24.2 STANDING

Judicial review in a preenforcement challenge may be taken "when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner."[1] Absent a discernible legislative intent to the contrary, standing for a challenge depends on a showing by the petitioner of "injury in fact."[2] Taxpayer status has been held sufficient to provide standing to challenge as invalid rulemaking a "policy bulletin" on medical assistance issued by the commissioner of public welfare.[3] In a case involving rulemaking under the Minnesota Occupational Safety and Health Act, the supreme court held that if a public interest organization was entitled as an interested person to participate in the rulemaking process, it also had standing and was entitled to seek judicial review of the rulemaking procedure.[4]

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1 MINN. STAT. § 14.44 (2014); Rocco Altobelli v. Dep't of Commerce, 524 N.W.2d 30, 34 (Minn. Ct. App. 1994) (finding petitioners lacked standing to challenge a rule which permits a cosmetologist to lease work space from a licensed salon as an independent contractor); Minn. Educ. Ass'n v. Minn. State Bd. of Educ., 499 N.W.2d 846, 849 (Minn. Ct. App. 1993) (citing MINN. STAT. §§ 14.44-.45).

2 McKee v. Likins, 261 N.W.2d 566, 570-71 (Minn. 1977); *see also* Snyder's Drug Stores v. Minn. State Bd. of Pharmacy, 301 Minn. 28, 32, 221 N.W.2d 162, 165 (1974); *Rocco Altobelli*, 524 N.W.2d at 35-36 (concluding petitioners have shown no connection between their injury and the purpose of the cosmetology statutes, which is to protect the health and safety of people in Minnesota); *In re* Crown CoCo, Inc., 458 N.W.2d 132, 135-36 (Minn. Ct. App. 1990) (finding standing for petroleum service station owner to appeal a decision from Petroleum Tank Release Compensation Board where the service station showed it would suffer sufficient economic injury as a result of the decision). Minnesota does not always adhere to the same test for standing used in the federal courts. For example, under the federal test, taxpayer status is not sufficient to provide standing. *See, e.g.*, Sierra Club v. Morton, 405 U.S. 727, 740 (1972) (affirming plaintiff must have "direct stake" in outcome); Ass'n of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150, 153-54 (1970) (stating federal test requires, in addition to "injury in fact," showing that plaintiff is arguably within zone of interest sought to be protected by statute or constitutional provision involved).

3 *McKee*, 261 N.W.2d at 570-71; *cf.* Friends of Animals & Their Env't v. Nichols, 350 N.W.2d 489, 491-92 (Minn. Ct. App. 1984) (affirming petitioner lacked standing in mandamus action to compel agency to adopt rules, since petitioner would not benefit from order compelling performance, as statute required).

4 Minn. Pub. Interest Research Grp. v. Minn. Dep't of Labor & Indus., 311 Minn. 65, 71, 249 N.W.2d 437, 440 (1976).