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# Public Accountability

## CHAPTER 2

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Over the last several years, there has been considerable controversy surrounding the Minnesota State High School League's status. As noted in Chapter 1, Minnesota law defines the League as "a nonprofit corporation that is a voluntary association of high schools."<sup>1</sup> However, because most of its member schools are publicly funded and because the League has a virtual monopoly over high school athletics and fine arts competition, some people think the League should operate more like a public entity or at least be subject to close government oversight. The Legislature has responded to this concern by requiring the League to follow some, but not all, of the laws that apply to state agencies. In this chapter, we ask:

- **What state laws govern the League's operation, and how do they compare with laws governing state agencies?**
- **How does the League ensure compliance with applicable state laws?**
- **Do League policies and procedures ensure public accountability in areas where laws governing state agencies do not apply?**

To answer these questions, we compared laws for state agencies with laws affecting the League. We considered how laws apply to both the League's board of directors and its staff. We reviewed laws about governing boards, compensation and expense reimbursement for board members and staff, hiring of staff, ethical practices, open meetings, data practices, rulemaking and contested cases, procurement and contracting, budgeting and accounting, auditing, and tort claims. We also tried to assess how the League has carried out its responsibilities in each of these areas. We examined League policy manuals and handbooks, reviewed minutes of League meetings, and talked with members of the League's board and staff. We also attended meetings of the League's board of directors and the Representative Assembly. Because the State Auditor is responsible for annual financial audits of the League, we also met with the State Auditor's staff to discuss the results of their audits.

Overall, we found that state law sometimes requires the League to conform with requirements of state boards or agencies, but in other instances the League may establish its own policies as a nonprofit corporation. With some minor exceptions, we observed that the League was following applicable state laws, and that the League had policies in place to ensure a satisfactory degree of public

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<sup>1</sup> *Minn. Stat.* §128C.01, subd. 1.

accountability. However, ambiguity about the League's status has contributed to controversy and misunderstanding about the League.

## STATUS OF THE HIGH SCHOOL LEAGUE

The Minnesota State High School League is not a state agency. However, some people argue that the League should be considered a governmental or public entity, citing that:

- Public schools account for most of the League's membership,
- Most of the people who are in governance positions are either employed by public schools or are elected school board members,
- Schools delegate their authority to operate extracurricular activities to the League,
- The League's activities are governmental in nature, authoritatively regulating certain student activities, and
- Students wishing to participate in interscholastic athletics and fine arts competitions must, for all practical purposes, abide by League rules.

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**Although the League is not a state agency, it regulates student behavior statewide.**

The League maintains that it is not a governmental or public entity because it was not created by the Legislature or local government, but rather by a group of incorporators who later permitted high schools to join their association.<sup>2</sup> The League points out that schools' participation is voluntary and that schools are free to choose in which activities they participate. In addition, the League argues that most of its funds, derived from the sales of tournament tickets and broadcast rights, are not general tax revenues.

The question of whether the League is a governmental or public entity is immaterial in many respects, since legal requirements often vary among these entities. For example, state agencies are subject to more state oversight than local governmental entities. Recognizing that, we examined Minnesota statutes to determine whether the League is subject to laws that are designed to ensure state agency accountability to the Legislature and the public. We found that the League is subject to the following laws that govern state agencies: appointing and compensating governing board members, reimbursing board members' and staff expenses, holding open meetings, and complying with the Data Practices Act. In addition, the League is subject to hiring, ethical practices, auditing, budgeting and accounting, and rulemaking laws that are different from those that govern state agencies. Finally, it is not subject to state procurement or contracting laws or statutory limits on tort claims.

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<sup>2</sup> Letter from Roger Aronson to State Auditor, Judith Dutcher, December 16, 1996.

## LEAGUE ACTIVITIES SUBJECT TO LAWS FOR STATE AGENCIES

Figure 2.1 shows areas where the League is subject to the same laws as state agencies. We discuss what state laws require, how they apply to the League, and how the League has carried out the mandates.

### Governance

#### Laws that Govern State Agencies

The Governor usually appoints state agency board members and commissioners. Board vacancies are published in the *State Register*, and the Secretary of State accepts nominations through an open appointment process.<sup>3</sup> Senate confirmation is required for some important state boards. State law also specifies procedures for compensating board members, removing members from office, and filling board vacancies.<sup>4</sup> According to statute, membership terms of appointed board members of state agencies are generally four years and end on the first Monday in January. Board members can be removed for cause or for missing three consecutive meetings.

### Figure 2.1: Laws Governing the Minnesota State High School League and State Agencies

#### Governing Boards

Board vacancies published in the *State Register* and nominations process set.  
The Governor appoints most board members, but special provisions may apply.  
Board member terms are generally four years, beginning in January.

#### Expense Reimbursement

Per diem reimbursement limit of \$55.  
Expense reimbursement for board members and staff must be consistent with the commissioner's plan for state employees.

#### Open Meetings

Meetings are open to the public.  
Advance notices are required.  
Votes and actions must be recorded.

#### Data Practices

Data are generally public, with some exceptions.  
Agencies must establish procedures for filling requests for data.

<sup>3</sup> *Minn. Stat.* §15.0597.

<sup>4</sup> *Minn. Stat.* §15.0575.

## Laws and Policies that Govern the League

*Minn. Stat.* §128C.01 requires the League to have a 20-member governing board. The Governor appoints four members according to *Minn. Stat.* §15.0597. Each of the Governor's appointees must be a parent, and at least one must be American Indian, Asian, Black, or Hispanic. The Minnesota Association of Secondary School Principals appoints two board members. Statutes require that the remaining 14 members be selected according to the League's bylaws.<sup>5</sup> Of the 14 board members selected under League bylaws, 8 must be elected as school representatives, 4 must be elected as activity representatives, and 2 must be appointed by the Minnesota State School Boards Association.

Minnesota law also says that the terms, compensation, removal of members, and the filling of membership vacancies are governed by *Minn. Stat.* §15.0575.<sup>6</sup> Although it appears to us that this provision refers to all board members, the League maintains that it only applies to the four members appointed by the Governor.<sup>7</sup> This ambiguity affects the terms and removal of board members who were elected according to League bylaws and the filling of vacancies of those members. In any event, four board members are appointed by direct application of statute and serve under the terms and conditions specified above.

Unless League bylaws specify otherwise, directors of nonprofit corporations are subject to state laws on nonprofit corporations.<sup>8</sup> For example, unless the League were to adopt bylaws that specify otherwise, board meetings must be held at least once a year.<sup>9</sup>

The League constitution incorporates the statutory requirement that the board must include four members of the public appointed by the Governor.<sup>10</sup> However, according to the League's *Policy Manual and Guidelines*, board policy law governs gubernatorial appointments: "Although the Constitution does not require or provide for additional members, the schools have *allowed* the Governor to appoint four (4) members." (italics added)<sup>11</sup> The constitution also states that 2 board members are selected by the Minnesota Association of Secondary School Principals, and 14 members are selected according to League bylaws. Elections for board members are held between March 1 and May 1. A board member's term of office begins on August 1 following the election, except for directors appointed by the Governor.<sup>12</sup>

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**The League's board of directors consists of 16 representatives from various high school constituencies, plus 4 "public" members appointed by the Governor.**

<sup>5</sup> *Minn. Stat.* §128C.01, subd. 4 (a).

<sup>6</sup> *Minn. Stat.* §128C.01, subd. 4 (b).

<sup>7</sup> After its most recent financial audit, the State Auditor requested an Attorney General's opinion on several issues, including this one. Letter from Judith H. Dutcher, State Auditor, to Hubert H. Humphrey III, Attorney General, February 13, 1998.

<sup>8</sup> *Minn. Stat.* §317A.111, subd. 3

<sup>9</sup> *Minn. Stat.* §317A.231.

<sup>10</sup> *Constitution of the Minnesota State High School League*, §211.01, as reported in Minnesota State High School League, *1997-98 Official Handbook* (Brooklyn Center, MN, 1998), 99-106. Proposed policy changes that were presented at the April board meeting would eliminate this section from the policy manual.

<sup>11</sup> Minnesota State High School League, *Policy Manual and Guidelines* (Brooklyn Center, MN, August 1997), 9.

<sup>12</sup> High School League, *Constitution*, §211.01.

According to the League's executive director, the two board members appointed by the school boards association usually serve four-year terms like the rest of the directors. An exception was made, however, for the current president of the League's board. Because she was elected to the board presidency near the end of her four-year term, her term was extended to five years. The next appointee from the school boards will serve a three-year term to compensate for the extension.

Our analysis of the terms of appointment of the League's board of directors leads us to recommend that:

- **The Legislature should consider requiring that all of the League's board members begin their terms on August 1.**

The terms of the directors appointed by the Governor and the terms of other board members are not consistent. This causes a problem for members who are newly appointed by the Governor because they miss the orientation sessions for new board members and other important board meetings in late summer and fall of the year just prior to their appointment. The League operates in conformity with the school year, not the calendar year.

## Expense Reimbursement

### Laws that Govern State Agencies

According to Minnesota law, board members of state agencies generally receive per diem payments of \$55 when authorized by the board, plus expenses in the same manner and amount as authorized by the commissioner's plan adopted under *Minn. Stat.* §43A.18, subd 2.<sup>13</sup> Child care expenses may also be reimbursed. Members who are full-time employees of the state or a political subdivision may not receive the per diem reimbursement, but they cannot be deprived of their normal salary for that time. The League can reimburse their expenses if they are not compensated for expenses by another agency. Child care expenses can only be reimbursed to a government employee for board work outside normal working hours. Expense reimbursements for state employees are subject to labor contracts or similar employee plans.

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**The League is subject to state laws on expense reimbursement.**

### Laws and Policies that Govern the League

The four board members of the Minnesota State High School League that are appointed by the Governor are clearly limited to the reimbursement specified in statute, and it appears to us that elected board members also have the same limits under the law.<sup>14</sup> League employee expense reimbursements are also limited to those authorized under the commissioner's plan for state employees.<sup>15</sup> Unlike state agencies, the League may not have credit cards, but, like state agencies, the

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<sup>13</sup> *Minn. Stat.* §15.0575, subd. 3.

<sup>14</sup> *Minn. Stat.* §128C.01, subd 4 (b).

<sup>15</sup> *Minn. Stat.* §128C.10, subd. 1.

League's executive director may have an expense account, subject to the same guidelines that pertain to the Commissioner of Children, Families & Learning.<sup>16</sup> In addition, advisory committee members can be reimbursed for expenses, and the board must have a policy on the use of automobiles and annually show its cost-effectiveness.<sup>17</sup>

We found that:

- **The League's per diem and expense reimbursement policies and practices for board members and staff are consistent with state law.**

The League's *Policy Manual and Guidelines* states that expense reimbursement for directors, except those precluded by law, must follow the statutory requirements cited above.<sup>18</sup> The League's policies prohibit the purchase of automobiles for employees, prohibit credit cards, permit an executive director expense account, and require that reimbursement rates for employees follow the commissioner's plan.<sup>19</sup>

According to recent audits by the State Auditor's Office, the League complies with statutory provisions, giving per diem payments only to non-governmental appointees and school board members who serve on the League's board and reimbursing expenses at the approved rates.

## Open Meetings

### Laws that Govern State Agencies

Minnesota's Open Meeting Act requires that, with certain exceptions, all meetings of state and local government agencies, including boards, commissions, school districts, committees, and subcommittees, must be open to the public.<sup>20</sup> In addition, all regularly scheduled meetings must be posted in advance, and meeting notices must be sent to all news media that request notification. All votes and actions taken must be recorded in a journal that is open to the public. A person intentionally violating the Open Meeting Act is subject to a \$300 civil penalty, and anyone who violates the law on three separate occasions may be removed from office.

### Laws and Policies that Govern the League

The League has been subject to the Open Meeting Act since 1989.<sup>21</sup> According to *Minn. Stat.* §128C.22, the League is a state agency for the purposes of open meetings and is required to transact business in meetings that are open to the public.

<sup>16</sup> *Minn. Stat.* §128C.10, subds. 2-3.

<sup>17</sup> *Minn. Stat.* §128C.10, subds. 4-5.

<sup>18</sup> High School League, *Policy Manual and Guidelines*, 13.

<sup>19</sup> High School League, *Policy Manual and Guidelines*, 24c, 57.

<sup>20</sup> *Minn. Stat.* §471.705.

<sup>21</sup> *Minn. Laws* (1989), ch. 220, sec. 4.

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**The League must comply with the state's Open Meeting Act.**

According to the League's *Policy Manual and Guidelines*, board meetings are subject to the Open Meeting Act.<sup>22</sup> As far as we could determine,

- **The League complies with the state's Open Meeting Act.**

We found no evidence that meetings are closed to the public. Meeting notices are posted on the bulletin board at the League's offices and on its Internet web site. Minutes of board and committee meetings are kept, although the details of committee meetings are sometimes sketchy and the minutes are not always typed.<sup>23</sup>

## Data Practices

### Laws that Govern State Agencies

All government data are classified as public data and are available for public inspection and copying, unless federal or state law or temporary classification of data specifies otherwise.<sup>24</sup> There are several different classifications of nonpublic data. For example, data classified as "private data on individuals" are not available to the public but are accessible to the subject of the data. State agencies must inform an individual being asked for information how it will be used, the consequences of providing or not providing it, and who will have access to it (commonly known as the "Tennessee Warning").

Agencies must establish procedures for filling all requests for data and for handling appeals by individuals questioning the accuracy of data. These appeals must be handled according to provisions of the state's Administrative Procedure Act.

State agencies must document the type of data that they maintain. They must also document the rights of data subjects and procedures for accessing data on individuals. Agencies must withhold data about minors from their parents upon the minors' request and if the agency determines that withholding the data would be in the minors' best interests.

### Laws and Policies that Govern the League

In 1988, the Legislature passed a law specifying that the Minnesota State High School League is subject to the Data Practices Act.<sup>25</sup> Although specific information on eligibility determinations is classified as private data on individuals, the League is required to make available to the public summary data

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**Data on League activities are generally open to the public.**

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22 High School League, *Policy Manual and Guidelines*, 30.

23 The State Auditor's Office recently requested an Attorney General's opinion on whether League subcommittees have to keep minutes of their meetings under the Open Meeting Act. Letter from Judith H. Dutcher, State Auditor, to Hubert H. Humphrey III, Attorney General, February 13, 1998.

24 *Minn. Stat.* §§13.03-13.05.

25 *Minn. Laws* (1988), ch. 718, art. 7, sec. 49.

on League eligibility determinations, with identifying information removed.<sup>26</sup> Information and documents created during the process of carrying out League business, such as minutes from meetings, annual audits, and annual reports, are public data, as are data on League employees.<sup>27</sup>

The League's policy manual says that the collection, creation, receipt, maintenance, dissemination, or use of information by the League is subject to the provisions of the Data Practices Act.<sup>28</sup> Procedures that the board adopted in 1996 also indicate that data disputes that the League does not settle to the individual's satisfaction may go through the administrative procedure process.<sup>29</sup> The League's procedures also require that outside agencies with which the League contracts must maintain data as they are maintained by the League.

As far as we could determine:

- **The League complies with the Data Practices Act and has adequate procedures to maintain data privacy.**

Our review was limited to reading the League's data practices procedure manual and noting the League's compliance with the act in response to data that we requested (e.g., providing it without hesitation and blacking out individuals' names). The document explaining the Data Practices Act and its application to League business is clear and well-written.

## LEAGUE ACTIVITIES SUBJECT TO OTHER STATE LAWS

In the previous section, we discussed areas where the League is required to conform to the same laws as state boards or agencies. Next we review areas where the League is not treated as a state entity, but may have other legal mandates, as shown in Figure 2.2.

### Staff Hiring and Salaries

#### Laws that Govern State Agencies

State agency heads are appointed to the unclassified service by the Governor and are subject to Senate confirmation. For the purposes of determining salaries, agency heads are categorized into subgroups, with each subgroup having a specified salary range. In general, salaries for agency heads are capped at 95 percent of the Governor's salary. Civil service requirements govern hiring in the

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<sup>26</sup> *Minn. Stat.* §128C.17.

<sup>27</sup> *Minn. Stat.* §13.43, subd. 2.

<sup>28</sup> High School League, *Policy Manual and Guidelines*, 53.

<sup>29</sup> Minnesota State High School League, *Data Practices Procedures* (Brooklyn Center, MN, December 10, 1996).

## Figure 2.2: Laws Governing the Minnesota State High School League that Differ from Laws Governing State Agencies

### Laws Governing State Agencies

### Laws Governing the League

#### Hiring and Salaries

The Governor appoints and the Senate confirms agency heads.

The League must advertise job openings in newspapers of general circulation.

Civil service requirements govern hiring in the classified service; collective bargaining agreements may apply.

Salaries are capped at 95 percent of the Governor's salary.

#### Ethical Practices

Members of some boards and commissions, and commissioners, deputy commissioners, and assistant commissioners of state agencies must file conflict of interest statements and economic interest statements.

The League is considered a metropolitan governmental unit and a political subdivision for the purpose of the Ethics in Government Act. Whether board members and executive staff have to file statements is unclear.

#### Auditing

The Legislative Auditor is responsible for auditing state agencies and determining the scope of these audits.

The State Auditor must:

- conduct annual financial and compliance audits of the League that cover specific items;
- reach agreement with the board regarding the scope of the audit; and
- audit the League's administrative regions.

#### Budgeting and Accounting

The Department of Finance oversees budget development and exerts accounting and expenditure controls on state agencies.

The League must prepare and submit its budget to the Department of Finance and the Legislature in the same manner and form as state agencies.

The Legislature appropriates funds to state agencies.

#### Rulemaking and Contested Case Hearings

The Administrative Procedure Act requires state agencies to:

The League must:

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| <ul style="list-style-type: none"> <li>• notify the public of proposed rules and print a copy in the <i>State Register</i>;</li> <li>• prepare a statement of need and reasonableness;</li> <li>• have all proposed rules evaluated for legality and need and reasonableness by an administrative law judge;</li> <li>• hold hearings on proposed rules if requested by 25 individuals; and</li> <li>• follow specific procedures when conducting contested case hearings.</li> </ul> | <ul style="list-style-type: none"> <li>• notify the public of proposed eligibility rules and policies;</li> <li>• hold hearings on amendments to eligibility rules if requested by 100 parents; and</li> <li>• at the hearing, show the need, reasonableness, and legality of the proposed rule, which will be evaluated by an independent hearing officer.</li> </ul> |
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classified service. A number of collective bargaining agreements apply to agency positions and they generally determine the salaries and benefits of state employees.

### **Laws and Policies that Govern the League**

The League is not subject to laws that govern how state agencies hire and compensate employees. However, state law requires the League to advertise job openings in newspapers of general circulation and to emphasize recruiting protected-group members.<sup>30</sup> The same law requires that the League have an affirmative action policy and be considered a political subdivision with respect to comparable worth requirements. Also, statutes require that the League submit a report on its compensation plan to the Legislative Commission on Employee Relations on July 1 of every odd-numbered year.<sup>31</sup>

The League constitution gives its board of directors the power to appoint an executive director for a term of three years and to determine the director's compensation.<sup>32</sup> The board may also appoint associate directors and determine their compensation. The board's *Policy Manual and Guidelines* further specifies that the executive director's three-year contract shall be renewed annually.<sup>33</sup> The *Policy Manual and Guidelines* also contains an affirmative action policy and a requirement that the League must submit annual reports on its compensation plan to the Legislative Commission on Employee Relations.<sup>34</sup>

Setting salaries for League staff has had a complicated history.<sup>35</sup> In the past ten years, several studies of the League's compensation policies have been conducted, most notably in 1989, 1991, and 1995. In response to the 1989 study by the Department of Employee Relations, the League adopted the same salary ranges for most of its employees as for state agency employees. This increased the salaries of several support staff. Later, for fiscal years 1994 and 1995, the League changed its compensation policy so that employee salaries were compared with similar positions in metropolitan school districts. For example, the director's salary was compared with that of a metropolitan area principal, and the associate directors' positions were deemed comparable to assistant principals in the metropolitan area.

In its 1995 study, the Department of Employee Relations observed that the League's compensation policies and practices were "unstable" and recommended that the League develop and monitor a compensation policy for staff.<sup>36</sup> The League revised its compensation policy in 1997 when it hired a consultant to set

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**League salaries  
are not  
governed by  
state law.**

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<sup>30</sup> *Minn. Stat.* §128C.15.

<sup>31</sup> *Minn. Stat.* §43A.18, subd. 4a.

<sup>32</sup> High School League, *Constitution*, §211.02.

<sup>33</sup> High School League, *Policy Manual and Guidelines*, 4. The board of directors is currently reviewing this policy.

<sup>34</sup> *Ibid.*, 50, 56-57.

<sup>35</sup> Minnesota Department of Employee Relations, *Minnesota State High School League Study of Compensation Policies* (St. Paul, 1995).

<sup>36</sup> *Ibid.*, 5.

up a comprehensive salary plan for League employees that would conform with the state's pay equity law.<sup>37</sup> The new plan compares the League's executive staff with like staff in similar organizations in other "Big-10" states, and compares its middle management and administrative employees with employees in schools, counties, and the Minnesota School Boards Association, among other public entities. The League's salary committee recommended that this latest plan remain in effect for six years.

Using different comparison groups to help set salaries has resulted in some significant salary adjustments through the years. We compared 1997 League salaries with the salary ranges for state job classifications that the Department of Employee Relations judged comparable in 1989. As shown in Table 2.1:

**Table 2.1: League Salaries Compared with State of Minnesota Classifications, FY1997**

<u>League Staffing</u>	<u>Average League Salaries<sup>a</sup></u>	<u>Comparable State Job Classifications<sup>b</sup></u>	<u>State Salary Ranges<sup>c</sup></u>
Executive Staff (5)	\$76,674		
Executive director (1)		Executive director of PERA or TRA <sup>d</sup>	\$50,000-67,500
Associate director (4)		Education specialist 4	51,365-72,934
Middle Management (3)	49,663		
Director of information (1)		Information and marketing coordinator <sup>e</sup>	36,469-51,783
Director of finance <sup>f</sup> (1)		Accounting officer	30,610-44,600
Office manager (1)		Office services supv. 3	29,483-43,952
Administrative Staff (9)	29,495		
Secretary - exec. dir. (1)		Executive 1	25,912-34,932
Secretary - assoc. dir. (4)		Clerk typist 4	23,323-31,404
Secretary - info. dir. (1)		Clerk typist 3	22,321-29,566
Ticket secretary (1)		Clerk 3	22,321-29,566
Mailroom secretary (1)		Clerk 3	22,321-29,566
Receptionist (1)		Clerk 2	20,796-27,290

<sup>a</sup>Minnesota State High School League for year ending July 31, 1997.

<sup>b</sup>Minnesota Department of Employee Relations, *Study of Minnesota State High School League Staff Positions*(St. Paul, January 1989). Job duties of League staff may have changed since 1989, making salary comparisons with these state job classes less valid.

<sup>c</sup>The salary range for the executive directors of the Teachers Retirement Association (TRA) and the Public Employees Retirement Association (PERA) is from *Minn. Stat.* §15A.081. Other salaries are from Minnesota Department of Employee Relations, *Salary Plan for July 1, 1996 - June 30, 1997*(St. Paul, 1997). The salary for the information and marketing coordinator is calculated based on the salary of the education specialist 4 position. See footnote "e" for further explanation.

<sup>d</sup>As of 1997, the salary range for the executive directors of TRA and PERA had not increased since 1987. In 1997, the Legislature changed the salary ceiling for the salary group in which these two positions are located to 75 percent of the Governor's salary, which comes to \$85,550.

<sup>e</sup>The information and marketing coordinator position no longer exists. In 1989, the salary range for this position was about 71 percent of the range of the education specialist 4 position. The salary range reflected for the information and marketing coordinator is 71 percent of the education specialist 4 position.

<sup>f</sup>In 1989, the job title for this position was "accountant." The table reflects the salary range for an accounting officer senior.

<sup>37</sup> John Barnett (board member), to Members of the Board, memo dated June 5, 1997, "Update on Negotiations with League Staff."

- **Except for the executive director's position, salaries for the League's management staff were slightly higher than the salary ranges established by the Department of Employee Relations for comparable state agency positions during 1997, while administrative salaries were generally within the ranges.**

For example, the Department of Employee Relations indicated that the League's associate director positions were similar to education specialist 4 positions. During 1997, the average associate director salary was \$74,223 compared with a salary range of \$51,365 to \$72,934 for education specialist 4 positions. Salaries for the League's administrative staff were generally more than \$1,000 below the maximum for comparable state positions.

The board of directors recently adopted the current compensation plan for the next six years, and this may signal the beginning of more stability in the League's compensation practices. This may change the perceptions among some individuals that the League changes salary levels without clear justification.

## Ethical Practices

### Laws that Govern State Agencies

The state's Ethics in Government Act is designed to ensure that public officials do not use their positions for personal gain. The law defines a public official to include anyone who is a constitutional officer or chief administrative deputy; a member, chief administrative officer, or deputy of a state board or commission with power to adopt, amend, or repeal rules or rule on contested cases; or a commissioner, deputy commissioner, or assistant commissioner of any state department.<sup>38</sup> Under state law, public officials may not accept gifts from lobbyists and must file conflict of interest statements with their superior and the Campaign Finance and Public Disclosure Board, should a conflict arise.<sup>39</sup> Public officials must also file economic interest statements.

### Laws and Policies that Govern the League

The Ethics in Government Act applies to the League as a local unit of government. In statute, the League is classified as both a metropolitan governmental unit and a political subdivision.<sup>40</sup> It is not clear whether the League is a lobbyist principal or whether its board members and executive staff are local officials, and therefore whether laws applying to lobbyist principals and local officials apply to the League. The Ethics in Government Act requires that lobbyist principals file annual reports with the Campaign Finance and Public Disclosure Board that indicate the general range of their lobbying expenditures. Lobbyist principals are individuals or associations that spend at least \$500 a year

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<sup>38</sup> *Minn. Stat.* §§10A.01-10A.07.

<sup>39</sup> The Campaign Finance and Public Disclosure Board was formerly known as the Ethical Practices Board.

<sup>40</sup> *Minn. Stat.* §10A.01, subds. 26-27.

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**It is not clear how the Ethics in Government Act applies to the League.**

lobbying or compensating a lobbyist or spend at least \$50,000 a year in other efforts to influence legislation or administrative action.<sup>41</sup>

The Campaign Finance and Public Disclosure Board recently issued an advisory opinion that suggests that an organization cannot be both “an individual or association,” which is required by the definition of lobbyist principal, and a political subdivision.<sup>42</sup> The reasoning of the board’s opinion suggests that, since the statute defines the League as a political subdivision, it cannot also be an individual or association and, thus, cannot be a lobbyist principal.

Regardless of whether the League is required to file certain reports or is prohibited from giving or receiving gifts, the League’s lobbyist, like all lobbyists, must register and file a report with the Campaign Finance and Public Disclosure Board.<sup>43</sup> What the report must include is, again, somewhat unclear. If the League is not “a person or association,” the information that the League’s lobbyist must file could be minimal.

Finally, local officials must disclose potential conflicts of interest and file statements of economic interest with their metropolitan governmental unit. A local official of a metropolitan governmental unit cannot accept a gift from a lobbyist or lobbyist principal. By definition, a local official must have some influence over the expenditure of public funds, which the League argues it does not. If League board members and staff are not local officials, they may not need to file conflict of interest and economic interest statements.

League policy requires that board members file an economic interest statement with the state each year. The League’s code of ethics includes the wording: “I will . . . avoid being placed in a position of conflict of interest and refrain from using my Board position for personal or partisan gain.”<sup>44</sup> Furthermore, League policy states that, each year, all members of the board and all employees of the League must sign the conflict of interest policy which states, “any representative of the League who has the authority to sell, purchase or lease goods and/or services shall not have a personal, financial, or professional interest in, or gain, or benefit from the sale, purchase or lease of any goods or services.”<sup>45</sup>

We found that:

- **The League has complied with requirements of the Ethics in Government Act.**

Board members and executive staff have filed economic interest and conflict of interest statements with the League board. The League has filed a lobbyist principal report with the Campaign Finance and Public Disclosure Board and the League’s lobbyist has filed the required lobbyist report with the Campaign Finance and Public Disclosure Board.

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<sup>41</sup> *Minn. Stat.* §10A.01-10A.04, subd. 28.

<sup>42</sup> Campaign Finance and Public Disclosure Board, Opinion # 224, January 26, 1996.

<sup>43</sup> *Minn. Stat.* §10A.04, subd. 1.

<sup>44</sup> High School League, *Policy Manual and Guidelines*, 24.

<sup>45</sup> *Ibid.*, 24c, 50.

## Auditing

### Laws that Govern State Agencies

State agencies' financial operations, including compliance with finance-related legal requirements, are audited by the Legislative Auditor.<sup>46</sup> Statutes direct the Legislative Auditor to audit all state departments, boards, commissions, and other state agencies at least once a year, if time and personnel permit, and more often if necessary.

The Legislative Auditor audits some components of state government each year in its Statewide Audit. This audit focuses on the state's financial statements in about 25 agencies and results in an opinion on the financial statements and other reports on internal control and legal compliance. The Legislative Auditor also audits some state agencies, commissions, and boards that are not covered in the Statewide Audit. Because of limited staff resources, each year the auditor uses a risk assessment to determine which agency audits to conduct. The risk assessment considers various criteria including the amount of financial activity, time since the last audit, significance of prior audit findings, and changes in the control environment. According to Legislative Auditor staff, state agencies or boards the size of the League are audited approximately once every three years.

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**State law directs the State Auditor to conduct annual audits of the League.**

### Laws and Policies that Govern the League

Minnesota statutes treat the Minnesota State High School League as a unit of local government and require that the State Auditor, not the Legislative Auditor, conduct an annual financial and compliance audit of its practices.<sup>47</sup> However, the State Auditor does not have as much latitude in designing the scope of its League audit as it does when conducting audits of other entities. State law requires that the State Auditor examine the aggregate totals of all revenues and expenditures for the current year and three previous years, showing the percentage and dollar change from the year before each of the four years.<sup>48</sup> The law requires that the following items be audited: student activities, membership dues, publications, registration of officials and judges, interest earned, automobile sales, and revenue from other sources such as medals, refunds, and reimbursements. Expenditures to be audited annually include items for the staff, board of directors, student activities, capital outlay, office and other supplies, and membership services. Also, extending the scope of the audit to include items not specified in statute must be agreed upon by the League's board of directors and the State Auditor.

The board's policy calls for the audit-finance committee to meet at least annually with the League's auditor to review the general financial condition and status of

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<sup>46</sup> *Minn. Stat.* §3.971, subd. 1.

<sup>47</sup> *Minn. Stat.* §6 gives the State Auditor responsibility for conducting financial audits of cities, counties, towns, school districts, and other governmental subdivisions. In a recent expansion of duties, the State Auditor must also audit the League's regional offices.

<sup>48</sup> *Minn. Stat.* §128C.12.

the League.<sup>49</sup> Board policy also requires the League to develop a uniform audit document for the administrative regions and to set a standard date for completing them.<sup>50</sup>

We reviewed the State Auditor's audits of the League from 1988 through 1997. We noted that:

- **Since the early 1990s, the State Auditor has found no major problems with the League's financial practices.**

For example, in its 1997 audit of the League, the State Auditor's Office said that incurring expenses for refreshments in hospitality rooms at state tournaments did not serve a public purpose, and recommended that the League refrain from such expenditures.<sup>51</sup> We met with the staff of the State Auditor who told us that League audits were done in compliance with the law and with the full cooperation of the League.

As discussed in Chapter 1, over the last ten years the Legislature has passed laws to address the League's financial problems of the late 1980s. Consequently, Minnesota statutes are rather prescriptive in delineating what the State Auditor must examine when auditing the League. However, we think that:

- **The Legislature should consider giving the State Auditor's Office the same amount of flexibility in determining how to audit the League as it now has with local government entities.**

Because the State Auditor has documented only minor financial problems over the last few years, it may be appropriate for the Legislature to give the State Auditor's Office latitude to choose how best to audit the League. Similarly, although staff from both the State Auditor's Office and the League told us that state law requiring that all parties agree to the scope of its annual audit did not affect how the latest audit was done, we believe that such language compromises the independence of the State Auditor's Office and should be removed.

## Budgeting and Accounting

### Laws that Govern State Agencies

The Governor's Office and the Department of Finance review and control state agency budget requests to the Legislature. After the Legislature appropriates money, agencies are subject to the Department of Finance's accounting and expenditure controls.<sup>52</sup> The law also sets standards for establishing fees for state agencies, which must be approved by the Commissioner of Finance.

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<sup>49</sup> High School League, *Policy Manual and Guidelines*, 16.

<sup>50</sup> *Ibid.*, 31.

<sup>51</sup> Office of the State Auditor, *Minnesota State High School League, Brooklyn Center, Minnesota, for the Year Ended July 31, 1997* (St. Paul, 1997), 19.

<sup>52</sup> *Minn. Stat.* §16A.055.

Agencies must prepare and submit their budgets to the Department of Finance and the Legislature in the prescribed form by October 15 of each even-numbered year. The budget format must show expenditures for the two most recent fiscal years and estimates for the current fiscal year and each year of the upcoming biennium. Estimated expenditures must be classified by fund and type and may be subclassified by program and activity. Revenue estimates must show how they were made and the factors used, and be classified by programs, funds, and activities.<sup>53</sup> Major state agencies must submit performance information to complement budget requests.<sup>54</sup>

### Laws and Policies that Govern the League

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## The League is not subject to most state budgeting and accounting laws.

Effective fiscal year 1999, the League must submit its budget to the Commissioner of Finance and the Legislature in the same manner as state agencies.<sup>55</sup> The League is subject to the Commissioner of Finance's rules and instructions regarding budget preparation, but the Department of Finance does not have control over the League's budget or how it spends its money. In addition, the Legislature does not directly appropriate any funds to the League.

Currently, the League's director of finance prepares budget worksheets for the executive director and associate directors' recommendations, showing revenues and expenditures for the three previous years when possible.<sup>56</sup> The finance committee of the board of directors reviews proposed changes and presents a preliminary budget to the full board. After the board's recommendations, staff prepare a final budget to present to the finance committee and board for their approval. Final budget adoption occurs at the June meeting. Adoption of the budget authorizes expenditure of funds when the expenditures precede actual approval of payment by the board. During the course of the League's fiscal year, the finance committee monitors how the League is adhering to its approved budget.<sup>57</sup>

The League's first experience submitting its budget to Finance will be in Fall 1998. At this time, it is not clear exactly what will be required of the League. The Department of Finance expects to release its latest set of budget instructions for state agencies and the League early this summer.

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<sup>53</sup> *Minn. Stat.* §16A.10.

<sup>54</sup> *Minn. Stat.* §15.91.

<sup>55</sup> *Minn. Laws* (1Sp1997), ch. 4, art. 7, sec. 37.

<sup>56</sup> High School League, *Policy Manual and Guidelines*, 24.

<sup>57</sup> *Ibid.*, 15.

## Rulemaking and Contested Case Hearings

### Laws that Govern State Agencies

Most state agencies are empowered by statute to adopt rules that clarify, implement, or enforce particular statutes.<sup>58</sup> In adopting rules, agencies are generally required to follow the procedures contained in the Administrative Procedure Act (APA), as summarized earlier in Figure 2.2.<sup>59</sup> Rules adopted according to these provisions have the force and effect of law.<sup>60</sup> These provisions include procedures to provide for public notice and input into agency rules and to ensure that proposed rules are needed and reasonable, consistent with statutes, within the agency's rulemaking authority, and in the appropriate legal form.<sup>61</sup>

In addition to prescribing the rulemaking process, the APA sets forth the procedures that state agencies must follow in conducting contested case proceedings.<sup>62</sup> Contested case proceedings are required when an agency with administrative or regulatory authority renders a decision that an affected party thinks is unfair. The APA requires that all parties, after reasonable notice, have the opportunity to air their grievance before an administrative law judge from the Office of Administrative Hearings. Parties have the right to testify and present evidence, and testimony is subject to cross examination. A hearing record must be maintained and a transcript must be provided if requested. At the conclusion of the hearing, the administrative law judge must issue a report with conclusions and recommendations. Parties have ten days to file exceptions to the law judge's report, after which the agency issues a final decision. Final agency decisions may be appealed to the courts.

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**The League is exempt from the Administrative Procedure Act.**

### Laws and Policies that Govern the League

The League is exempt from the rulemaking and contested case requirements of the APA. However, a 1997 law requires the League to ensure public notice of all eligibility rules and policies and to provide for public hearings if requested by 100 or more parents or guardians of students.<sup>63</sup> The hearing must be conducted by an administrative law judge from the Office of Administrative Hearings, by a person

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<sup>58</sup> Specifically, a rule is defined as, "every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure." See *Minn. Stat.* §14.02, subd. 4.

<sup>59</sup> *Minn. Stat.* §14.

<sup>60</sup> *Minn. Stat.* §14.38, subd. 1. Rules exempt from the rulemaking requirements of the Administrative Procedure Act also have the force and effect of law if they follow the provisions of *Minn. Stat.* §14.386 or if the statute authorizing rulemaking specifies that *Minn. Stat.* §14.386 does not apply.

<sup>61</sup> While the Administrative Procedure Act is designed to provide public input and promote due process in agency rulemaking, it is not without problems. In our 1993 report on administrative rulemaking in Minnesota, we found that 81 percent of the rules that were adopted by state agencies were adopted without public hearings, and that the majority of the citizens that we surveyed said that they had insufficient input into the rulemaking process. Subsequently, the Legislature streamlined rulemaking procedures, provided for better public notice, and clarified ambiguities. See Office of the Legislative Auditor, *Administrative Rulemaking* (St. Paul, March 1993).

<sup>62</sup> *Minn. Stat.* §§14.57-14.62.

<sup>63</sup> *Minn. Laws* (1997), ch. 187, art. 4, sec. 6.

hired by the Office of Administrative Hearings, or by a person appointed by the Commissioner of Children, Families & Learning from a list maintained for that purpose. The law requires the person conducting the hearing to prepare a report evaluating the extent to which the League has shown that the proposed rule is needed and reasonable and the legality of the proposed rule. The law does not require the League to adopt the hearing officer's conclusions and recommendations.

Both the League's Representative Assembly and its board of directors adopt rules that regulate student participation in extracurricular activities--the assembly through its bylaws and the board through its policies that clarify and interpret bylaws. The League's authority to make rules for student eligibility in interscholastic activities was affirmed by the Minnesota Supreme Court in a 1970 decision, provided that the rules supported reasonable goals of education and were not "arbitrary or capricious."<sup>64</sup> We examined both rulemaking processes and found that:

- **Although the League adopts rules differently than state agencies, its rulemaking procedures generally promote public accountability.**

The League's principal rulemaking process is like a legislative process, with bylaws adopted by vote of a 90-member Representative Assembly. The League constitution requires that the Representative Assembly formulate bylaws for all activities in general and for each specific activity. Bylaws cover topics such as the addition of new activities, eligibility standards, season length, and the conduct of participants, coaches, and officials. Proposed amendments to the bylaws must be submitted to the League's executive director at least 30 days before a regularly scheduled meeting of the Representative Assembly. Amendments may be submitted by designated school representatives of five or more schools, any district or region committee, the board of directors, the officers of an activity association, or by action of the Representative Assembly.<sup>65</sup>

Unlike state agency rules, there is no requirement that the party submitting the proposed bylaw change include a statement of need and reasonableness. In practice, however, most proposed bylaw changes are accompanied by a brief statement explaining the rationale for the proposed change. The proposal cannot be passed until the next meeting of the assembly.

We reviewed the minutes from all Representative Assembly meetings between November 1993 and November 1997; we also attended the March 1998 meeting. We found that:

- **Most proposals to change League bylaws came from member schools.**

Between November 1993 and March 1998, 34 amendments to the League's bylaws were submitted. Eighteen of the proposals were submitted by five or more designated school representatives, nine were submitted by the board, four by activity associations, two by *ad hoc* committees created by the board, and one by

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**The League's rulemaking procedures allow for public input.**

<sup>64</sup> Brown v. Wells, 181 N.W. 2d 708 (1970).

<sup>65</sup> High School League, *Constitution*, §215.

a region committee.<sup>66</sup> Most of the proposed changes dealt with season dates, the number of games per season, summer coaching and camps, student eligibility, and adding or deleting League activities.

A quorum of three-fourths of the Representative Assembly must be present for a vote to be taken. Two-thirds of those voting must approve an amendment to the bylaws for it to be passed.<sup>67</sup> Between 1993 and 1998, 16 proposed bylaw changes (47 percent) were approved by the necessary two-thirds of the delegates, 14 were not approved, and 4 were withdrawn or tabled.

The League constitution gives the League's 20-member board of directors general management responsibilities, including the authority to interpret the League's bylaws.<sup>68</sup> The board does this by issuing policy statements that it publishes along with the bylaws in the League's handbooks. Board policy permits the board to modify the contest rules of an activity, but not change the intent of any bylaw approved by the Representative Assembly.<sup>69</sup> For example, Bylaw 205 limits the type and value of awards that students may receive for participating in League activities and specifies that the restrictions do not apply to non-League activities. The board's policy in this area states that accepting an award for a sport not conducted by the League, such as bowling, boxing, or rodeo, would not make a student ineligible for League activities.<sup>70</sup>

We found that:

- **The public has less time and fewer opportunities to respond to proposed changes in League policies than it has to proposed changes in League bylaws.**

Policies that are adopted by the League's board of directors may be adopted within one month of initial proposal, allowing little time for public comment. The League's policy states that any policy considered for adoption by the board must appear on the discussion agenda at one of its regular meetings. After discussion at a board meeting, the proposed policy is placed on the board's action agenda for the next regularly scheduled board meeting and, if approved at that meeting, is effective the following day. Between meetings, individuals may submit written requests to appear before the board to discuss the issue. However, the board may bypass the discussion meeting and place an item directly on the action agenda if it notifies member schools and interested persons at least 30 days before final action.<sup>71</sup> In contrast, as we discussed earlier, bylaws cannot be adopted in fewer than four to eight months, depending at which meeting of the Representative Assembly they were proposed.

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<sup>66</sup> The two bylaw changes proposed by *ad hoc* committees were actually changes to several bylaws voted on by the Representative Assembly as a package.

<sup>67</sup> High School League, *Constitution*, §§213.00, 215.01.

<sup>68</sup> High School League, *Constitution*, §211.02.

<sup>69</sup> High School League, *Policy Manual and Guidelines*, 10.

<sup>70</sup> Minnesota State High School League, *1997-98 Official Handbook* (Brooklyn Center, MN, 1997), 105.

<sup>71</sup> *Ibid.*, 11.

As we discussed in Chapter 1, the League has made significant efforts in recent years to increase public input into its rulemaking procedures. It has created a student advisory committee, improved notification procedures, held informational meetings throughout the state, and adopted procedures for holding hearings on proposed changes to its bylaws. Yet, we noted that:

- **Despite the League's efforts, overall involvement by the public in rulemaking has been minimal.**

Although the League must hold a public hearing on its eligibility rules if requested by 100 or more parents or guardians of students, as of February 1998, the board had not received any requests. Also, attendance at area meetings and at the open forums held during the state wrestling and volleyball tournaments was sparse. Several area meetings had no public attendees, and none had more than six.

When we attended the March 1998 meeting of the Representative Assembly, we noted that several activity associations often had polled their membership to obtain their opinions on the various bylaw proposals under consideration prior to voting. However, there was no polling of student or parent organizations on their opinions about proposed bylaw changes. Given their lack of representation on the assembly and their poor attendance at League forums and area meetings, the League should continue to periodically survey students and parents to measure their support (or lack thereof) for proposed changes to League bylaws and policies. The League might also do more to encourage member schools to hold local informational meetings for parents and students. Not only might this type of information be useful during the rulemaking process, but it could also help buffer the League from both public and legislative criticism that may occur later in the process.

In general, we found that the League's rulemaking processes have been open and democratic. However:

- **The various documents that outline League rules are often unclear and contradict one another about whether a rule is a bylaw or a policy.**

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**League documents sometimes contradict one another.**

We found ambiguities in how some responsibilities are divided between the board and the Representative Assembly and numerous inconsistencies in the League's handbooks. For example, the *1997-98 Official Handbook* states that rules adopted by the National Federation of State High School Associations are the official game rules for all activities, unless modified by the League. Neither the handbook nor the constitution specifies whether the Representative Assembly or the board is empowered to modify the National Federation rules. In 1993, the board adopted a policy modifying the official game rules of several sports by requiring participants to wear mouthguards. Although the board acted on the recommendation of a sports medicine advisory group, the policy met with widespread opposition from student athletes and their parents, and the board ultimately reversed itself and changed the mouthguard requirement to a recommendation. Staff members told us that, in hindsight, the board probably

should have taken the matter to the Representative Assembly rather than adopting it as a policy statement.

We also compared the League's rulebooks for 1996-97 and 1997-98 and looked at the League's Internet web site. We found several discrepancies and contradictions. Some discrepancies involved labeling certain provisions as bylaws one year and as policies the next, and *vice versa*. For example, Bylaw 303 in the League's *1996-97 Official League Handbook* outlines the League's fair-hearing procedure for student eligibility. Just as it had appeared in handbooks for the previous years, Bylaw 303.00, 2, C (3) required that the appealing party in a contested case send a certified check for \$250 to the League with the request for a hearing. However, the League's *1997-98 Official League Handbook* deleted all references to the \$250 and described the fair-hearing procedure as a board policy rather than a bylaw. The Representative Assembly did not vote to repeal this provision. The minutes of the board's August 1997 executive committee meeting indicate that it voted to delete the \$250 fee, but the full board's minutes only indicate that the executive committee's action was discussed, not voted on.

Another example is the bylaw on ineligible players. Bylaw 305.01 in the *1996-97 Official League Handbook* provided for a one-year suspension of schools that, by mutual consent, allowed an ineligible player to compete. Bylaw 305.02 provided for forfeiture of games if a school willingly allowed an ineligible player to compete, Bylaw 305.03 provided for an additional nine-week penalty against the ineligible player with some exceptions, and Bylaw 305.04 permitted the board to levy additional penalties against the school if the violation was deliberate.<sup>72</sup> However, the League's *1997-98 Official League Handbook* contains only the one-year suspension provision (formerly Bylaw 305.01) and a portion of the player penalty provisions (formerly Bylaw 305.03), now numbered bylaw 304. The other parts of the ineligible player bylaws (formerly Bylaws 305.02 and 305.04) are now listed as "procedures."<sup>73</sup>

In other cases, we found inconsistencies among the League's different 1997-98 publications. What is defined as a bylaw in one publication may be described as a policy in another or *vice versa*, or be absent from a publication altogether. For example, Bylaw 502.00 in the *1997-98 Official League Handbook* limits the number of innings a baseball player can pitch in a three-day period.<sup>74</sup> In the League's *1997-98 Athletics Rules and Policies Manual*, this provision is not included in the bylaws section but is included in the policies section.<sup>75</sup> We found similar discrepancies for other sports as well as contradictions between the League's 1997-98 publications and the bylaws shown on the League's Internet website. We also found inconsistencies in how provisions of the League's constitution are numbered in its *1997-98 Official League Handbook* and its Internet web site.

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72 Minnesota State High School League, *1996-97 Official Handbook* (Brooklyn Center, MN, 1996), 56.

73 High School League, *1997-98 Official Handbook*, 43.

74 *Ibid.*, 67.

75 Minnesota State High School League, *1997-98 Athletic Rules and Policies Manual* (Brooklyn Center, MN, 1997), 253.

While these contradictions may have little or no practical consequences for students, as they must adhere to all bylaws and policies regardless of their origin, these discrepancies can create confusion if someone wishes to change a bylaw or policy. Furthermore, such contradictions may create the perception that the League's rulemaking process is arbitrary. Currently, the board of directors is reviewing its policies to identify those that are obsolete or unclear as well as the format of the *Official League Handbook* to make it more user-friendly. As part of these reviews, we recommend that:

- **The board should carefully review its publications and Internet web site for consistency with the League's official bylaws and policies.**

As discussed earlier, the APA also sets forth procedures that state agencies must follow in hearing contested cases. State law does not prescribe a dispute resolution method for the Minnesota State High School League.<sup>76</sup> However, the League has established a policy for hearing disputes about student eligibility.<sup>77</sup> A student, parent, or guardian may appeal an eligibility decision by notifying the school principal within ten days of the date of mailing of the school's decision. Within ten days, the principal must convene a hearing panel of three to five members, including a member of the school board, a member of the school's administrative staff, and a member of the faculty. Alternatively, the school may elect to have the case heard by an independent hearing officer at the school's expense. The panel hears evidence, keeps a record of the hearing, and prepares written findings of facts and conclusions. The League's executive director may overrule the hearing panel's decision if the findings are inconsistent with the League's bylaws.

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### **Students and parents file few eligibility appeals with the League.**

A student, parent, or guardian may appeal the hearing panel's or executive director's decision to the League's board within ten days by filing a written notice of appeal to the board, the executive director, and the school principal. The board must schedule a hearing before an independent hearing officer within ten days. The student may present evidence and testimony and is entitled to representation by legal counsel. The hearing officer must issue a written decision within four days of the hearing. The full board must review the hearing officer's report and issue a final decision at its next regularly scheduled meeting.

We reviewed files of eligibility hearings held at schools and those appealed to the board. We found that:

- **There were few appeals of student eligibility decisions; most of the appeals involved substance abuse and most were denied.**

Between August 1997 and early March 1998, there were 13 appeals by students of eligibility suspensions. Students appealed six school hearing panel decisions to the League's board. Nine of the 13 cases involved substance abuse, usually

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<sup>76</sup> *Minn. Stat.* §128C.08 does specifically authorize individual schools or the League's board of directors to disqualify a person from interscholastic activities for assaulting an official. In such cases, the alleged offender is entitled to an informal hearing.

<sup>77</sup> High School League, *Policy Manual and Guidelines*, 58, 59.

alcohol or smoking. Two of the suspensions were reversed, one for lack of evidence and one after the student obtained a temporary injunction from a court.<sup>78</sup> We also reviewed reports filed by the League with the Education Committees of the House and Senate in the three academic years prior to 1997-98 when the appealing party had to send a certified check for \$250 to the League with the request for a hearing. We found that between one and three students filed eligibility appeals with the board during each of those years.<sup>79</sup>

## LEAGUE ACTIVITIES NOT SUBJECT TO LAWS ON PUBLIC ENTITIES

Figure 2.3 shows two areas where the League is not subject to the legal mandates that apply to state agencies or local governments. These include procurement and professional and technical contracting and tort law.

### Figure 2.3: Laws Governing State Agencies that Do Not Apply to the Minnesota State High School League

#### Procurement and Contracting

The Commissioner of Administration oversees or performs most purchasing and contracting.

Requests for bids or proposals must be solicited for all purchases over \$15,000 and all contracts over \$10,000.

#### Tort Claims

The state's responsibility for tort claims is limited.

## Procurement and Contracting

### Laws that Govern State Agencies

State law sets forth various requirements to help ensure that state agencies spend public money efficiently and effectively, and that the purchasing process is open to the public. The Commissioner of Administration oversees or performs most purchasing for state agencies.<sup>80</sup> Depending upon the dollar amount involved, purchases of supplies, materials, equipment, and utility services (where appropriate) must be made competitively. For example, Department of Administration policies require that at least one price quote be obtained for purchases up to \$1,500, at least two quotes for purchases from \$1,500 to \$5,000, and three or more written bids for purchases from \$5,000 to \$15,000. For

<sup>78</sup> This case involved a student who was declared ineligible after playing junior hockey in Iowa and then transferring to a Minnesota school. The board reversed the suspension because the student's coach had given him incorrect information.

<sup>79</sup> Letters from the Minnesota State High School League to the Chairs of the House and Senate Education Committees, January 19, 1996, January 17, 1997, and January 26, 1998.

<sup>80</sup> *Minn. Stat.* §16B.06.

purchases over \$15,000, statutes require that the Commissioner of Administration solicit requests for bids by advertising the contract's availability in a newspaper or trade journal not less than seven days before the final day for submitting bids.<sup>81</sup> Unless certified to do their own purchasing, state agencies must go through the Department of Administration. In addition, state agencies must adhere to certain requirements that encourage purchasing from small businesses and businesses owned by women and minorities.

For the most part, current state law requires that purchases be made from the lowest responsible bidder.<sup>82</sup> However, effective July 1, 1998, purchasing decisions must be based on "best value," which includes at a minimum, price considerations, but may also include environmental considerations, quality, and vendor performance.<sup>83</sup>

The Commissioner of Administration also oversees state agency contracting for professional/technical services.<sup>84</sup> As with procurement, requirements for public involvement vary depending upon the contract's size. For example, small contracts that result in any one firm or individual receiving \$500 or less over the course of the fiscal year may be simply outlined in an "annual plan" that is approved by the Department of Administration. In contrast, agencies must certify, among other things, how they will publicize the availability of contracts over \$5,000. For contracts greater than \$10,000, agencies must submit a request for proposal to the Commissioner of Administration for approval. Contracts generally may not exceed five years, including extensions, and agencies are required to evaluate contractors' performance.

### Policies that Govern the League

The League is not required to adhere to state laws regarding procurement or contracting for professional/technical services.<sup>85</sup> We examined League policies in these areas and found that:

- **The League's policies for purchasing goods and contracting for professional/technical services provide few safeguards to help ensure public accountability.**

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**League policies do not require competitive bidding or price comparisons.**

For example, the board's procurement policy indicates that its audit-finance committee is responsible for reviewing bills and monitoring warrants. Purchase orders are approved by the League's associate director for business affairs and the executive director, but purchase orders do not have to be used for all items

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<sup>81</sup> *Minn. Stat.* §16B.07, subd. 3. Legislation passed in 1998 raises the dollar value of purchases that require a request for bids from \$15,000 to \$25,000 effective July 1, 1998. See *Minn. Laws* (1998), ch. 386.

<sup>82</sup> *Minn. Stat.* §16B.07, subd. 1.

<sup>83</sup> *Minn. Laws* (1998), ch. 386.

<sup>84</sup> *Minn. Stat.* §16B.17 and Department of Administration, *Contracts Manual* (St. Paul, 1994).

<sup>85</sup> As noted earlier, after its most recent audit, the State Auditor's Office requested an Attorney General's opinion on several issues, including whether the League is subject to the uniform municipal contracting law set forth in *Minn. Stat.* §471.345. Letter from Judith H. Dutcher, State Auditor, to Hubert H. Humphrey III, Attorney General, February 13, 1998.

purchased.<sup>86</sup> There are no requirements for obtaining competitive bids or proposals or for periodically reviewing price quotes. Likewise, League policies set forth little guidance as to how or when to contract for professional/technical services. Board policy indicates that the board must ratify all requests for consultant contracts, although it may grant the executive director authority to act on its behalf between meetings.<sup>87</sup>

During fiscal year 1997, the League spent about \$380,000 with five vendors for publications, T-shirts, and other goods, and at least another \$370,000 contracting for professional services from seven other vendors, most often without the benefit of requests for bids or public advertising. According to League staff, the League has done business with some vendors for many years, and it has established a good working relationship that it believes precludes the necessity of competitive bidding. For example, the League has purchased tournament awards from one company for over 25 years. The League has purchased major printing services from the same three vendors for more than seven years.

The League's staff have periodically obtained price quotes for low-cost printing jobs (typically \$10,000 or less) from different vendors, but larger purchases, as well as professional/ technical contracts, have generally been entered into without obtaining competitive bids or proposals. We think that:

- **The League should adopt policies to obtain competitive bids or proposals for purchases or contracts above a certain dollar threshold and to periodically review preferred vendor contracts.**

We noted that the League has solicited proposals from five vendors to expand its Internet web site and appears to be moving in a deliberate, well-studied manner. The League should consider using this experience to develop overall procurement and contracting policies that delineate the various factors, including price, that should be considered before making major procurement or contracting decisions.

## Tort Liability

### Laws that Govern State Agencies

Minnesota law limits the liability of state agencies and employees of the state in tort claims, which are claims for damages or injuries done willfully or negligently, but not involving a breach of contract.<sup>88</sup>

### Policies that Govern the League

State limits on tort claims do not apply to the League or its employees, but all employees are covered under the state's workers' compensation laws, up to statutory limits. The League requires liability insurance coverage for itself and its region committees.<sup>89</sup> The League has a \$1 million liability insurance policy for

<sup>86</sup> High School League, *Policy Manual and Guidelines*, 24a.

<sup>87</sup> *Ibid.*, 51.

<sup>88</sup> *Minn. Stat.* §§3.732, 3.736.

<sup>89</sup> High School League, *Policy Manual and Guidelines*, 64-65.

“errors and omissions.” In addition, board members are covered by medical insurance for accidents during travel on League business. The League has a catastrophic medical insurance policy with a lifetime cap of \$3 million for students competing in League athletic, fine arts, and cheerleading activities. The policy has a \$25,000 deductible provision, except for injuries occurring to state tournament participants where there is no deductible.

## SUMMARY

Although the High School League is not a state agency, the Legislature has, over the years, required the League to adhere to some of the laws that govern state agencies. We found that state law sometimes requires the League to conform with requirements of state boards or agencies, but in other instances the League may establish policies of its own. The League is subject to the following laws that govern state agencies: appointing and compensating governing board members, reimbursing board members’ and staff expenses, holding open meetings, and complying with the Data Practices Act. In addition, the League is subject to hiring, ethical practices, auditing, budgeting and accounting, and rulemaking laws that are different from those that govern state agencies. Finally, it is not subject to state procurement or contracting laws or statutory limits on tort claims.

For the most part, the League has complied with state requirements and we think that most of the abuses that subjected the League to criticism in the past no longer exist. We recommend that the Legislature consider giving the State Auditor’s Office more flexibility to conduct its audits of the League. Also, we think the League could improve accountability if it developed better procurement and contracting policies, such as requiring competitive bids or proposals for purchases and contracts over a certain threshold. We also think the League could reduce suspicions about its fairness if it removed inconsistencies in its handbooks and manuals and clarified which requirements are bylaws and which are policies. Finally, we think that the Legislature could help the League’s board function more smoothly if it required the terms of all board members, including the Governor’s appointees, to begin August 1.