

# Administrative Subpoenas

An administrative subpoena is an official order compelling an individual to provide a state or local administrative agency with information. This information brief answers common questions about this enforcement tool.

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## What Is an Administrative Subpoena?

There are two types of administrative subpoenas. The subpoena *ad testificandum* orders a witness to appear and give testimony. The subpoena *duces tecum* requires the production of documents or a showing of cause why they need not be produced.

## How Does an Administrative Body Get Subpoena Power?

An administrative agency may obtain subpoena power only by statute. (A table listing the statutes that grant this power in Minnesota through the 2006 session appears at the end of this information brief.)

The authority of an agency head to delegate subpoena power may be implied from an agency's duty to promulgate rules and regulations. *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 67 S. Ct. 1129 (1947). Most Minnesota Statutes that grant administrative subpoena power expressly allow an agency commissioner or director to delegate the power to issue subpoenas.<sup>1</sup>

## How Are Administrative Subpoenas Enforced?

While many agencies have the power to issue subpoenas, they usually have no power to enforce them. An agency cannot "under our system of government, and consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment." *I.C.C. v. Brimson*, 154 U.S. 447, 485, 14 S. Ct. 1125, 1136 (1894); overruled on other grounds, *Bloom v. Illinois*, 391 U.S. 194 (1968). A subpoena is enforced through the courts, but it is constitutional for an agency to impose procedural sanctions if empowered to do so by statute. In Minnesota, the statutes provide for enforcing subpoenas through district court. Agencies are not authorized to impose sanctions.

Generally, a court action for enforcement of a subpoena must be brought by the agency, except when a statute authorizes a private party to bring an action to enforce the subpoena. In the absence of such a statute, an interested private party seeking to enforce a subpoena must petition the agency to act.

## What Is the Penalty for Violating an Administrative Subpoena?

Some statutes granting administration subpoena power indicate that the penalty for disobeying a subpoena is a misdemeanor. [Minn. Stat. § 388.23](#), subd. 5. Others specify that a violation is punishable in the same manner as contempt of the district court. [Minn. Stat. § 270C.32](#), subd. 7. If a statute granting subpoena power does not specify a penalty for violation, the general rule is

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<sup>1</sup> See also [Minnesota Statutes, section 15.06](#), subdivision 6, on commissioners' general authority to delegate powers to subordinates.

that it is contempt of court to violate a lawful subpoena. [Minn. Stat. § 588.01](#), subd. 3, cl. 8. The maximum penalty for this kind of contempt is a fine up to \$50. The statutes specifies, however, that imprisonment or a higher fine could be imposed if the contempt defeated or prejudiced the right or remedy of a party. [Minn. Stat. § 588.02](#).

## **On What Grounds Can the Enforcement of an Administrative Subpoena Be Challenged?**

It is very difficult to challenge an administrative subpoena on grounds that it exceeds the agency's jurisdiction or is not reasonable. There are some constitutional grounds for challenging administrative subpoenas, as well as some other grounds for challenges. These issues are covered below.

### **Jurisdiction**

Generally, the scope of an agency's statutory authority cannot be litigated in a judicial proceeding to enforce an administrative subpoena. *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 66 S. Ct. 494 (1946). A court will defer to agencies to determine their own subject matter jurisdiction. When this deference is combined with the low standard of relevance discussed below, it is difficult to challenge the enforcement of a subpoena that calls for information related to an investigation at least nominally connected to an agency's purpose.

Requiring a person not subject to an agency's supervisory jurisdiction to comply with a subpoena issued by that agency does not violate due process. *State v. Mees*, 235 Minn. 42, 49 N.W.2d 386 (1951).

### **Reasonableness**

A court's review of an administrative subpoena is limited and usually turns on reasonableness. Generally an agency does not need to show probable cause or a pressing need for the information sought in order to have a subpoena enforced. Courts will enforce a subpoena if: (1) the investigation is legitimate, (2) the subpoena is not unnecessarily broad, and (3) the information sought is relevant to the investigation. *Oklahoma Press*, supra. Courts allow agencies a low threshold to meet these requirements.

The Minnesota Supreme Court set out the following factors in determining reasonableness of an administrative subpoena.

- The documents are described clearly enough to be readily identified
- The breadth and volume of the documents sought is not an unnecessary hardship
- The source or evidence prompting the investigation is reliable
- There are no other less expensive and burdensome sources available for the information sought
- There is a reasonable expectation that the subpoenaed documents would lead to relevant information. *Roberts v. Whitaker*, 178 N.W.2d 869 (Minn. 1970).

## **Constitutionality**

There are at least two constitutional grounds for challenging an administrative subpoena.

While probable cause is not necessary for the issuance of an administrative subpoena, the Fourth Amendment's protections against unreasonable searches and seizures apply to requests for information. *Marshall v. Barlow's Inc.*, 436 U.S. 307, 98 S. Ct. 1816 (1978). The United States Supreme Court has upheld warrantless administrative searches of some commercial properties while indicating that in some circumstances the Fourth Amendment protection against unreasonable search and seizure may require a warrant. *Donovan v. Dewey*, 452 U.S. 594, 101 S. Ct. 2534 (1981).

The Fifth Amendment privilege against self-incrimination can be raised to challenge an administrative subpoena. See *Couch v. United States*, 409 U.S. 322, 93 S. Ct. 611 (1973). This privilege may only be asserted by an individual, not by a corporation or a union.

## **Fraud, Retaliatory Purpose, and Common Law Privileges**

A court may refuse to enforce a subpoena because of fraud or trickery by the government. Similarly, if the government issues a subpoena to harass or to coerce a party concerning a collateral matter, the court will not enforce the subpoena. *Resolution Trust Corp. v. Prates*, 61 F.3d 962 (D.C. Cir. 1995).

Common law privileges that restrict access to information such as attorney-client and the trade secret privilege may also be asserted in contesting a subpoena. Keppel and Gilbert, *Minnesota Administrative Practice and Procedure* (1982).

## Appendix: Minnesota Administrative Subpoena Statutes

This appendix lists the entities given administrative subpoena power in Minnesota Statutes through the 2006 session, the statute granting the power, and the activity to which the subpoena power applies.

<b>Body with Administrative Subpoena Power</b>	<b>Statute Granting Power</b>	<b>Issue Involving Subpoena</b>
<b>Accountancy Board Administration, Commissioner of</b>	§ 326A.02	Regulating accountants
	§ 15.08	State department operations
	§ 16B.36, subd. 2	Organization of state government
<b>Administrative Law Judge</b>	§ 245A.08, subd. 2	Human services licensing hearings
<b>Agriculture, Commissioner of</b>	§ 17.17	Discrimination in purchase of farm products
	§ 17.697, subd. 10	Compel participation in mediation after information exchanges
	§ 17.984, subd. 2	License compliance
	§ 17A.15	Livestock marketing
	§ 18D.201, subd. 6	Agricultural chemicals
	§ 18J.04, subd. 7	Inspection and enforcement of various laws
	§ 21.1195	Seed potato planting
	§ 27.13	Wholesale produce dealers
	§ 31A.27, subd. 2	Meat products
<b>Animal Health, Board of</b>	§ 500.221, subd. 2b	Acquisition of farmland by foreigners
<b>Arbitration Tribunal</b>	§ 35.92, subd. 5	Livestock sanitation
<b>Attorney General</b>	§ 179.09	Settling labor disputes after mediation fails
<b>Campaign Finance and Disclosure, Board of</b>	§ 8.16, subds. 1 and 1a	Specified businesses
<b>Chief Administrative Law Judge</b>	§ 10A.02, subd. 10	Ethics in government
<b>Chiropractic Examiners, Board of</b>	§ 14.51	Any matter heard by Office of Administrative Hearings
<b>City Council</b>	§ 148.102, subd. 7	Production of required reports
<b>Commerce, Commissioner of</b>	§ 347.15, subd. 1	Determining damages caused by domestic animals
	§ 45.027, subd. 2	Commerce - A broad power to investigate and enforce matters regulated by chapters 45 to 83, 309, and 332
	§ 46.04, subd. 1	Banking
	§ 60A.031, subd. 3	Insurance companies
	§ 60E.10	Risk retention groups

<b>Body with Administrative Subpoena Power</b>	<b>Statute Granting Power</b>	<b>Issue Involving Subpoena</b>
	<a href="#">§ 72A.22</a> , subd. 4 <a href="#">§§ 80A.41; 80A.79</a> <a href="#">§ 81A.03</a> , subd. 2 <a href="#">§ 82.35</a> , subd. 6 <a href="#">§ 82A.12</a> , subd. 5 <a href="#">§§ 168.66</a> , subd. 12; <a href="#">168.70</a> <a href="#">§ 332.40</a> , subd. 3	Unfair trade practices Uniform Securities Act Uniform Athlete Agents Act enforcement Real estate brokers Membership camping Sales finance companies Collection agencies
<b>Coroner</b>	<a href="#">§ 390.15</a>	Deaths
<b>County Attorney</b>	<a href="#">§ 388.23</a> , subd. 1 <a href="#">§ 390.11</a> , subd. 5	Specified business Inquest into certain deaths
<b>Crime Victims Reparation Board</b>	<a href="#">§ 611A.56</a> , subd. 2	Crime victims' injuries
<b>Dentistry, Board of</b>	<a href="#">§ 150A.13</a> , subd. 7	Obtaining reports required by law
<b>Dietetics and Nutrition Practice Board</b>	<a href="#">§ 148.623</a>	Regulating practitioners
<b>Emergency Medical Services Regulatory Board</b>	<a href="#">§ 144E.30</a>	Licensing actions against regulated persons
<b>Emergency Response Commission</b>	<a href="#">§ 299K.10</a> , subd. 1	Hazardous chemical emergencies
<b>Eminent Domain Commissioners</b>	<a href="#">§ 117.085</a>	Land appraisal
<b>Employment and Economic Development, Commissioner of</b>	<a href="#">§ 268.188</a>	Unemployment insurance program
<b>Environmental Quality Board</b>	<a href="#">§ 116C.06</a> , subd. 2	State programs with environmental impact
<b>Families, Ombudsperson for</b>	<a href="#">§ 257.0762</a> , subd. 2	Law compliance
<b>Finance, Commissioner of</b>	<a href="#">§ 15.08</a> <a href="#">§ 16A.44</a>	State departments' operations State transactions
<b>Fire Marshal</b>	<a href="#">§ 299F.06</a> , subd. 1	Arson crimes and fire code violations
<b>Firefighter's Civil Service Commission</b>	<a href="#">§ 420.12</a>	Firefighter inefficiency or misconduct
<b>Gambling Control Board and its director</b>	<a href="#">§§ 349.151</a> , subd. 10; <a href="#">349.152</a> , subd. 2	Licensing and regulation of gambling
<b>Gambling Enforcement Division of Public Safety, Director of</b>	<a href="#">§ 299L.03</a> , subd. 3	Lawful gambling
<b>Health, Commissioner of</b>	<a href="#">§ 62D.14</a> , subd. 5 <a href="#">§ 144.054</a> , subds. 1 and 2 <a href="#">§ 144.4805</a> , subd. 2 <a href="#">§ 144A.12</a> , subd. 2 <a href="#">§ 144A.46</a> , subd. 3b <a href="#">§ 144A.754</a> , subd. 3	Health maintenance organizations Serious health threats Medical records of a tuberculosis carrier Nursing home licenses Home care services Hospice licensing actions

<b>Body with Administrative Subpoena Power</b>	<b>Statute Granting Power</b>	<b>Issue Involving Subpoena</b>
	§ 146A.09, subd. 2	Alternative health care practitioner complaints
	§ 148C.091, subd. 2	Licensing and professional conduct of alcohol and drug counselors
	§ 149A.04, subd. 4	Licensing and inspection of funeral providers and crematoriums
	§ 153A.15, subd. 3a	Hearing instrument dispensing
	§ 326.78, subd. 5	Asbestos installation
<b>Health Facility Complaints, Director of Office of</b>	§ 144A.53, subd. 1	Complaints against health facilities and health care providers
<b>Hearing Officer</b>	§ 125A.091, subd. 18	Special education rights
<b>Hennepin County Board</b>	§ 383B.36, subd. 2	Personnel matters
<b>Hennepin County Medical Examiner</b>	§ 383B.225, subd. 6	Deaths
<b>Human Rights, Commissioner of</b>	§ 363A.06, subd. 2	Discriminatory practices
<b>Human Services, Commissioner of</b>	§ 256.01, subd. 4	Welfare and social security violations
<b>Human Services, Commissioner of and County Welfare Boards</b>	§ 256B.13	Medical assistance
<b>Interstate Board of Arbitration</b>	§§ 290.081; 291.44	Nonresident income tax disputes; estate tax domicile determinations
<b>Labor and Industry, Commissioner of</b>	§ 175.20	Employment conditions
	§ 176.184, subd. 3	Proof of workers' compensation coverage
	§ 176.351, subd. 2	Workers' compensation hearings
	§ 182.659, subd. 2	Occupational safety and health
<b>Legislative Auditor</b>	§ 3.978	Use of public funds
<b>Legislative Commissions/Committees</b>	§ 3.153	Business of the commission/committee
<b>Legislative Electric Energy Task Force</b>	§ 216C.051, subd. 8	Energy planning
<b>Liquidator of HMO dissolving by law</b>	§ 60B.25	Hearings connected to liquidation
<b>Marriage and Family Therapy Board</b>	§§ 148B.07, subd 9; 148B.175, subd. 1	Therapist regulation
<b>Mediation Services, Commissioner of</b>	§ 179.08	Labor disputes affecting public interests
	§ 179.16, subd. 3	Employee collective bargaining representation
	§ 179A.04, subd. 3	Public employment labor relations
<b>Medical Practice, Board of</b>	§§ 147.111, subd. 9; 147A.14, subd. 9	Production of required reports on physicians and physician assistants
<b>Mental Health Practice, Office of</b>	§ 148B.07, subd. 9	Production of required reports
<b>Mental Illness and Retardation Ombudsman</b>	§ 245.94, subd. 1	Client services



<b>Body with Administrative Subpoena Power</b>	<b>Statute Granting Power</b>	<b>Issue Involving Subpoena</b>
<b>Stewards, Board of Tax Court</b>	§ 240.16, subd. 3 §§ 271.13; 271.21, subd. 9	Horse race oversight Matters before the court
<b>Transportation, Commissioner of</b>	§§ 174.10, subd. 2; 174.64, subd. 3 § 218.041, subd. 6 § 222.54 § 360.015, subd. 11	Transportation; motor carriers; railroads Common carriers Rail service improvement Aeronautics
<b>Unemployment Law Judge</b>	§ 268.105, subd. 4	Unemployment benefits hearing
<b>Veteran Affairs, Commissioner of</b>	§ 197.481, subd. 3	Veterans' rights
<b>Veterinary Medicine, Board of</b>	§ 156.01, subd. 3	Professional conduct of veterinarians
<b>Water and Soil Resources, Board of</b>	§ 103A.335, subd. 2 § 103D.101, subd. 2	Water policy Establishing watershed districts

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