immediate license revocation on the spot versus revocation by mail where one might wait weeks if not months for notice of revocation.
5. **Note:** In light of *Missouri v. McNeely*, _ U.S. _ (2013) (taking of blood under the presumed consent law to determine whether DUI without a warrant violated his Fourth Amendment rights), this decision may be up for debate.

V. United States Supreme Court

A. ***Arlington v. Federal Communications Commission*, _U.S. _ (2013).**

1. **Facts:** Two cities petitioned for review of declaratory ruling of the Federal

Communications Commission (FCC) establishing reasonable time frames under the 1996 Telecommunications Act for a state or locality to act on wireless facility siting applications. They contended that the FCC lacked jurisdiction to issue these time frames because it lacked the authority to interpret its own ambiguous provisions. The United States Court of Appeals for the Fifth Circuit denied the petitions in part and dismissed the petitions in part. Cert. to the Supreme Court.

2. **Issue:** Does the FCC have the statutory authority under the 1996 Telecommunications Act to establish time frames for local governments to act on siting applications? **Yes**
3. **Reasoning:** Under Chevron v. NRDC a court should defer to an agency construction of a statute if the statute is ambiguous and if the agency has constructed a permissible interpretation of the statute. Here the issue is whether a court must defer under *Chevron* to an agency's interpretation of a statutory ambiguity that concerns the scope of the agency's statutory authority (that is, its jurisdiction). The Court rules that even when it comes to jurisdictional issues, unless the law clearly prohibits the agency from ruling on its own jurisdiction, *Chevron* deference permits an agency to construe its own jurisdiction.
4. **Why significant?** An important federal extension of the *Chevron* doctrine that might trickle down to the state level.

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