

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Monday, August 3, 1981, and Tuesday, August 4, 1981.

Place of Meeting: Senate Committee Rooms 116 and 24, Statehouse, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar Holden and Dale E. Tieden; Representatives Betty J. Clark and Ned Chiodo. Also present: Joseph Royce, Committee Staff, and Brice Oakley, Rules Coordinator.

Convened Chairman Schroeder convened the meeting in Senate Committee Room 116 at 10:10 a.m. Holden and Tieden were excused for the morning in order to attend another meeting.

FAIR BOARD Complete revision of Fair Board rules, filed, chs 1 to 7, ARC 2138 was reviewed by J. D. Taylor, Secretary to the Board, and Jerry Coughlin, Office Manager.

2.8 Royce, speaking for Tieden, questioned the prohibition of use of metal detectors in 2.8. Taylor recalled instances where renegade diggers had been destructive. He admitted arbitrary determinations are made and it would be difficult to obtain a permit during the Fair. Oakley took the position that discretion without standards was not good. He proposed alternatives, e.g., prohibit metal detecting entirely; require an advance deposit, which would be refundable if no damages were incurred, or possibly set specific periods of time when detecting would be permitted. Taylor agreed to study the matter and submit a recommendation within 60 days.

3.2(1) Again, for Tieden, Royce questioned the necessity of 3.2(1), restriction of equipment and vehicles to campsites. Taylor responded the intent was directed to prohibit parking on others leased areas.

3.4(2) In re 3.4(2), Schroeder preferred clarification and he requested removal of "with permission of campground security." in 3.4(3). Taylor agreed.

1.2(4) In 1.2(4), Priebe queried Taylor re lack of opportunity for public notice of meetings of the Board. Oakley opined the open meetings law [Ch28A] would supersede the rule. Priebe thought 1.2(4)c, voting, to be totally wrong; ARRC policy has been to require a 2/3 majority to take final action. In 1.2(4)d, Priebe said there was no time allowed for public participation at the end of a meeting--he preferred a more open policy. Oakley thought that to be the intent of the rule, but could see Priebe's point. In 1.2(4)b, Priebe thought the rule to be limiting as to public participation. Oakley recommended clarification and Taylor was amenable. Taylor commented the Board has practices which should be aired--nine district directors which are elected and three ex officio members (the governor, state agriculture secretary and the president of Iowa State University) comprise the Board. According to Taylor, the ex officio members vote. After referring to Chapter 173, The Code, there was disagreement as to interpretation of the statute in that respect.

FAIR BOARD
Cont'd

Oakley reiterated his position that the quorum matter should be resolved legislatively.

Motion
Ch 173 to
Legislature

Priebe moved that the Agriculture Committees of the Legislature be notified by Royce that concern was expressed that ambiguity exists in Chapter 173 and the law should be clarified to allow the three "ex officio" Board members to appoint a designee to vote on their behalf. Motion carried viva voce.

There was unanimous consent to include in Priebe's motion Royce's recommendation that the entire chapter be reviewed.

4.8
Motion to
Object

Priebe moved to object to 4.8, Liens, on the grounds that it exceeds the law. The following formal language was prepared by Royce:

Pursuant to the authority of §17A.4, The Code, on 13 July 1981 the committee objected to rule 4.8 adopted by the fair board and appearing in IV IAB 1 (7-8-81). It is the opinion of the committee that rule 4.8 is unreasonable and beyond the authority of the board.

Rule 4.8 in essence provides that the board has a lien on all property located on the fairgrounds as security for rent or privilege money owed under contract, and that the board may attach that property without process of law. This provision is unconscionable because it is a completely one-sided remedy which puts the state in a completely superior position to the renter; and the only reason it can be imposed is because the state fair is a unique event, and those who wish to participate must comply with the conditions imposed on a take-it-or-leave-it basis. An agency of the state, itself a creation of law, must not use its superior bargaining position to impose contractual conditions that deliberately avoid process of law for their enforcement.

Vote delayed

The Chairman asked and received unanimous consent to delay the vote on Priebe's motion until all members were present. Oakley preferred to resolve the question by legislation which would restructure the procedure in a more balanced manner and allow selection in kinds of property which would be affected. Priebe suggested advance payment as a possible solution.

Priebe and Royce insisted the rule was written in absolute terms-- it states "they shall" without due process of law. Priebe said he was going to object and it could be worked out with Oakley and Royce. Priebe preferred "may" to "shall" in this instance.

Oakley reminded members that the Uniform Commercial Credit Code addressed liens and would take precedent. Action was deferred until the afternoon meeting.

4.17

Schroeder requested clarification of 4.17, dismantling. Priebe had the same problem with 4.15, opening day. Priebe thought discretion had been eliminated, which he opposed. Oakley said there were some general provisions in the rules which allowed for waivers for good cause.

FAIR BOARD
Cont'd

Responding to Priebe, Taylor commented the former Cultural Center had been dismantled. He pointed out the Fair was still in the housing business. There was discussion of the entry fees, 6.3 Priebe was concerned about the method used in allocating space for exhibits. In response to Schroeder's question, Taylor explained the insurance requirements for interim events had been increased. In 6.19, Priebe recommended that ", with the exception of cattle," be stricken. After some discussion, he suggested the rule be rewritten to provide that "All breed Associations rules shall apply in determining ownership of livestock", thus removing the burden from the Fair Board.

ch 5 and 6

4.28

In re'4.28, Clark suggested deletion of "as are" from line 2. No further questions.

SECRETARY
OF STATE

Jack Galvin, Corporations Director, represented the office of Secretary of State for review of Corporations, chapter 2, ARC 2133, IAB 7/8/81. Responding to Clark, Galvin indicated the language in 2.2(1) and 2.2(2) was statutory. Royce, speaking for Tieden, questioned 2.2 Galvin reiterated the statute on reservations for business corporations provides for a 90-day reservation; on nonprofit, it provides for 120-day reservation.

LIVESTOCK
HEALTH
ADVISORY
COUNCIL

Mark Truesdale, legal counsel, represented Livestock Health Advisory Council for review of recommendations, 1.1, filed, ARC 2205, IAB 7/22/81. In answer to Clark's question as to reason for including pseudorabies, swine dysentery and bovine virus diarrhea research in the breakdown of the appropriation when those areas received nothing, Truesdale indicated the Council hoped that some of those areas would be included for funding in the next fiscal year. There was discussion of TGE with Priebe questioning the \$18,000 appropriation when there is a vaccine for eradication.

At the June meeting, the Council allocated \$25,400 FY 1981-82 for swine pseudorabies awaiting a response from a \$96,000 request to USDA. Recently, USDA granted the Iowa State Emergency Project \$75,000 to develop a pseudorabies vaccine. Truesdale was confident that the Council, at their September meeting, would consider utilizing the \$25,400 for other research projects.

Truesdale asked and received permission to file an emergency rule to 1.1 regarding the matter. Oakley opined the whole area should be removed from the Administrative Rules process. Committee members disagreed. No further comments or discussion on Livestock Health Advisory Council.

PLANNING AND
PROGRAMMING

The following rules were before the Committee:

- PLANNING AND PROGRAMMING(630)
- Local and regional planning program. 8.1, 8.2 ARC 2200. F..... 7/22/81
- Weatherization assistance program. 19.2(1). filed emergency ARC 2201..... F.E..... 7/22/81

Appearing on behalf of Planning and Programming were James Lynch, Chief Planner, Harriet Cate Leitch, 701 Administrator, and Walt W. Pickett, Weatherization Coordinator.

8.1, 8.2

In 8.1, 8.2, date certain insertion for all federal references was requested by ARRC members. Priebe requested change of "should" to "may" or "shall" in 8.1(2).

PLANNING AND PROGRAMMING Cont'd

Responding to Chiodo, Pickett said the poverty income guidelines were federal. Pickett advised Schroeder that there were some carry-over funds from 1980 in the weatherization program. He admitted there were still some funding problems in southwest Iowa. As soon as there is assurance of continuation of the allocation for 1982, the program will be reinstated.

PUBLIC INSTRUCTION

Jim Athen, Vocational Education, Department of Public Instruction, was present for review of programs, 26.2 to 26.5, ARC 2142, Filed, ARC 2142, IAB 7/8/81. According to Athen, DPI will submit several planning activities into the rulemaking process in a concise manner. One modification had been made since Notice; broader representation from society and the teaching profession in the Planning and Accountability Committee which advises the state Board of Public Instruction. The Committee deals with all of the problematic aspects, as well as the budgetary.

Royce, commenting on behalf of Tieden, re 26.2(2), requested that the names of agencies be included in the rule, i.e., those prescribed by P.L. 94-482. Priebe pointed out that those eligible to serve on the Committee should be listed in the rule. There was general discussion, with the members questioning DPI with regard to encouraging formation of other groups. Athen responded they had not and said ISEA was the latest group to indicate an interest in the Committee. Athen advised ARRC that the law requires representation by ten groups. No further comments.

BOARD OF ENGINEERING EXAMINERS

The following rules were reviewed:

ENGINEERING EXAMINERS, BOARD OF [390]
Registration of professional engineers and land surveyors, 1.11, 3.1, 3.3, 3.4, 3.8, 3.10, 3.12 to 3.15 ARC 2210 .M..... 7/22/81

Appearing for the Board of Engineering Examiners was Tom Hanson, Attorney, who briefed the Committee that the purpose of the amendments to chapters 1 and 3 was to implement biennial renewal of registration of professional engineers and land surveyors in the state.

chs 1 & 3

3.3

Schroeder questioned statutory authority for professional development hours to be twice the annual rate. [Table in 3.3] Hanson commented, "If anything, the rules are a little too tough." Schroeder asked Hanson to relay to the Board that the number of hours should be uniform regardless of employment hours. Discussion of pros and cons of continuing education.

In 1.1, second paragraph, Clark claimed it was redundant. Clark requested rewrite of 3.13 for brevity to consolidate the repetitious language in each paragraph into one paragraph. Hanson was amenable. In 3.10(2), she suggested removal of "therein". In 3.8, Note 3, Clark pointed out a missing word and thought "thereof" should be deleted.

SOIL CONSERVATION DEPARTMENT

Kenneth Tow, Assistant Director, Soil Conservation, was present for review of the following:

SOIL CONSERVATION DEPARTMENT [780]
No-till planting row-cropped lands, 5.20(31), 5.51(1)F, 5.60(1), 5.84(12) ARC 2215 .M..... 7/22/81

Schroeder raised a question about 5.84(12), no-till planting. He was interested in method by which dry fertilizer could be incorporated between rows that will be left untilled. Tow responded there had been a debate about allowing the "knifing in" of anhydrous ammonia. Schroeder preferred an exception for emergency situations where dry fertilizer would be available.

SOIL CONSERVATION

Responding to question by Priebe, Tow said language in 5.60(1)a applied to permanent soil conservation measures. Tow agreed to take Schroeder's concerns to the Soil Conservation Committee.

Tow noted that on August 15, the Department would be allocating the remaining 40 percent of available funds for the voluntary soil erosion control program. He asked if there would be opposition to emergency rule implementation for the program. Committee voiced none. Schroeder pointed out that this was important to make the money more readily available.

In 5.84(12), Clark called attention to a typo--"that" should be "than".

Recess

Chairman Schroeder recessed the Committee for lunch at 11:50 a.m. to be reconvened at 1:30 p.m.

Reconvened

Committee was reconvened at 1:30 p.m. The following rules of Employment Security were before them:

EMPLOYMENT SECURITY (Job Service)

EMPLOYMENT SECURITY(370)	
Employer's contribution and charges, 3.36, 3.40(2), 3.40(5), 3.40(6), 3.41(3), 3.43(4), 3.47(3)	ARC 2127,
also filed emergency	ARC 2126 N.F.#.....7/8/81
Claims and benefits, 4.1(12), 4.13(1), 4.23(40), 4.24(15), 4.24(17), 4.37(2)	ARC 2129,
also filed emergency	ARC 2128 N.F.#.....7/8/81

3.47(3)

Appearing on behalf of the Department were Joseph Bervid, Attorney, and Paul H. Moran, Job Insurance Administration. According to Bervid, changes in the existing rules, as a result of HF 789[69GA, 1981 Session] bring the chapter into conformity with the law. Royce, speaking for Clark, asked that the word "prior" be deleted from 3.47(3), last sentence. Bervid was amenable.

Responding to Tieden's question, Bervid said the IPERS program was a good example of reducing job insurance payments by only that portion of the employer's percentage of contribution to the total pension or retirement fund after the employee's percentage of contribution is deducted. Bervid admitted the language was confusing.

Recess

Reconvened

Committee was in recess awaiting arrival of General Services Department officials. Schroeder called the meeting to order with special review of chapters 1 and 4 of the General Services rules. Appearing on their behalf were Stanley McCausland, Director, and Jack T. Pitzer, Chief Purchasing Officer. Also present was Representative JoAnn Trucano.

GENERAL SERVICES

Clark discussed the fact that special rules had been written in 1977 for data processing purchasing. Although many states have changed their rules since that time, Iowa has not. She pointed out that 4.3(2) had no long-range planning requirements. She referred to 2.2 which in her opinion was more in compliance with the statute. Clark questioned the make-up of the Evaluation Committee, and viewed it as a "closed corporation" since there were no governing rules. Clark continued in the use of RFP's, [defined in 4.2(2)f] vendors do not have opportunity to display their wares. She was interested in the meaning of compatability and cited the time frames as being unrealistic. Clark commented she had received complaints from vendors, one being Sperry Univac. Clark called attention to the rules giving blanket authority to the controller and the director of General Services--a tremendous power. Clark opined that request for proposals--1.1(2)--was not always practical. She contended that wording in chapter 4--"sole source of acquisition" of data processing equipment [4.7] was not statutory.

Trucano had attended a bidder's convention and was disturbed by the entire process.

8-3-81

GENERAL
SERVICES
Cont'd

In Trucano's opinion, there should be identical rules regarding bidding for state agencies buying data processing equipment--General Services as well as DOT, DPI and Regents. McCausland reminded ARRC members that he had no responsibility for DOT.

Clark had discovered that, in procurement, some vendors had been excluded, particularly, in the purchase of furniture. Agency preference seemed to take precedence.

In discussing the history of the purchasing, McCausland commented that 9 years ago, Data Processing was provided exclusively by the Comptroller's office--IBM had a monopoly for many years. There was a definite philosophy toward centralization and he attempted to establish rules for the user agency to define their needs and defend their requests. Requests were presented to those with expertise. He has an open policy with vendors and believed the process had improved. He discussed the appeal process available for all vendors.

McCausland concurred that the Code delegated authority to the Director of General Services, which responsibility he does not "take lightly". Responding to Trucano, McCausland assured her that vendors are permitted to demonstrate their products even though it was not statutory.

Trucano was unhappy with the appeal process for vendors and alleged that bidding specifications limited competition among vendors. She questioned use of "items" in ch 4. There was discussion of the process used in keeping the state apprised of the state of the art in computers and evaluations of proposals.

In discussing vendors' conferences, Pitzer said the state uses them as a discovery process. Meetings are recorded. Time is our most precious product and he commented he had not knowingly attempted to keep anyone from demonstrating a product.

Pitzer noted the Code is vague with respect to data processing. The state receives about 50 procurement requests per year but he opined Iowa has a better controlled data processing system than other states with fewer large centers. Pitzer also mentioned there is no law governing purchasing by DOT or Regents. There was discussion of possible legislation to address the matter.

Clark preferred the state of the art to be more flexible so that the average employee could handle the equipment without special training. She noted there was no allowance for equipment not compatible with that manufactured by IBM. She thought the state should move into the other philosophical direction.

Pitzer envisioned problems with allowing state employees to travel at vendors' expense in order to examine data processing equipment. Further discussion of the computer process, along with competition between vendors and problems of control and free display.

Tieden commented that change was seldom well received in any situation.

McCausland was receptive to considering voiced concerns. Clark mentioned there would be an interim [study] on procurement. The discussion was brought to a close by the Chairman.

ARTS
COUNCIL

Appearing on behalf of the Arts Council was Sam W. Grabarski, Director.
The following rules were reviewed:

Organization, 1.2(1), 1.2(2) ARC 2135 .N.....7/8/81
Policies and procedures, 2.1(1), 2.1(2), 2.1(4), 2.3(8) ARC 2136 .N.....7/8/81
Forms, 3.1(9) to 3.1(11) ARC 2137 .N.....7/8/81

1.2(2) Responding to Priebe, Grabarski said the term of the director in 1.2(2) was statutory.

2.3(8)a Tieden and other members questioned how determinations were made for operational support grants in 2.3(3)a. Grabarski said it was a specialized program, intended to deal with large budgeted institutions with unique problems. He said the Council has a number of grant-in-aid program categories that are geared toward specific service populations within the state. He gave as examples: Artists-in-schools, (money is available only to school districts for school projects); community arts council development program (grants direct to arts councils alone); grant program for special constituencies, arts in older Americans; touring arts team (summer project available only to communities of 1500 population or less). Other programs are specifically related to service populations. The general grants-in-aid program was designed for all tax-exempt institutions with no budgetary limitation.

In the operational supports grant program, Grabarski appointed a one-year survey team comprised of representatives of both small and large institutions to determine their different needs. All arts--performing and visual--with budgets above annual operation of \$25,000 were surveyed. It was determined the difference between a performing arts institution and a visual arts institution was the presence of a facility and the need to maintain and obtain it was monumental. A different budget criteria would be necessary in order for those groups to apply.

Groups in that large category include Des Moines Art Center, Davenport Art Gallery, Waterloo Recreation Commission, Cedar Rapids Art Center, Charles MacNider Museum in Mason City, etc. The Sioux City Arts Center is striving to reach the higher budget but is somewhat below the criteria. He enumerated others who intend to apply.

In discussing the different programs, Grabarski briefed the Committee regarding the current condition of operational support grants; \$50,000 and general support grants (for other groups which are below the operational category), \$131,000, plus \$10,000 year-around on an emergency basis. Those groups may also apply for \$33,000 in local community development support if they band together for a program. There are mini-grant programs available for solo artist programs. Responding to Tieden, financial need is a major component of the program. Communities are required to apply each year and prove their need. Budgets for three consecutive years must be submitted. Grabarski did not foresee more funds going into the program in the next two years and he assured the Committee they would have knowledge of endowments.

Chiodo alluded to the fact that Sioux City was the only community west of Des Moines to be a recipient of funds for their symphony. An application had been received from the Council Bluffs wing of the Omaha symphony. Grabarski was willing to supply an across-the-board listing of fund recipients in the last fiscal period. Only six legislative districts did not receive at least one program from the Arts Council.

Representative Jim O'Kane pointed out that the Sioux City Art Center would like to compete for the available funds but the \$200,000 limit precludes that.

ARTS COUNCIL
Cont'd

In his opinion, budgets are fluctuating and not rising, and he could see no reason for the "hard and fast" \$200,000 figure for visual arts organizations and \$100,000 for performing arts organizations. Grabarski cited several examples of budgets which were up.

Schroeder raised question as to statutory authority for the \$200,000-\$100,000 figures. Grabarski responded that the Code provides for an Advisory Committee. Schroeder recommended inclusion of a variance in requirements for programs. That would allow some other communities to be heard. Grabarski considered the point well taken. There was Committee support for a 10% variance.

Grabarski reiterated that western Iowa receives major funds in the grants-in-aid program. Grabarski declared he could implement a 10% variance on the basis of appeal in both categories--take the authority outside of the Advisory process and require Communities to prove that the 10% would not alter the other elements of their characteristics. The variance would apply only to qualifying.

In reply to Holden, Grabarski explained the Council is authorized FTE 13.75--currently staffed at 12.75 FTE's and has no intention of meeting the authorized level. He instructed the Committee that panelists and advisors, 2.1(4), were synonymous, with the exception of a small Committee that would not be considered a panel. Holden thought the terminology should be consistent, and requested Grabarski to clarify the rule.

Grabarski was willing to meet with the legislature to report method of funding and disbursement. Schroeder requested him to compile a breakdown of expenses for the Arts Council.

2.1(1)

In 2.1(1), Clark recommended removal of the period in the middle of each paragraph, insertion of a comma and removal of "he/she". She also requested deletion of "such" in several areas of the rules. Grabarski was amenable.

HEALTH
DEPARTMENT

The following rules were before the Committee:

- HEALTH DEPARTMENT(470)
- Vital records, 96.1.96.3, 96.6 ARC 2159.
- also filed emergency ARC 2158.....N.Y.F.F..... 7/22/81
- Chi-opractic examiners, continuing education, 141.13(1)"a", 141.61(5), 141.64(1) to 141.64(3) ARC 2139 F..... 7/8/81
- Ophthalmic dispensers, ch 159 ARC 2160 F..... 7/22/81

Mark W. Wheeler, Hearings Officer, and Paul Carlson, Assistant to Commissioner, represented Health Department. Also present: Herbert Strentz, Executive Secretary, Iowa Freedom of Information Council; James B. West, Attorney, Iowa Press Association; Carl W. Nissly, President, Iowa Genealogical Society; Margaret Foster and Barbara A. Snedden, Professional Genealogy Researcher; Howard E. Snedden, Nancy E. Davison and Ronald Woodin, Genealogists; Mrs. Ronald R. Woodin, Genealogy Instructor; and Tom Davidson, citizen.

ch 159

There was brief discussion of ophthalmic dispensers. [68GA, ch 1046].

Vital Records
Amendments
to ch 96

Wheeler advised the ARRC of the Task Force involving all interested parties and of the discussion of the legislation and emergency rules. Also, Department representatives had met with members of the genealogy society. He noted the rules were still under consideration, subject to modification after the public hearing. Department officials were willing to appear at the September ARRC meeting.

HEALTH
DEPARTMENT
Cont'd

Holden questioned where Iowa was in relation to earlier law. He had talked with a conference Committee member who indicated the amendment was intended to restore the confidentiality of certain information to standards of 1979. He wondered if the rules met legislative intent. Wheeler responded that no one from the department had sat in on the conference committee. Priebe thought they had circumvented legislative intent.

Holden asked how the rules compared with those of 1979. Oakley responded there was no change in 1979 other than an AG opinion. He admitted the Department had been somewhat more assertive in applying the law than it was in the past and that created the present difficulty. Oakley continued the executive department had encouraged dialogue on the part of the Health Department, but he referred to the scheduled public hearing where all factions could be heard.

In response to Holden, Oakley concurred the custom before 1979 was not in agreement with the statute, and the AG opinion. He recognized that the Department was trying to write more stringent rules. Oakley called attention to Royce's memo which set out legal considerations. Priebe reported clerks of court in his area were concerned about liability aspects. Wheeler commented the statute [Ch 144] had remained the same over the years.

Tieden declared that maintaining confidentiality as to the cause of death placed a terrible burden on the clerks. Wheeler concurred. Tieden contended there was no Code section requiring that.

Mrs. Ronald Woodin, Panora, addressed the Committee on behalf of concerned genealogists throughout the state. She emphasized that genealogy is "an art and a science, requiring skill and training." She continued that it must be based on "facts--not fiction, on records--not hearsay." She added that although we are not responsible for what our ancestors did, we have an obligation to accurately record facts about them. The vital record is the only place with legal information needed to prove lineage.

Woodin explained the process which must be followed by the genealogist in gathering facts to build a family history and stressed the importance of access to vital records to prove relationship between generations. It is imperative that each record contain names of both parents and the children, according to Woodin.

She stressed that genealogists do not misuse records and do not expect any county official to do their research. In conclusion, Woodin posed three questions:

1. How can a department implement a rule that negates law?
2. Why are genealogists and historians being denied access and charged for a search while reporters, lawyers, abstractors, etc. have free access?
3. If family records are so confidential, what right do public officials have to give or sell that information?

Nissly favored opening the line of communication. He was a member of the task force which had been moving slowly. He mentioned the burden placed on county clerks in requiring confidential information to be covered. He alluded to the problems facing genealogists when information is concealed.

HEALTH
DEPARTMENT
Cont'd

West, speaking for the Iowa Press Association, and responding to Holden, indicated the history of the matter was confusing. He discussed an AG opinion of 1974 which stated the records were confidential. In 1974, the legislature amended the law which many interpreted as "opening the records". In March 1980, the AG issued another opinion that the records were to be confidential--except as provided by rule. That was addressed in the legislature with HF 413. It does require the records to be open.

Strentz distributed a prepared statement and highlighted two points--sometimes government agencies collect too much information and open information is generally in the interest of the public, even though examination may cause inconvenience or embarrassment. He contended 68A provides the record custodian some discretion in release of information. There is a presumption of openness -- and he concurred with the comment of the genealogy society. Closing of records would generate gossip and rumor. He thought there was a good chance of resolving the issue and urged rewrite of the rule regarding live birth to clarify that the identity of the parents remain public. He pointed out that the rules regarding divorce confidentiality may address the wrong document. He referred to §144.37 and recommended clarification of the rules. Strentz pondered whether there was compelling rationale to keep the records secret. He concluded that government should not collect information unless it is absolutely necessary.

Tieden wondered if county officers could set up a time schedule when records were available. It was pointed out the officers must view the record before it may be shown.

Oakley was of the opinion the Department had broad rulemaking authority in addition to Ch 68A to set out specific rules on access to the records. The difficulty is that almost all records contain information which should be confidential. He concluded compliance with the rules is an administrative difficulty.

Carlson spoke of problems in dealing with the confidential information--illegitimate birth and cause of death records. He pointed out that, previously, clerks could allow blanket access to all volumes of books.

Tieden raised the question as to identification of an individual seeking access to records.

Carlson said the task force, among other things, was reviewing Chapter 144 in an attempt to pinpoint vague language.

Priebe had been contacted by clerks re the possibility of hiring more people to blank out confidential information. He pressed for direction to county officers. General agreement that the issue was far from resolved.

Recess

Committee was recessed at 4:40 p.m. to be reconvened Tuesday, August 4, 1981, in room 24.

Reconvened

Chairman Schroeder reconvened the meeting Tuesday, August 4, 1981 in Senate Committee Room 24. All members were present. Also present: Joseph Royce, Staff, and Brice Oakley, Coordinator.

CONSERVATION

First order of business was the following:

- CONSERVATION COMMISSION(290)
- Manufacturer's certificate of origin, 39.8, to 39.10, filed emergency ARC 2216.F.F..... 7/22/81
- Special Review
- Fees for use of state camping facilities/lack of rules
- Licensing metal detectors/lack of rules

39.8(2)

Representing Conservation were John Stokes, Chief, Lands and Waters, Joe Brill, Superintendent of Parks and Roy Downing, Lands and Waters. The Committee was advised that 39.8(2) pertains to new vessels and requires owners to have a manufacturer's certificate of origin to be registered in Iowa.

Special Review

There was special review re licensing of metal detectors. Royce commented that lack of rules in the program created a problem. Stokes concurred but pointed out the method of licensing had been practiced for 20 years. It began as a result of people losing watches or rings on public beaches and another individual, by use of a metal detector, finding the lost items before the owner could search. It has become a popular hobby among people. Department officials indicated the AG's office is assisting them in formulating a rule to be implemented under normal rulemaking. Stokes emphasized the licensing is free. Schroeder recommended issuing a permit with limitations--not a license--since no fee is involved. Conservation officials were amenable.

Fees for State Camping Facilities

Discussion of interpretation of "week-end" with respect to camping. There had been one case--strictly an oversight on the part of the park ranger--of a reduced rate on Sunday.

Brill indicated the funds were needed and Public Safety preferred Sunday limitation. He said hearings had been held. Senior citizens had requested the rule. Discussion of occupancy rates at state parks during the week. Brill thought it good practice to consider reduced rates in state parks for Monday to Thursday and favored publicity to encourage use of our parks by more families. He said senior citizens may take advantage of reduced rates Monday through Thursday. General discussion. Full rates are charged Friday through Sunday. General agreement to concur with Conservation that full rates should be Friday, Saturday and Sunday.

CITIZENS' AIDE/ OMBUDSMAN

Complete revision, chs 1 to 8, of Citizens' Aide/Ombudsman Notice, ARC 22208, IAB 7/22/81 were reviewed by William Angrick, Ombudsman. According to Angrick, the rules were written in 1978 to conform with the Code and did not accurately describe the operation in the office. The revision clarifies those rules. Also present: John Spinnato, Legal Analyst, Citizens' Aide, and Linda Hoffmann, general deputy.

Rules re declaratory ruling and those involving rulemaking were modeled after the administrative rules guide. The format of previous rules was revised. The Committee was advised by Spinnato that 2.4(1)c was for the benefit of many people who come to their office without funds to pay for counsel.

There was general discussion of 1.2(1)b pertaining to the cost of WATS line. Responding to Priebe, Spinnato explained method used for collect calls. The office takes the number and returns the call. Priebe recommended change of "will" to "may". Priebe supported the in-WATS concept.

CITIZENS'
AIDE/
OMBUDSMAN
Cont'd

Schroeder mentioned another type of WATS service, where you are billed for the number of calls as opposed to a flat rate.

Holden pointed out there would be an interim study committee for communications and it would be a good idea for them to review this area. He opined that all of our citizens are not treated equally. Royce commented that the House Public Information Office had an incoming WATS line, which served them very well.

9:50 a.m. Chiodo arrived.

Clark cited instances of excessive use of "such". Holden asked Angrick to change "may" to "shall" in 2.1(2), second sentence.

AUDITOR OF
STATE

John Pringle, Savings and Loan Division, Auditor of State, was present to review adjustable mortgage loans, ch 11, filed emergency after notice, ARC 2206, IAB 7/22/81. The rules were in substantially the same format as published under Notice. No written comments had been received, but 2 or 3 people were present at the public hearing and encouraged adoption of the rules.

Pringle briefed the Committee re the changes -- Previously, for loans to be made on loans secured by a first lien; now, second mortgages geared to a small or large borrower would be permissible as would property improvement loans. However, consumer loans granted under the Consumer Credit Code would not be affected. Pringle said that it is the belief of many people that you can grant an adjustable or variable rate under the Consumer Credit Code but these rules would not affect a consumer loan as defined. The rules are changed to allow associations to establish their own policy on loan-to-value exposure if negative amortization occurs.

11.2(4)

Chiodo was concerned as to the impact of 11.2(4). He could envision interest rates increased to the point where payments could double in 5 years. Pringle said the format was approved by the Bank Board for their associations. In Chiodo's opinion, the rules would circumvent the Code on the 2½% factor limit up or down on interest. Schroeder said that could not be possible. Pringle had been concerned about the matter and would continue to give it consideration.

Pringle advised Chiodo there was no prepayment penalty on an owner-occupied dwelling--1 and 2 family. Chiodo thought that should be spelled out to avoid misinterpretation. It was recommended that Code section be included. Pringle pointed to 11.2(6) which references §534.21(10).

Glossary--
lending
instruments

Holden thought it would be helpful if LSB provided a glossary of the various lending instruments. He recalled that at the NCSL meeting, Garrison had agreed to provide one.

Tieden was concerned for the fact that, by rule, rather than legislation, one financial institution seemed to be favored. Discussion of the source of money. Chiodo contended the Department had broad authority. Holden raised a question as to how much regulating is really being accomplished. He favored perusal of the entire process to determine what "we are trying to protect the consumer from."

Committee
Business

Committee agreed to meet on the statutory date of September 8 and conclude on September 9, 1981.

Break

Schroeder recessed the Committee at 10:15 a.m. to return at 10:50 a.m.

ENVIRONMENTAL
QUALITY

The following rules of the Department of Environmental Quality were before the Committee:

ENVIRONMENTAL QUALITY DEPARTMENT[400]

Emission standards for contaminants, 4.1(1), 4.1(3) ARC 2110 *M*..... 7/8/81Certification of operators of public water supply systems and wastewater treatment plants, 21.1 to 21.14 ARC 2105 *M*... 7/22/81Hazardous waste, 45.5, 45.6, filed emergency ARC 2141 *M*..... 7/8/81

Odell G. McGhee, Compliance, Michael P. Murphy and A. Patrick Allen, Compliance, Mick Durham, Steve Gore, Air Program Development, were present for DEQ.

4.1(1)(3)

McGhee indicated DEQ was adopting federal NESHP, standards re national emission standards for hazardous air pollutants. Clark questioned use of parenthesis in 4.1(1). McGhee saw no need for them. Clark recommended striking "such alloy" in 4.1(3)b.

Priebe thought the required inspections should be conducted by federal authorities. McGhee said the money is provided by the government to the state for a large portion of the DEQ programs. Durham explained the cost to the state would be almost zero because it would be incorporated into current inspections. He added that two-thirds of the DEQ staff is federally financed. Priebe wants the "dollar cost" provided and McGhee was amenable.

21.1-21.14

Murphy, responding to Schroeder and Tieden, said the rules involve the multiyear licensing of operators -- qualifications, increased fees, required by statute -- not testing requirements. Fee increases are designed to pay for administrative cost.

Murphy did not foresee that budget cuts would change the program. Specific requirements for education are by rule. He emphasized there were allowances for individuals without high school education to be given credit for experience in areas requiring Grade 1. Also, the high school GED tests are utilized.

21.1(21)

Clark questioned the meaning of "completion of curriculum" in 21.1(21). Murphy agreed to clarify.

21.1(1)(3)(5)
21.1(16)

Holden preferred consistency and "common language" in the definitions. He reasoned if discretion were intended in 21.1(11), it should be spelled out -- in the last sentence, "may" would be "shall". Holden thought the language was unclear as to applicability of both wastewater systems and public water. Murphy stated "plant" refers to both types of treatment plants. Priebe questioned reason for deletion of "provides active daily on site charge" in 21.2(43). Murphy responded this has been a major issue in the last few years.

21.3(2),
21.4(2)

In 21.3(2) and 21.4(2), Schroeder wanted assurance the additional language would not create changes -- he thought comparable information could be used--not necessarily that listed in the rule. Murphy noted legislative authorization for variances in these situations. Responding to Holden, Murphy said DEQ had researched all of their records to determine the effect of the rules. He emphasized DEQ is required to establish criteria. Impact of the design of the treatment facility was discussed. Holden and Schroeder preferred more flexibility in the criteria in grades of water distribution systems.

Tieden declared population should not be a determining factor with respect to construction. He considered the design to be important since there is great variance in needs.

ENVIROMENTAL
QUALITY
Cont'd
Hazardous
Waste

Holden questioned doubling of fees in 21.7. Murphy agreed to review the matter.
According to McGhee, the Environmental Protection Agency has voted to delay the effective date of the certain sections of the 40 CFR--DEQ is, by reference, adopting these rules in the hazardous waste area.

TRANSPORTATION
DEPARTMENT

Carol Coates represented Transportation for review of the following:

TRANSPORTATION, DEPARTMENT OF[820]	
Abandoned vehicles, [07,D] 2.2(3) ARC 2161 ..	7/22/81
Vehicle recyclers, [07,D] ch 6 ARC 2162 ..	7/22/81
Mobile home dealers, [07,D] 7.2(2), 7.2(5), 7.4(1) ARC 2163 ..	7/22/81
Travel trailer dealers, [07,D] 8.2(2) ARC 2164 ..	7/22/81
Motor vehicle leasing licenses, [07,D] 9.1 ARC 2165 ..	7/22/81
Motor vehicle dealers, manufacturers and distributors, [07,D] 10.1(7), (13) to (17); 10.2(1), (3) to (5); 10.4(1)"a"; 10.4(2)"a" and "c"; 10.4(3)"c"; 10.7(1)"a" and "b"(7); 10.8, 10.10 ARC 2166 ..	7/22/81

[07,D]ch 6

No comments re [07,D]2.2(3). In re [07,D]ch6, Coates, responding to Clark, stated the reason for the vehicle recycler's license was a theft prevention measure.

Discussion of the inspection program in general--Holden maintained it should be changed. Auto dealers have raised questions about the so-called "recycling operation." Holden said auto body dealers and shops are being circumvented by "moonlighters." Discussion of necessity for more thorough inspection of the rebuilt auto. Prior to registering a reconstructed vehicle, it must be examined by DOT inspectors.

7.2(5)
7.4(1)
7.2(2)
8.2(2)

Coates said subrules 7.2(5) and 7.4(1) which require dealers to have a franchise in order to sell new mobile homes were rescinded since no statutory authority existed. Discussion of dealer's bond in 7.2(2) and 8.2(2).

Priebe questioned the need for use of certified mail to notify dealers of license revocation. Coates explained it was for court certification. No questions were raised re 07D, 9.1.

10.4(2)a, e

Coates advised the Committee that changes in 10.4(2)a and 10.4(2)e were statutory. Discussion of dealer plates. Coates indicated the plates are legal for private use as long as the vehicle is offered for sale continuously.

Schroeder was told a dealer's license is required when six or more autos are sold annually.

10.10
10.2(4)b

Holden requested inclusion of the date certain in [07,D]10.10. He questioned 10.2(4)b. Coates replied that DOT interpreted the Code to prohibit two dealers from operating a place of business from the same location. Committee members recommended DOT reconsider that interpretation since this could be advantageous in today's economy.

4.8
FAIR BOARD

Chairman Schroeder called for further review of Fair Board rule 4.8 providing for liens on property situated on the fairgrounds. Royce reported on his research of the matter following yesterday's meeting. The Uniform Commercial Code applies to that type of transaction where county fairs collect fees. He suspected the rules were illegal in terms of seizing possession of the goods (which is allowed only in cases where the goods are in the possession of the creditor in the first place). The rules of the Fair Board empower the Board to seize goods or property that is actually in the physical possession of the owner -- the debtor. Suggested alternatives for the Committee were to object or to delay for 70 days.

Vote on
Objection

Priebe moved an objection to Rule 4.8[430] of the Fair Board on the basis that it exceeds the statute. Formal language appears on page 1526. Motion carried viva voce.

- July Minutes Holden moved adoption of the minutes of the July meeting. Motion carried.
- Recess for lunch Schroeder recessed the Committee for lunch at 11:55 a.m. to be reconvened at 1:30 p.m.
- Reconvened The Committee reconvened at 1:35 p.m. with all members present.

REVENUE

Carl Castelda, Deputy Director, Cynthia Eisenhauer, Excise Tax Director, and Mel Hickman, Excise Tax Division, appeared on behalf of the Department of Revenue. The following rules were reviewed:

- REVENUE DEPARTMENT(730)
Administration, 11.10(1)"b" to "d" ARC 2207 ..F..... 7/22/81
- REVENUE DEPARTMENT(730)
Gambling licenses, 91.6, filed emergency ARC 2154 ..F.F..... 7/22/81
- Games of skill, chance, bingo and raffles, 91.4 - 91.7, 92.3, 93.2, 94.1 to 94.3, 94.10, 95.2 ARC 2155 ..F..... 7/22/81

11.10 (1) Castelda reported that 11.10(1)b to d was unchanged from the Notice.

91.6 He reviewed the application requirements of SF 519 [69GA,ch44] relating to eligibility for applicants seeking gambling licenses. The Director of Revenue is required to set standards with respect to the good reputation and financial standing of an applicant. The rules which were filed emergency to accommodate individuals who file for a gambling license on or after July 1, 1981 will terminate in 6 months. A public hearing was scheduled for August 13, 1981, to review Noticed rules on the subject.

Tieden recalled a problem faced by a Clayton County constituent who had to make a trip to Des Moines to obtain a special permit to operate gambling at the County Fair. Tieden thought that should have been accomplished by telephone. He pointed out that a Revenue representative was in the county but lacked knowledge of the correct procedure--a regrettable situation, in his opinion. Castelda indicated Revenue had cautioned the legislature there would be this kind of problem. Revenue had advised the Fair Board of statutory requirements and the Board was to call a meeting. After two weeks passed and a meeting had not been held, Revenue contacted the fair, Council for Iowa Amusement Association, Iowa County Fair Association and held a meeting to discuss the law and proposed rules. As a result of that meeting, the rules were modified in the area of concessions. The method to apply for license before July 1 was recommended. Mailings were sent to hundreds of persons and associations advising of that action.

The new law requires financial standing and good reputation of eligible applicant and licenses cannot be issued on the spot. Castelda readily admitted that when people are "caught in the bind" there is nothing the Department can do and there was some inconvenience.

The Department also must work with other state agencies to obtain certain criteria on felony convictions and liquor permit violations. Chiodo made the point that fairs would not likely make the same mistake twice.

Castelda was agreeable to inclusion of a date certain with reference to 501(c), Internal Revenue Code, in 91.6(1)j.

In response to Chiodo, Castelda was unsure whether prize money would be included under 94.3--records reports.

REVENUE
Cont'd

Discussion of definitions of "overhead" and "reasonable" expenses. Chiodo expressed concern that "reasonable expenses" might cause problems for tax purposes. Castelda said the expenses are tied to those normally allowed under general accounting principles.

Chiodo commended Revenue for a job well done.

In reply to Tieden, Castelda said there were some instances of organizations wanting to qualify as "religious" for exemption purposes--in the area of sales tax. Revenue is in contact with Internal Revenue Service -- and Iowa is not "rubber stamping."

Clark pointed to numerous grammatical errors in 94.1.
No further comments or questions.

COMMERCE
COMMISSION

The following Commerce rules were before the Committee:

Petition to intervene, method of intervention, 7.2(7), 7.2(8), 2.2(10) ARC 2125 .N.....	7/8/81
Bonded warehouses, licensed grain dealers, 12.1, 12.6, 12.7, 12.10(9), 12.12(6), 12.15, 12.19(3), 12.19(4), 13.7 to 13.9, 13.11(3), 13.11(5), 13.13 ARC 2148 .N.....	7/8/81
Filing requirements for rate increases, emergency after Notice, 7.4(6)"e" to "g" ARC 2199 F.E.F.N.....	7/22/81
Accounting, 16.5(9) to 16.5(11) ARC 2209 .F.....	7/22/81
Gas and electric utilities--load management, energy conservation, 19.9, 20.10(6) to 20.10(9) ARC 2149 .F.....	7/8/81

Appearing on behalf of the Commerce Commission were Andrew Varley, Commissioner, Donald Judisch, Utility Analyst, Eugene Rasmussen, Chief Economist, David Conn, Assistant Commerce Counsel, Marlene Triggs, Law Clerk, Robert Evans, Utility Analyst, Dennis P. Hocksmith, Principal Communications Engineer. Also present: J. B. Fleming, Director, Rates and Budget Services, Iowa Power and Light Co.; Cecil L. Goettsch, Attorney, Sheila Tipton-Frink, Attorney, John C. Cortesio, Jr., Attorney, representing Iowa Power and Light Co.; Susan M. Stewart, General Attorney, Iowa Public Service; Jerry Parkin, Mgr-Govt. Affairs, Iowa Power; Ron Worthington, Director of Rates, Peoples Natural Gas; Brent Gale, Attorney, Iowa-Illinois Gas and Electric Co.; and John Lewis, representing Utility Companies.

Fleming discussed the history of outdoor gas lights and the 1974 prohibition under certain circumstances. The Department of Energy developed supporting rules and after one year, state rules became optional. However, the federal prohibition against outside gas lights still stands. Utilities would be required to notify customers that the utility cannot deliver gas for that purpose. The role of various public bodies in enforcement beyond the utility was unknown by Fleming.

Conn explained that rules re petition to intervene in rate cases and the method of intervention, provide advance standards for the Commission and party applying for intervention.

7.2(7)
7.2(8)

Chiodo took exception to permissive intervention at discretion of the Commission in 7.2(7) and 7.2(8). Conn replied that the intent was to operate on two different levels--to allow the Commission to limit those parties. Chiodo wondered if Commerce had the ability to consolidate similar points of view, why not allow one party to join another party with the similar view. He was dubious about promises to "protect his interests."

Conn said the Commission would consider Chiodo's comments. However, he did not view the procedure as protecting an interest, but rather saying, "You appear to have the same interest as someone else in the proceeding"--a matter of semantics, perhaps.

Triggs concurred the intervention of rights is considered a way of protecting the opportunity to intervene by someone whose interests are not

COMMERCE
COMMISSION
Cont'd

presently being represented by the existing parties. As an intervention of right in requirements of petition in 2.2(10), the individual who wants to intervene must set out their interest in the subject matter of the proceeding. The Commission cannot exercise discretion and deny that individual the opportunity to intervene.

Chiodo posed the question: "I decide to intervene but Commerce decides my intervention is already being pursued by some other group? What would you tell me?"

Triggs responded, "If you had not shown us that you have a unique interest, we would look at 2.2(10)."

Chiodo could foresee a problem with what on the surface might seem to be similar but at some later time, be a different point entirely. He favored more flexibility to allow intervention at any time. Triggs thought that would be the approach taken but Chiodo insisted it was not in the rule.

Varley recalled, initially, there were 600 plus requests to intervene in the IPS case. The previous rules allowed a great deal of discretion in how to include or exclude intervenors. Varley did not see that the problem would be solved if Commerce followed the course Chiodo recommended -- if the rule is so strict as to include 650, that means we are going to handle one rate case a year. Varley concluded from a practical standpoint, there must be a mechanism to limit interventions to a reasonable number.

Chiodo felt uncomfortable about someone being denied the right to intervene on limited basis. Varley questioned Chiodo for an alternative. Chiodo suggested allowing 300 to join together and Varley contended the rule did allow this. Holden thought the provision could be set out in a "less abrasive manner."

Priebe suggested providing "Your point of view will be represented by somebody else." Schroeder offered, "...is denied, unless you can show cause that your area has not been addressed." Chiodo preferred a reverse approach -- instead of the person having to prove he has something unique, have the Commission prove the person does not.

Oakley interjected, "What prevents this from being a risk to the Commissioners and how would they recommend dealing with that particular problem and who should have discretion in deciding the question?"

Chiodo asked if there are several groups, with similar points of view, who wish to intervene, how are they chosen? Conn reviewed the process.

Holden asked if IMA's objection had been met. Conn knew of nothing to prohibit an intervention on the part of a trade association. Royce inquired what would then be the role of the individual member of the trade association? Conn replied there is a legitimate point that the individual's interest would be represented, unless it were different than that of the company. The rules leave that open.

Clark pointed to use of "or" instead of "of" in 7.2(7)(1). It was noted definition of "town" is no longer in the Code. In 7.2(8), she asked for the antecedent of "such person." Conn agreed to check.

Bonded
Warehouses

Holden commented the rules match the statute. Daniel Fay, Commerce Counsel, advised Schroeder that new legislation [69GA, H841] would provide licensing

COMMERCE
COMMISSION
Cont'd

according to the amount of grain purchased last year or by deferred credit sales contract.

12.12(6)

Priebe was informed that deletion of "deferred payment or deferred pricing" in 12.12(6) was a result of the legislation. According to Fay, only two comments had been received on the amendment.

Discussion of the identifying number on contracts for control purposes. Clark offered recommendations : Rewrite 12.4 for brevity; in 12.7, first paragraph, remove ", as hereafter set forth"; remove excessive "such" words; and insert punctuation changes in 12.10(9) and 13.8(2) for clarity.

7.4(6)

Review of filing requirement for rate increases. Conn said the amendment would require that investor-owned utilities provide a fairly extensive list of additional data when they file for rate increase. He said the information was extremely important to the Commission.

Clark raised question on requiring complete federal and state income tax returns for two calendar years preceding the year of filing. She questioned whether the tax information would become public record after it is filed with the Commission. Conn viewed the question as having two parts: 1. Does the Commission have the power to require that information and he thought the answer to be "yes". 2. Once filed, does the Commission have discretion as to whether it becomes a public record. There is a good argument under 68A that it would be.

Clark asked "If you are able to get that information without the automatic filing--why do you feel you need to exercise that power even assuming you have it?" Conn replied that argument could apply to all the information concerning utilities. Given the time constraints the Commission is under, they cannot spend 2 to 4 days reviewing records of the various offices.

Chiodo declared, "You are starting on the wrong track -- when you are afraid of requiring utilities to reveal their income tax!" First of all, these are publicly held corporations with many stockholders who should be entitled to look at the income tax return. When an institution becomes a monopoly, it becomes "semipublic" and has a responsibility to be as open as possible about all information concerning the business. Any reluctance on the part of the utility would indicate to him they must have "something to hide."

Chiodo suspected the real reason utilities were objecting to making income tax returns public--had something to do with holding companies and affiliates.

Cortesio, speaking on behalf of Iowa Power, referred to a letter which they had distributed to the Committee. The letter focused on the impact of 7.4(6) on Iowa Power. Iowa Power challenged the Commission's authority to require the filing of its tax returns in view of strong public policy against such disclosure, evidenced by Internal Revenue Code §610.3 and Iowa Code §422.20.

Cortesio emphasized the question of "raw power" must be tempered by the matter of confidentiality and reasonable protection of that and the weighing in the balance in determining if the power is reasonably exercised. The courts are focusing on that. Iowa power was willing to continue to open their returns in their offices. He wondered what other entity in this state is required to file copies of its tax return. Cortesio contended the public utility is entitled to the same consideration as any other citizen.

COMMERCE
Cont'd

With respect to filing requirements for affiliated companies and subsidiaries (companies affiliated with public utilities but not in the utility business), Iowa Power took the position that was a "clear excursion beyond the Commission's regulatory jurisdiction and was capricious, unreasonable and arbitrary."

Cortesio cited §476.1 as authorizing the Commission to regulate rates and services of public utilities and §476.8 as permitting the Commission to inquire into whether an affiliate made an unreasonable profit in sale of materials or services to a public utility in determining the value of those materials and services for purposes of inclusion in the utility's cost of operation. He discussed the merits of HF 771 which provides the ratemaking process but was doubtful this authorized the Commission to make the big sweep into the area of affiliates. Cortesio urged the Committee to object to the rule on the basis it was beyond statutory authority and unreasonable.

Chiodo maintained that utilities are publicly held corporations, as well as monopolies and have a responsibility "to be as open as possible." He found it difficult to understand why an institution already lacking public credibility would proceed on a course that indicates they have something to hide.

According to Cortesio, public utilities are not regulated by the Iowa Department of Revenue and the Internal Revenue Service.

Oakley reasoned if most of the information was already available from other documents, the confidentiality and privacy argument seemed weak. General discussion.

Fleming concurred with Cortesio that the confidential information about a very competitive enterprise would be displayed to the competitors (the parent affiliate tax return) placing them at a great disadvantage. Oakley could see no reason for filing a consolidated return. Fleming said it was an option of the corporation and that right should not be taken away.

Oakley inquired of Commerce as to the relationship between affiliates and their operations, specifically with the utility in setting its rates-- the degree in which they may be sharing expenses, etc. Fleming reiterated the tax returns should not be a matter of public record.

Oakley opined someone has "to watch the watchers." Holden brought up the question of the assessed valuation of a utility and whether it would be confidential.

Gale commented briefly and conveyed his company's concern that the public or news media would misinterpret the tax information. They are not attempting to hide anything but are of the opinion the rule will generate more questions than it will ever resolve. Gale knew of no Code provision to protect the tax return information.

Tieden had been informed that the Illinois Commerce Commission goes to the utility office to review all tax returns. No one was able to provide Tieden with the average length of time spent by Commission members in searching tax returns. He supported the concept of confidentiality.

Oakley, in considering the reasonableness of this rule, asked Cortesio to submit precise information which could be obtained from the tax returns not relevant to Commission's request. Cortesio was amenable. He indicated

COMMERCE
Cont'd

they would not oppose opening their files for inspection if the Commission, at the outset of a rate proceeding, were to so order it.

Sept.
Agenda

Priebe called on Royce to advise the Committee on possible options re the rule. Royce advised that they could object within 70 days from the July 1 effective date. There was unanimous agreement to place the Commerce rule 7.4(6) ARC 2199 on the September 8 agenda.

Ch 16

McIntire explained amendments to chapter 16. They have created a few new accounts and moved items from existing accounts to new accounts. In response to Holden, McIntire said there had been some opposition, one being the FCC changed their rules after these had been Noticed.

19.9, 20.10

Holden pointed out that in the various references to the utilities in 19.9 and 20.10 the same language was not used. Conn indicated the rulemaking was combined to implement HF 2550[68GA, ch 1155] and requirements of PURPA.

Recess

Chairman Schroeder recessed the Committee at 3:50 p.m. to be reconvened at 4:10 p.m.

Reconvened

The Committee reconvened at 4:10 p.m. The following rules of Social Services were reviewed:

Council membership, 1.2, filed emergency	ARC 2186	..F.F.	7/22/81
Adult correctional institutions, 16.10	ARC 2143	..F.	7/8/81
Mental health program, 31.1(4), 31.2(1)	ARC 2170,		
also filed emergency	ARC 2169	.....	7/22/81
ADC, eliminates payments for the unborn child, 40.1(3), 40.5, 40.7(1)"e"(7), "f"(7), 41.4(1)"e", 41.8(1), 41.8(2), filed emergency	ARC 2189	..N. F.F.	7/22/81
ADC, stepparent's income and resources, 40.2, 40.7(3), 41.1(5)"d", 41.6(1)"f", 41.6(2), 41.7(2)"b", 41.7(4), 41.7(8), 41.8(1)"e" and "f", 41.10, filed emergency	ARC 2187	..N. F.F.	7/22/81
ADC, unemployed parent program, 40.7(1)"e", 41.1(5)"d", 41.4, 41.8(1)"b", ch 42, filed emergency	ARC 2188	..F.F.	7/22/81
ADC, school expenses, 41.8(3)"a", filed emergency	ARC 2190	..F.F.	7/22/81
ADC, unemployed parents, 42.6, ARC 2167 terminated	ARC 2167	..N.	7/22/81
ADC, guardian or conservator, 43.1(2), 43.1(3), filed emergency	ARC 2191	..F.F.	7/22/81
Supplementary assistance, security income increase, 51.3(1), 51.4(1), 51.7, filed emergency	ARC 2192	..F.F.	7/22/81
Supplementary assistance, residential care facilities, 52.1(1) to 52.1(3), filed emergency	ARC 2193	..F.F.	7/22/81
Work and training programs, 55.2	ARC 2172,		
also filed emergency	ARC 2171	.....N. F.F.	7/22/81
Burial benefits, 56.5, filed emergency	ARC 2194	..F.F.	7/22/81
Shelter assistance for unemployed parents, ch 57	ARC 2174,		
also filed emergency	ARC 2173	.....N. F.F.	7/22/81
Food stamp program, 65.2, 65.3, filed emergency	ARC 2195	..F.F.	7/22/81
Medical assistance, 75.1(12), 75.1(13), 75.4	ARC 2176,		
also filed emergency	ARC 2175	.....N. F.F.	7/22/81
Medical assistance, sex reassignment surgery, 78.1(1)"d", "e", filed emergency	ARC 2196	..F.F.	7/22/81
Medical assistance, prescribed drugs, 78.2(2)"a"	ARC 2144	..N.	7/8/81
Remedial eye care, ch 83, filed emergency	ARC 2197	.....F.F.	7/22/81
Group living foster care facilities for children, ch 114	ARC 2145	..N.	7/8/81
Comprehensive residential facilities for children, ch 115	ARC 2146	..N.	7/8/81
Residential facilities for mentally retarded children, ch 116	ARC 2147	..N.	7/8/81
Fee schedule for services, 130.4, 130.4(6)"d", filed emergency	ARC 2151	..F.F.	7/22/81
Child day care services, 132.4(3)"a", ARC 1958 terminated	ARC 2168	..N.	7/22/81
Foster care, 137.9, filed emergency	ARC 2198	.....F.F.	7/22/81
Homemaker-home health aide services, 144.1 - 144.3, filed emergency	ARC 2152	..F.F.	7/22/81
Chore service, 149.2, filed emergency	ARC 2153	.....F.F.	7/22/81

SOCIAL SERVICES DEPARTMENT[770]

ADC, recipient responsibility, 40.7(1)"e"(9), (10), 40.7(4)"f"(9) and (10)	ARC 2177	..F.	7/22/81
Supplementary assistance, residential care, 51.3(3), 51.3(5) and ARC 2178	ARC 2178	..F.	7/22/81
Intermediate care facilities, reimbursement rate, 81.6(16)"e"	ARC 2179	..F.	7/22/81
intermediate care facilities for mentally retarded, reimbursement rate, 82.5(16)	ARC 2180	..F.	7/22/81
Child day care services, fee schedule, 130.4(2), 130.4(3)	ARC 2181	..F.	7/22/81
Foster care payments, 137.6, 137.9	ARC 2182	..F.	7/22/81
In-home health related care, 148.4(7)	ARC 2183	..F.	7/22/81
Sheltered work/work activity services, 155.2(4)	ARC 2184	..F.	7/22/81
Adult protective services, 156.3(1)	ARC 2185	..F.	7/22/81

SOCIAL
SERVICES
Cont'd

The Department was represented by Judith Welp, Rules and Manual Specialist, Lois Berens, Eligibility Specialist, Mary Helen Cogley, Program Manager, Gloria Sapp, Barbara Olk, Adult Corrections, Mary Reavely, Adult Services, James E. Krogman, Gloria Conrad and Miriam Turnbull, Childrens Services. Also present: Allan Faidley, Executive Director, Iowa Group Home Personnel Associate and Merlie Howell, Executive Director, Coalition for Family and Children's Services.

Council on Social Services - 1.2 Oakley, speaking for Priebe, asked about the quorum requirement for voting by Council on Social Services. Welp said it would be a majority of the membership and Oakley thought it should address vacancies on the Council. Welp was amenable.

16.10 According to Welp, 16.10 defines crimes against persons and property. In 16.10(5), Clark pointed out that Royce had recommended change of Unauthorized Possession of a weapon to the list of "Crimes Against Person." Welp was amenable.

Tieden wanted assurance the rules were definitive enough to avoid excessive appeals. Welp replied the wording for the crime was removed from the law and thought the rules to be definitive. As a result of comments, DSS will try to provide a stricter definition of "property crimes."

31.1, 31.2 Welp explained because of SF 572 [69GA, ch 78], DSS redefined the definition of the psychiatric program eligible for reimbursement at the local treatment program.

In line with SF 566 [69GA, ch 7], DSS eliminated the references to ADC payment for an unborn child. The definition remained because of the Medical Assistance Program.

Chs 40
42 The amendments will reinstate the policy prior to October 31, 1978 -- when a stepparent is in the home, his or her resources are counted as if they were a natural parent. Clark found 41.7(8)b(1) difficult to follow. Welp emphasized they intend to show many examples in their manual. Priebe expressed his dissatisfaction with 41.8(3).

Amendment to 55.2 was mandated by SF 566 [69GA, ch 7] to implement cost containment provisions in the IETP (Individual Educational Training Program). No plan is less than 2 weeks. Schroeder thought there might be instances where completion of programs could be accomplished in less than two weeks-- a saving in the long run.

Oakley viewed this as a substantial revision and he requested a fiscal impact comparing previous and revised expenses. He was interested in what savings would be realized and opined it may come out that the cuts are quite deep.

55.2(12) Responding to Clark's question, Welp agreed to provide a better definition of "elective course" in 55.2(12). Clark pointed out there are situations where there are courses related to career choices, e.g., art would be helpful for an elementary education teacher. Welp indicated that would be an elective course and not eligible for the program.

56.5 No recommendations for 56.5.

- SOCIAL
SERVICES
Cont'd
- Ch 57 Welp explained they had attempted to base the shelter assistance program on current programs -- some from ADC and the ADC unemployed parent program. They tried to relate it to food stamp program so the application and process is concurrent with that program. Responding to Schroeder, Welp said the \$150 maximum for 3 months was set by law.
- ch 65 & 75 No recommendations were offered for amendments to chapters 65 and 75.
- 78.1(4)d Welp pointed out the court, in Pinneke v. Preisser, 623F 2d 546 (8th cir1980), declared their rule prohibiting payment for sex reassignment surgery to be void and DSS rescinded that portion of the rule.
- 78.2(2)a In response to Priebe, Welp said 78.2(2)a with respect to charges for legend drugs implements the directive in the appropriations bill.
- Ch 83 Chapter 83 pertaining to the program on remedial eye care was rescinded to implement SF 566.
- Ch 114 Chapter 114 -- group foster care -- contains basic standards for licensing. Facilities wishing to be licensed for group foster care must also meet the requirements of either chapter 115 or 116.
- Clark questioned definitions and the difference between "community residential and "comprehensive residential facility."
- Turnbull explained that a comprehensive facility is self-contained. Services would be purchased for community agencies, if needed. Clark contended the rule did not reflect that practice. DSS had worked with providers for associations. Clark encouraged further perusal of the matter.
- Schroeder could envision problems with the 75-square-foot requirement in 114.3(1) for an outdoor play area. However, providers thought that to be a realistic requirement.
- In response to Tieden, Krogman indicated the requirements were absolute-- there was no waiver. Turnbull stated the rules had been developed with a coalition of all childrens agencies.
- Schroeder doubted the necessity of maintaining a 140° temperature for hot foods being transported. Turnbull said the standards were from the Department of Agriculture--114.4(5).
- Schroeder questioned the necessity for 114.4(11)"b". It was the consensus of the Committee that the provision on garbage cans should be clarified as to intent of "water tight". Royce will peruse Health Department Standards and Turnbull agreed to reconsider the matter.
- 114.2(3) Re qualifications for staff--in 114.2(3), Schroeder noted there was no indication that a BA degree was required, but in 114.8(1), it was. Clark pointed out the use of "or", which seemed to offer alternatives. Turnbull agreed one qualification was six years of supervised child welfare experience.
- 114.14(1) In 114.14(1), Schroeder raised question as to a child's service plan. Krogman indicated each child sets up a plan with the social worker. Schroeder could foresee problems in that area and opined there should be uniformity. Krogman said they were trying to be flexible.

SOCIAL
SERVICES
Cont'd

115.8(2) Priebe referred to 115.8(237)--locked cottages--and wondered if the night staff was required to be awake. If the doors are locked, how would anyone know if they were awake? He declared the rule was unenforceable.

115.9 In 115.9, Clark questioned the meaning of mechanical restraints. Department officials cited handcuffs as an example.

Ch 116 There was discussion of chapter 116 with particular emphasis on staff-to-client ratio for care of mentally retarded in residential facilities. An Association for Mentally Retarded had requested that the ratio be at least 1 to 4. Priebe questioned the authority for the rule. Turnbull said there had never been standards governing the MR group. Previous standards had not been related to the needs of handicapped children. The law provides the Department can have different standards for different types of facilities. Further, the Department has a responsibility to ensure that adequate and well-trained staff is available. Turnbull doubted there were any facilities operating with a 1 to 8 ratio at the present time. All facilities have, on the average, 1 to 5 or 1 to 6 and DSS believes MR facilities should have 1 to 3. Priebe and Schroeder recommended a 1 to 6 ratio. Priebe had problems with mandating a 1 to 4 if 1 to 6 would be adequate. General discussion, with Priebe mentioning a problem with re-evaluation of handicapped children in his area. Turnbull was unsure that related to the licensing issue. Schroeder suggested striking the sentence stating the "one to four ratio" and provide "staff to meet the needs of the clients." Turnbull responded there would be a difference of opinion among the licensing people, and removal of the ratio would hamper the facilities. Clark contended that during the prime program hours, 1 to 4 ratio was necessary.

Schroeder requested the Department to furnish additional information relative to ratios when the rules are before the Committee again. Turnbull was willing to compile statistics on the matter.

No questions or comments re 130.4, 130.5(6)d, 132.4(3)a or 137.9. Discussion of rules on state-funded homemaker programs (114.1-144.3). DSS defined the components of the service and included eligibility and resource standards, and spelled out who could obtain the service when there was a need. Holden inquired if there are private corporations offering that service--there was indication that a nonprofit organization was interested.

144.1(9) In re 144.1(9)--family management--Schroeder asked what the legal obligation was as far as skills are concerned. Welp said the family must remain together--you are legally obligated to support your children. The family management segment is involved in the child abuse areas and child protection cases.

The remaining filed rules on the agenda were not reviewed at this meeting.

Since DSS rules are frequently controversial, Priebe requested they be placed on the agenda at an earlier time.

NO AGENCY
REPRESENTA-
TIVES

Agency representatives were not requested for the following:

BEER AND LIQUOR CONTROL DEPARTMENT[150]	
Class "C" beer establishments, 4.31, ARC 1436 terminated ARC 2202 <i>N</i>	7/22/81 66
INSURANCE DEPARTMENT[510]	
Requirements on licensees, 9.1(6), 9.2, 9.3, ARC 1344 terminated ARC 2157 <i>N</i>	7/22/81 81
LABOR, BUREAU OF[530]	
Occupational safety and health, general industry, 10.20 ARC 2131 .. <i>N</i>	7/8/81 12
Occupational safety and health, 10.20, filed emergency ARC 2130 .. <i>N</i>	7/8/81 35
Occupational safety and health, construction, 26.1 ARC 2132 .. <i>N</i>	7/8/81 13
MERIT EMPLOYMENT DEPARTMENT[570]	
Merit increases, 4.5(2) ^e ARC 2212, also filed emergency ARC 2211 .. <i>N, F, F, F</i>	7/22/81 102
Emergency appointment, 8.8 ARC 2214 .. <i>N</i>	7/22/81 81
Vacation and leave, 14.1 to 14.18 ARC 2213 .. <i>F</i>	7/22/81 126
REGENTS, BOARD OF[720]	
Personnel administration, 3.3(5), 3.14(20), 3.14(21), 3.39(2), 3.39(7), filed emergency ARC 2156 .. <i>F, F</i>	7/22/81 103
SUBSTANCE ABUSE, DEPARTMENT OF[805]	
Licenses, treatment programs, 3.5 ARC 2204 .. <i>N</i>	7/22/81 89
WATCHMAKING EXAMINERS[850]	
License renewal, continuing education, 3.4, 4.10, filed emergency ARC 2150 .. <i>F, F</i>	7/8/81 35
ENGINEERING EXAMINERS	
Plats, 2.5, ARC 1472 terminated ARC 2107 .. <i>N, T</i>	6/21/81 1587

Chairman Schroeder adjourned the meeting at 5:25 p.m.

September
Meeting

Next regular meeting will be held Tuesday and Wednesday, September 8 & 9, 1981, Room 24.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assisted by Vivian Haag

Laurene Schroeder

CHAIRMAN

9-9-81

DATE