

8.3 REQUIREMENT OF A CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT

The discovery rule, Minnesota Rules part 1400.6700, applies only to a contested case proceeding, as defined by statute, that is required to be heard by the OAH.¹ The OAH also conducts hearings for local units of government that do not arise under the Minnesota APA.² Since such hearings are not contested case proceedings under the Minnesota APA, the rules of the OAH, including the rule authorizing prehearing discovery, have no literal application. These hearings are governed procedurally by the statute, ordinance, or rule providing for the hearing and any rules adopted by the local governmental unit regarding the conduct of the hearing. In the absence of a provision in statute or rule for prehearing discovery, none may be provided by or required of an agency.³ In *Bahr v. City of Litchfield*, the court held that the APA is inapplicable to the actions of a local police civil service commission because it is not an agency with “statewide jurisdiction”⁴. The lack of pretrial discovery in such hearings has been held not to deny due process.⁵

Minnesota Rules part 1400.6700 does not apply to discovery in a rulemaking proceeding. Since the statute relied on for authority to adopt a prehearing discovery rule applies to hearings generally without differentiating between contested case and rulemaking proceedings, it would authorize adoption of a discovery rule for rulemaking.⁶ Other states have explicitly authorized discovery in rulemaking proceedings.⁷ To date, Minnesota has not.

¹ MINN. STAT. § 14.02, subd. 3 (2014), excludes from the definition of a contested case the hearings held by the department of corrections relating to the discipline or transfer of inmates or inmate management. Minnesota Statutes, section 14.03, subdivision 2 (2014), exempts specified hearings from the contested case procedures of the Minnesota APA. Finally, by specific statutory exemption, a number of hearings conducted by state agencies are, likewise, exempt from the Minnesota APA. For a more complete discussion of the statutory definition of a contested case, see chapter 4 § 1.

² MINN. STAT. § 14.55 (2014).

³ See *Waller v. Powers Dep't Store*, 343 N.W.2d 655, 657 (Minn. 1984); *Pa. Human Relations Comm'n v. St. Joe Minerals Corp. Zinc Smelting Div.*, 24 Pa. Commw. 455, 459-60, 357 A.2d 233, 236 (1976), *aff'd*, 476 Pa. 302, 382 A.2d 731 (1978).

⁴ 420 N.W.2d 604, 606 (Minn. 1988); see MINN. STAT. § 14.02, subd. 2 (2014).

⁵ For a discussion of the availability of discovery as a requirement of due process, see § 8.6.

⁶ See MINN. STAT. § 14.51 (2014).

⁷ See, e.g., COLO. REV. STAT. ANN. § 24-4-103(13) (West 2013).