24.12 COLLATERAL ATTACK ON RULES

Sections 14.44 and 14.45 of the APA are specifically designed to provide a direct judicial attack on the validity of an administrative rule, and this procedure may be used before any action by the agency to enforce the rule. So far, this chapter has dealt chiefly with this direct, preenforcement proceeding for judicial review. It is established in Minnesota, however, that the validity of a rule may also be attacked collaterally in an enforcement or contested case proceeding.[1] Consequently a rule challenge can arise in a variety of legal settings.

A rule may be collaterally attacked in judicial review of a contested case decision brought pursuant to sections 14.63 through 14.69 of the APA. Thus, an employee who was disciplined under a rule of a city's civil service commission sought judicial review of the contested case decision, alleging that the rule was unconstitutional both on its face and as applied to him.[2] In the judicial review of a decision of the commissioner of public welfare fixing a nursing home's rate, the nursing home established that the rate was not computed under a permissible interpretation of the agency rule but that the rate was improperly based on factors that should have been adopted in a new rule.[3]

An agency may have authority to enforce its rules by seeking an injunction, and in such an enforcement proceeding, the defendant may, as a defense, collaterally attack the rule as being invalid.[4] In a personal injury tort action brought in state court based on a defendant's violation of an interpretative rule of the federal Consumer Product Safety Commission, the Minnesota Supreme Court ruled on the validity and authoritative effect of the federal agency's rule.[5]

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1 *E.g.*, Boedingheimer v. Lake Country Transp., 485 N.W.2d 917, 921 (Minn. 1992); State v. Lloyd A. Fry Roofing Co., 310 Minn. 528, 531, 246 N.W.2d 696, 698 (1976); *see also In re* Peace Officer License of Woolett, 540 N.W.2d 829, 831-32 (Minn. 1995); State *ex rel*. Spurck v. Civil Service Bd., 226 Minn. 253, 259, 32 N.W.2d 583, 586 (1948); Martin v. Wolfson, 218 Minn. 557, 565, 16 N.W.2d 884, 889 (1944); Drum v. Minn. Bd. of Water & Soil Res., 574 N.W.2d 71, 75 (Minn. Ct. App. 1998); *In re* Insurance Agent License of Casey, 540 N.W.2d 854, 859 (Minn. Ct. App. 1995) *rev. on other grounds*, 543 N.W.2d 96 (Minn. 1996); *In re* Lawful Gambling License of Thief River Falls Amateur Hockey Ass'n, 515 N.W.2d 604, 606-07 (Minn. Ct. App. 1994); *In re* Eigenheer, 453 N.W.2d 349, 353-54 (Minn. Ct. App. 1990); *In re* Crown CoCo, Inc., 458 N.W.2d 132, 136 (Minn. Ct. App. 1990); *In re* Appeal of Jongquist, 460 N.W.2d 915, 916-17 (Minn. Ct. App. 1990). *But see* Adamo Wrecking Co. v. United States, 434 U.S. 275, 285 (1978) (concluding federal courts in criminal prosecution may inquire whether agency complied with appropriate procedures when promulgating a rule under which defendant is charged, but may not in a criminal case "pursue any of the other familiar inquiries which arise in the course of an administrative review proceeding"). The legislature added another means of challenging an unadopted rule in 2001. *See* § 16.6.

2 Thompson v. City of Minneapolis, 300 N.W.2d 763, 763 (Minn. 1980); *cf.* Wangen V. Comm'r of Pub. Safety, 437 N.W.2d 120, 124 (Minn. Ct. App. 1989) (invalidating rule depriving driver of reinstatement hearing after second DUI as in excess of statutory authority); Vang v. Comm'r of Pub. Safety, 432 N.W.2d 203, 207-208 (Minn. Ct. App. 1988) (unsuccessfully challenging driver's license reinstatement decision); Norman v. Comm'r of Pub. Safety, 404 N.W.2d 315, 318 (Minn. Ct. App. 1987) (same).

3 White Bear Lake Care Ctr. v. Minn. Dep't of Pub. Welfare, 319 N.W.2d 7, 7-9 (Minn. 1982); *see also* Wenzel v. Meeker Cnty. Welfare Bd., 346 N.W.2d 680, 684 (Minn. Ct. App. 1984) (finding commissioner erred by relying upon invalid interpretive rule for determining welfare assistance).

4 *E.g.*, *Fry Roofing Co.*, 310 Minn. at 532-33, 246 N.W.2d at 699.

5 Swanson v. Emerson Elec. Co., 374 N.W.2d 690, 701-02 (Minn. 1985).

In a direct preenforcement challenge, the record for judicial review is the record made by the agency during the rulemaking proceedings,[6] and in a contested case, the record is that made before the agency in the contested matter.[7] When a rule's validity is attacked collaterally in a contested case proceeding or some other kind of enforcement proceeding, the parties will need to consider carefully the contents of the record so as to afford a proper evidentiary basis for the grounds to be asserted for the rule's invalidity. In a preenforcement challenge, the court will be concerned only with the validity of the rule on its face.[8] In a collateral attack setting, however, the court may also be asked to strike down the rule as applied to the challenging party.[9]

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6 *See* § 24.6.

7 MINN. STAT. § 14.66 (2014) (requiring "the entire record of proceeding under review"); Mammenga v. Dep't of Human Servs., 442 N.W.2d 786, 791 (Minn. 1989) (finding portions of rulemaking record made part of record in contested case proceeding); Drum v. Minn. Bd. of Water & Soil Res., 574 N.W.2d 71, 73 (Minn. Ct. App. 1998) (stating on first judicial review, court should independently examine the agency's record without deferring to its legal conclusions).

8 *See* § 24.10.

9 *See, e.g.*, Broen Mem'l Home v. Minn. Dep't of Human Servs., 364 N.W.2d 436, 440 (Minn. Ct. App. 1985) (weighing reasonableness of challenged rule as applied to plaintiff); *Mammenga*, 442 N.W.2d at 789-90 (clarifying misunderstanding surrounding phrase "invalid as applied," and affirming the approach taken in *Broen Mem'l Home*, 364 N.W.2d at 440).