



# STATE OF MINNESOTA

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August 28, 2017

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By E-File

The Honorable Robyn A. Millenacker  
Ramsey County District Court Judge  
St. Paul City Hall and Courthouse  
15 West Kellogg Boulevard  
St. Paul MN 55102

**Re: *Partners In Nutrition v. Minnesota Department of Education***  
**Ramsey County Court File No. 62-CV-16-3558**

Dear Judge Millenacker:

The above-captioned matter is scheduled to be heard before you on August 31, 2017, at 9:30 a.m., on the Defendant Minnesota Department of Education's motions to dismiss and summary judgment, and the parties' motions regarding discovery.

After the parties filed their briefs in support of their respective motions, on July 31, 2017, the Minnesota Court of Appeals issued its decision denying Plaintiff's Partners In Nutrition's application for attorney fees and costs under the Minnesota Equal Access to Justice Act. A copy of the Court of Appeals' decision is attached to this letter.

Because Plaintiff seeks attorney fees under the same law for the same administrative proceedings in Count VI of its Amended Complaint, ¶¶ 135-140, Defendant brings this decision to the Court's attention for consideration of that issue.

Thank you for your consideration.

Very truly yours,

/s/ Martha J. Casserly

MARTHA J. CASSERLY  
Assistant Attorney General  
(651) 757-1214

*Attorney for Minnesota Dept. of Education*

Encl: Court of Appeals' July 31, 2017 Order

cc: Rhyddid Watkins, attorney for Plaintiff  
Daron Korte/Monica Herrera, MDE

**FILED**

July 31, 2017

**OFFICE OF  
APPELLATE COURTS****STATE OF MINNESOTA  
IN COURT OF APPEALS**

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Partners in Nutrition's Appeal of  
Disapproval of Site Expansion in the  
CACFP Program

**ORDER**

#A16-1422

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Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Smith, John,  
Judge.\*

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:**

1. By opinion filed May 15, 2017, we reversed the denial by respondent Minnesota Department of Education (MDE) of an application by relator Partners in Nutrition to sponsor multiple sites under the federal Child and Adult Care Food Program. *Partners in Nutrition's Appeal of Site Expansion*, 896 N.W.2d 564 (Minn. 2017). MDE did not seek further review in the supreme court.

2. Partners filed a timely request for costs and disbursements. But no taxation is permitted for or against the agency to which a writ of certiorari is directed. Minn. R. Civ. App. P. 115.05. And state agencies are immune from the taxation of costs and disbursements when acting in a sovereign, rather than a proprietary, capacity. *See Lund v. Comm'r of Pub. Safety*, 783 N.W.2d 142, 143 (Minn. 2010). MDE was acting in a

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

sovereign capacity as the designated government reviewer of applications, and it is immune.

3. Partners also moves for attorney fees and costs under the Minnesota Equal Access to Justice Act (MEAJA), Minn. Stat. §§ 15.471-.474 (2016). Partners asserts that it “need only show that MDE’s decision was not ‘substantially justified.’”

4. Under the MEAJA, the burden of proof is on the party seeking fees. *Donovan Contracting of St. Cloud, Inc. v. Minn. Dep’t of Transp.*, 469 N.W.2d 718, 720 (Minn. App. 1991). Because the MEAJA constitutes a limited waiver of sovereign immunity, its language must be strictly construed. *Id.*

5. Only a party to “a court action or contested case proceeding . . . who is an unincorporated business, partnership, corporation, association, or organization” with fewer than 500 employees and revenues not exceeding \$7 million, or an officer or owner of such an entity, is eligible for fees and expenses under the MEAJA. Minn. Stat. § 15.471, subs. 3 (defining contested case), 4 (defining expenses), 5 (defining fees), 6(a), (b) (defining party). Partners is a nonprofit corporation, but the motion for fees and supporting affidavit do not appear to address current revenues or the number of employees. Even assuming that Partners falls within the definition of a party eligible to seek fees under the MEAJA, because Partners failed to establish that it was a party to a court action or contested-case proceeding, or that fees may be sought for the first time after a party prevails in a certiorari appeal, we deny the motion.

6. A contested-case proceeding, for purposes of seeking MEAJA fees, is “a proceeding defined in [Minnesota Statutes] section 14.02, subdivision 3.” Minn. Stat.

§ 15.471, subd. 3. In turn, contested-case procedures are addressed in Minn. Stat. §§ 14.57-.62 (2016). Hearings conducted under chapter 14 must be conducted by an administrative law judge (ALJ) or a workers' compensation judge assigned by the office of administrative hearings (OAH). Minn. Stat. § 14.50 (2016). Federal regulations provided for an agency review process in this case, but did not require that a contested-case proceeding be conducted, and neither of the administrative appeals involved an ALJ or the OAH. Partners argues that the evidentiary hearing was analogous to a contested case, but that argument is inconsistent with the requirement that we strictly construe the language of the MEAJA.

7. Partners also has not established that a certiorari appeal constitutes a "civil action," within the meaning of the MEAJA. MDE cites *Bass v. Ring*, but that case construed contract language referring to "the cost of litigating" and "the common meaning of the word 'litigation,'" and it is inapposite. 215 Minn. 11, 15-16, 9 N.W.2d 234, 236 (1943). The rules of civil procedure govern proceedings in the district courts and provide for "one form of action to be known as 'civil action.'" Minn. R. Civ. P. 1, 2. Those rules do not govern certiorari appeals to this court, and there is no analogous provision in the appellate rules characterizing a certiorari appeal as a civil action. When an appeal to the *district* court is authorized by statute, that proceeding "commences a new civil action," which must be properly served under Minn. R. Civ. P. 4.03. *In re Application of Skyline Materials, Ltd.*, 835 N.W.2d 472, 473 (Minn. 2013). Such an appeal to the district court is a civil action that begins with "the initiation of a lawsuit," but the administrative or "non-judicial proceeding" being appealed is not converted "retroactively . . . into a 'civil action.'"

*Id.* at 477. Partners has not established that the MDE proceedings or the certiorari appeal to this court constituted a contested case or civil action, within the meaning of the MEAJA.

8. The MEAJA contemplates making an application for “fees and other expenses” to the district court (in a civil action) or to an ALJ (in a contested case). Minn. Stat. § 15.472(b). This court may review a district court’s award of MEAJA fees on appeal from a final judgment. *See State Campaign Fin. & Pub. Disclosure Bd. v. Minn. Democratic Farmer Labor Party*, 671 N.W.2d 894, 899 (Minn. 2003). A party aggrieved by an ALJ’s ruling on a request for MEAJA “fees and expenses” in a contested case “may petition for leave to appeal.” Minn. Stat. § 15.474, subds. 1, 2. Partners failed to establish that the MEAJA authorizes a motion for fees that is brought for the first time in this court, after decision on a certiorari appeal.

9. Because we conclude that Partners failed to meet its burden of establishing that it is entitled to fees for other reasons, we need not address the assertion that MDE’s position was not substantially justified. We also express no opinion on whether fees and expenses may be recoverable in connection with separate litigation that Partners indicates is pending in the district court.

**IT IS HEREBY ORDERED:**

1. The notice of taxation filed on May 30, 2017 is disallowed in its entirety.
2. The motion for attorney fees and expenses is denied.

**Dated:** July 31, 2017**BY THE COURT**

Lucinda E. Jesson  
Opinion Judge

MINNESOTA  
JUDICIAL  
BRANCH