

3.2 INVESTIGATIONS

Investigations are fact-finding activities of administrative agencies. The authority to investigate frequently exists independent of a pending administrative or civil proceeding.¹ For that reason, investigations must be distinguished from the process of agency adjudication.² Agency investigations may involve inspections, compulsory submission of statements or reports, compulsory testimony or production of documents³, and even compulsory mental and physical examinations.⁴ Agencies may engage in fact-finding activities for a variety of purposes. An investigation may be undertaken for the licensing of an individual or a business;⁵ adjudication;⁶ supervision of a business activity;⁷ or the development of policy.⁸

In a sense, the agency power to investigate may be viewed as inquisitorial in that it may be based on a mere suspicion that the law is being violated or may be simply to satisfy the agency that no violation exists.⁹ Agency investigations of specific activity by an individual or business need not be undertaken solely for the purpose of proving pending charges but may also be undertaken to ascertain whether any such charges should be

¹ United States v. Oncology Servs. Corp., 60 F.3d 1015, 1019 (3rd Cir. 1995); NLRB v. Carolina Food Processors Inc., 81 F.3d 507, 511 (4th Cir. 1996); U.S. EEOC v. Tire Kingdom, Inc., 80 F.3d 449, 451 (11th Cir. 1996).

² Hannah v. Larche, 363 U.S. 420, 446 (1960); State *ex rel.* R. R. & Warehouse Comm'n v. Mees, 235 Minn. 42, 52, 49 N.W.2d 386, 392 (1951) (“[A]n ‘investigation’ may be utilized in furtherance of nonjudicial functions . . .”).

³ *But see* Kohn v. State by Humphrey, 336 N.W. 2d 292, 286 (Minn. 1983) (holding that an investigation cannot compel a corporate agent to give testimony that may be self-incriminatory under the Fifth Amendment).

⁴ Humenansky v. Minn. Bd. of Medical Exam'rs, 525 N.W.2d 559, 562-563 (Minn. Ct. App. 1994) (stating that “the board may direct the physician to submit to a mental or physical examination” as a condition of licensure).

⁵ *See, e.g.*, MINN. STAT. §§ 80A.61 (securities investigations), 82.58, subd. 2 (regarding real estate broker licensure), 144A.03, subd. 1 (reporting requirements that are preconditions to nursing home licensure), 332.33, subd. 4 (collection agencies) (2014).

⁶ *See e.g.*, MINN. STAT. § 214.10 (permitting the attorney general to investigate various occupational licensees once appropriate state licensing board has received communication alleging violation of law and before initiation of formal disciplinary action against licensee; §332.40 (collection agencies)

⁷ *See, e.g.*, MINN. STAT. §§ 501B.38,.40 (2014) (requiring a charitable trust to make periodic filings with the attorney general for the purpose of enabling the attorney general to monitor compliance with relevant laws by charitable trust). Other statutes authorizing supervision of business entities include: MINN. STAT. §§ 46.04,.05 (banking), 60A.031 (insurance), 60K.43 (insurance agents), 62D.14 (health maintenance organizations), 80A.79 (securities), 82.72 (real estate brokers), 332.40 (collection agencies) (2014).

⁸ *See, e.g.*, MINN. STAT. § 144.693 (2014) (requiring insurers for hospitals, out-patient surgery centers, and health maintenance organizations to periodically submit to the commissioner of health information regarding malpractice claims that have been resolved; based on the data submitted, the commissioner of health is to make annual report to legislature regarding malpractice claims as well as any recommendations to reduce their incidence or size).

⁹ United States v. Morton Salt Co., 338 U.S. 632, 652 (1950).

brought.¹⁰ However, investigations by agencies may only be conducted when the agency has the statutory authority to do so.¹¹

¹⁰ Kohn v. State, 336 N.W.2d 292, 296 (Minn. 1983).

¹¹ State v. Lloyd A. Fry Roofing Co., 310 Minn. 528, 534, 246 N.W.2d 696, 700 (1976) (concluding that the Minnesota Pollution Control Agency may not compel private business to conduct emission tests at its own expense absent specific statutory authority).