

STATE OF WISCONSIN

PERSONNEL COMMISSION

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P.V.N. ACHARYA, *

Appellant, *

v. *

Secretary, DEPARTMENT OF *

HEALTH & SOCIAL SERVICES, *

Respondent, *

Case No. 81-296-PC *

* * * * *

DECISION AND
ORDER
ON MOTION
FOR REHEARING

NATURE OF THE CASE

This case was dismissed for lack of subject matter jurisdiction as untimely filed by order dated September 3, 1981. The appellant filed a petition for rehearing on September 11, 1981.

OPINION

The appellant argues that because s.230.44(3), stats., utilizes the word "may" --- "any appeal filed under this section may not be heard unless the appeal is filed within 30 days ..." --- that it is discretionary with the Commission whether to hear an appeal which was not timely filed.

The word "may" means "ability or power". Webster's New World Dictionary, Second College Edition (1972). See also Koch Refining Co. v. United States Department of Energy, 497F. Supp. 879, 891 (D. Minn. 1980): "May is a permissive word ... and will be construed to vest discretionary power ..." Therefore, if a statute provides that an agency "may" do something, that normally means that it has the power to do it, and that it is discretionary with the agency whether to exercise the power and actually do the thing.

The word "not" is "... a particle of negation, or word expressing the idea of no, often implying refusal, affirmation of the opposite ..." id. Therefore,

when the word "may" is coupled with the word "not" in s.230.44(3), it does not seem logical to interpret "may not be heard" as "may or may not be heard in the exercise of the commission's discretion." If the Commission is denied the power to act, it cannot be said that it has the discretion whether to exercise that power.

The appellant also argues that Jab's v. Personnel Board, 34 Wis. 2d 245 (1967) is distinguishable because the individual involved there was a state employe, while he is not. This distinction does not obscure the more general principle, of which Jabs is representative, that governmental agencies are not required as a matter of law to inform people of their legal rights, with the narrow exception of certain specific requirements such as with respect to criminal suspects. It may be good public policy for state agencies to do so, as expressed in dictum in Sunnyview Village v. DOA, 100 Wis. 2d 34, 39, 300 N.W. 2d 878 (1980), but even in that case the court nonetheless felt itself compelled to affirm the dismissal of the petition for review for failure to comply with the statutory requirements.

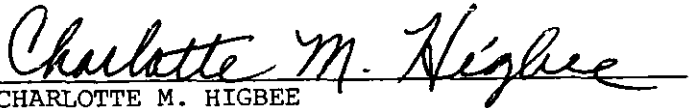
Therefore, the Commission is of the opinion that there was no material error of law as to its September 3, 1981, decision, and the petition for rehearing should be denied.

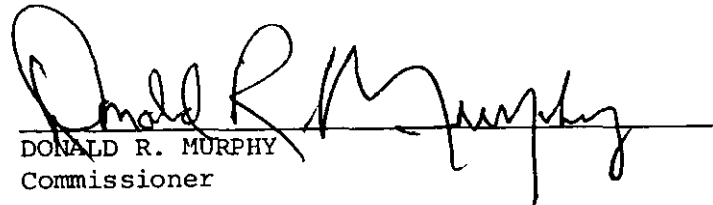
ORDER

The petition for rehearing filed September 11, 1981, is denied.

Dated: Oct. 1, 1981 STATE PERSONNEL COMMISSION


GORDON H. BREHM
Chairperson


CHARLOTTE M. HIGBEE
Commissioner


DONALD R. MURPHY
Commissioner

AJT:ers

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