23.5 DELEGATION OF AGENCY POWERS

Generally, it is improper for an administrative agency to delegate its powers to another agency, person, or body without statutory authorization. Whether an agency has unlawfully delegated its powers depends on "whether adequate legislative or administrative safeguards exist to protect against the injustice that results from uncontrolled discretionary power."[1] In rulemaking, the delegation issue often arises in two contexts: when a rule adopts standards developed by another agency or body, or when a rule adopts or incorporates a statute or federal law that has been subsequently amended.

The Minnesota Supreme Court has upheld a rule that adopted standards developed by another body, stating it is not an improper delegation of authority for the supreme court to require applicants for admission to graduate from a law school accredited by the American Bar Association.[2] The court stated that it has neither the time nor the expertise to individually investigate the training and the programs of all law schools, and thus it does not offend the constitution for the court to decide to utilize instead standards developed by a nongovernmental body with expertise in the area of legal education. Nor is the board of psychology's adoption of foreign government recognition of schools improper when there is a "rational basis" for adopting that standard or verification.[3]

Adoption or incorporation of acts of Congress is permissible if the state program is auxiliary in nature to the federal legislation and seeks to achieve uniformity in the implementation of national programs and policies.[4] Even if the programs are not auxiliary to federal statutes, when there are "good reasons" to coordinate the federal and state eligibility requirements, and when it is the agency that will be making the ultimate determination directly affecting the applicant, the Minnesota Supreme Court has upheld the adoption of federal legislation in rules.[5]

The nondelegation issue arises in another way when a rule adopts or incorporates a statute or federal law that has been subsequently amended. In *Wallace v. Commissioner of Taxation*,[6] the court held that a state tax law incorporating certain internal revenue code provisions incorporated these provisions as of the date the state law was enacted, and not as the provisions might be amended by Congress.[7] This case

1 Hubbard Broad., Inc. v. Metro. Sports Facilities Comm'n, 381 N.W.2d 842, 847 (Minn. 1986); *see* Muehring v. Sch. Dist. No. 31, 224 Minn. 432, 436-37, 28 N.W.2d 655, 658 (1947).

2 *In re* Hansen, 275 N.W.2d 790, 796-97 (Minn. 1978). *But see* Garces v. Dep't of Registration & Educ., 254 N.E.2d 622, 628-29 (Ill. App. Ct. 1969) (finding adoption of private organization's standards improper subdelegation of authority); Costanzo v. N.J. Racing Comm'n, 126 N.J. Super. 187, 192, 313 A.2d 618, 620 (1969) (concluding non-membership in the U.S. Trotting Association not valid grounds for refusal to issue or revocation of horse owner's license).

3 Draganosky v. Minn. Bd. of Psychology, 367 N.W.2d 521, 525 (Minn. 1985).

4 Minn. Energy & Econ. Dev. Auth. v. Printy, 351 N.W.2d 319, 351-52 (Minn. 1984); Wallace v. Comm'r of Taxation, 289 Minn. 220, 228, 184 N.W.2d 588, 592 (1971).

5 *Minn. Energy & Econ. Dev. Auth.*, 351 N.W.2d at 351-52.

6 289 Minn. 220, 184 N.W.2d 588 (1971).

7 *Id.* at 228, 184 N.W.2d at 593.

has been subsequently distinguished on a number of grounds. Several decisions have noted that this decision was based on statutory interpretation as well as on a specific constitutional provision.[8] In any event, the issue of subsequent amendments has been directly addressed by the Minnesota Legislature in Minnesota Statutes section 645.31: "When an act adopts the provisions of another law by reference it also adopts by reference any subsequent amendments of such other law, except where there is clear legislative intention to the contrary."[9]

[8] *Minn. Energy & Econ. Dev. Auth.*, 351 N.W.2d at 351-52; Minn. Recipients Alliance v. Noot, 313 N.W.2d 584, 587 (Minn. 1981).

[9] MINN. STAT. § 645.001 (2014) provides that, unless specifically provided to the contrary by law or rule, the provisions of chapter 645 govern all rules becoming effective after June 30, 1981. In addition, *Mason v. Farmers Ins. Cos.*, 281 N.W.2d 344, 348 (Minn. 1979) states that the standards in chapter 645 should apply also to rules.