MINUTES OF THE SPECIAL MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The special meeting of the Administrative Rules Review Committee was held Monday, April 10, 1989, Committee Room 22, State Capitol, Des Moines, Iowa. This meeting was held in lieu of the statutory date of April 11, 1989.

Members Present

Senator Berl E. Priebe, Chairman; Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives David Schrader and Betty Jean Clark. Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Vivian Haag, Executive Secretary. Also present: Barbara Brooker Burnett, Governor's Administrative Rules Coordinator.

Convened Chairman Priebe convened the meeting at 8:02 a.m. in Committee Room 22, State Capitol, Des Moines, Iowa.

BOARD OF REGENTS

R. Wayne Richey, Executive Secretary, Charles Wright, Director, Personnel, and Linda Kading, Business and Finance, represented the Board for the following:

Appropriate hearing, administrative law judge, procedures, 9.1(3) o." 9.3(3), 11.5(2), 11.5(3), 12.5(2), 12.5(4),	
12.5(6), 13.5(2), 13.5(4), 13.5(5), 15.5(2), 15.5(4), 15.5(5), 16.5(2), 16.5(4), 16.5(5) ÅRC 9750	3/22 89
Policy on competition with private enterprise, 9.4 ARC 9728	
Policy on telecommunications, 9.5 ARC 9751	3/22.89

Also present: David Brasher, Director, National Federation of Independent Businesses.

No questions re 9.1(3)a et al.

9.4

Discussion of rule 9.4 which, according to Richey, was intended to implement Iowa Code chapter 23A. Emergency rules had been filed and this Notice formulated final rules concerning government competition with private enterprise. Richey continued that contrary to complaints by opponents, the rules implement the law fully but do not exceed it. Richey distributed a memo on the subject. The institutions plan to conduct a detailed review to ascertain competitive activities which could be dropped if they are determined to be in needless competition with private enterprise. Richey emphasized that the rules do not amend the Act as proponents of stronger rules indicate. He spoke of considerable debate and negotiation concerning provisions of the new law as it relates to Regents' business operations.

Richey referenced written comments by Brasher and contended that the rules were less stringent than the law allowed. The Board believes their approach to be very reasonable in attempting to minimize potential conflicts and competition.

Tieden was advised that certain on-campus activities including the Hawkeye Shop and "Alumni set-ups" were exempted by the Act.

BOARD OF REGENTS

Tieden referenced correspondence he had received concerning the fact that faculty and students could order computers through the Regents Universities at special rates. Richey responded that the universities consider computers to be vital pieces of equipment for instructional use to advance the educational process. He referenced the last page of his memo.

Doyle referred to 9.4(8) a on the appeal process and Royce commented that there was no uniform policy for appeals. He viewed the process in 9.4(8) as being extremely simplified in that not all the elements of 17A were represented. He was of the opinion that the subrule would provide a good initial appeal process. Royce added that it could be argued that chapter 17A provisions would not pertain to these rules. In Doyle's opinion, additional language should be included in the new language between paragraphs "c" and "d" and Royce was directed to study the matter.

Brasher supplied copies of his remarks made at the public hearing on rule 9.4. He reviewed his position that nothing in the law exempts Regents from compliance with requests for regulatory flexibility analyses. He disagreed with statement by the Board that rule 9.4 would have no impact on small business except that the opportunity for private business might increase. Brasher recalled that the Board had declined to honor his request for a regulatory flexibility analysis on the filed emergency rule. As a result, it was his contention that under Code §17A.31, the filed emergency rule was null and void.

Brasher asked for specifics in the rule and he cited Iowa Code §17A.31(4), paragraph "j" which requires a comparison of probable costs and benefits of the proposal to probable costs and benefits of inaction. He voiced opposition to allowing students to use IDs as "interest-free charge cards at university shops." He urged Regents to divest itself from all but the most rudimentary and critical services to students, faculty and staff.

With respect to a regulatory flexibility analysis, Richey said the question had been carefully reviewed and they were advised it was not required. However, they were willing to begin the process, still maintaining it is not legally necessary. No formal action.

Chairman Priebe was hopeful that a compromise could be reached before the rules were adopted.

9.5 There was unanimous consent to defer review of proposed Deferred 9.5 until the May meeting.

CORREC-TIONS DEPT. Fred Scaletta reviewed the following:

 CORRECTIONS DEPARTMENT Continued 45.4(1) 45.2

Scaletta was willing to modify 45.4(1)a to reflect "city ordinances" as well as federal and state law. Chairman Priebe observed the absence of guidelines for standard conditions of parole supervision in 45.2(1). He referred to 45.2(1) k as conferring "a great deal of power" on the parole officer.

Pavich could foresee problems for parolees living in communities located on county lines--45.2(1)f. Scaletta stated that the Department believes that more stringent rules will help the Department to fulfill their mission to protect the public.

Clark challenged the requirement in 45.2(1)h for use of "true name" of the parolee. She thought "legal name" would be more appropriate. Scaletta responded that the inmate's name is associated with a number and the Department uses the name under which the individual was prosecuted. He cited use of aliases and religious cults. At any time the name varies, confusion can reign. letta was willing to refer the matter to the Board for further consideration.

Clark also had problems with provisions in 45.2(1)i relative to owning or operating a motor vehicle by a parolee. She favored a system whereby the inmates, after release, would be subject to the rules of society. Clark reasoned that a lot of animosity is created by rules for the parolee to follow. She preferred removal of language in paragraph "l" which would require the parolee to "treat all persons with respect and courtesy..." No formal Committee action.

ELDER **AFFAIRS** DEPARTMENT

David Ancell and Lois Haecker presented the following:

It was noted that the National Federation of Independent Business had requested a regulatory flexibility analysis on the rules. No questions by the ARRC.

EMPLOYMENT APPEAL **BOARD**

Jim Althaus and I. John Rossi, Attorney, appeared on behalf of the Board for the following:

After brief overview by Althaus, Royce noted lack of detail in the rules relative to appeals. Althaus indicated that the Board would rely on the master set of rules on appeals. No substantive recommendations were offered at the December hearings on the rules.

HUMAN **SERVICES** The agenda before the Committee follows.

Granting assistance — forms, 41.2(9)"a" and "c" ARC 9704 E	9 0 on
Application and investigation — eligibility card under qualified Medicare beneficiary program, 76,6(4) ARC 9706 — F	-
Electronic benefits transfer of A103 benefits, 40.7(41°6"(9), 40.7(11"1"(9), 41.7(11"1"(1), 41.8(4), 42.8, 42.8(1),	
43.2(2)"e," 43.3(3)"f," 45.1, 46.1, 46.2(2), 46.4(1), 46.5 ARC 9715	
Granting assistance, 41.7(6)"q." "r," and "v," 41.7(9)"c"(2) ARC 9712//	
Administration of food stump program, 65.24, 65.34, filed emergency ARC 9705F.	
Conditions of eligibility, 75.1(2)"a"(4), 75.1(2)"b" ARC 9713	3/8/89
Medicaid reimbursement, 77,29, 77,30, 78,16(6), 78,28(7) to 78,28(9), 78,31(4)"d"(7) and (10), 78,33, 78,34,	
79.1(1)"d." 79.1(2), 79.1(5)"L" 80.2(2)"dd" and "ee," notice ARC 9270 terminated ARC 9736 . N.T.	3/22/89
Dependent adult abuse, 176.17 ARC 9732 A	
Subsidized adaptions, 201.1 to 201.8, 201.10, 201.11 ARC 9714 . 🕢	

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HUMAN SERVICES Continued Mary Ann Walker, Lorena Griffith, Vivian Thompson and Margery Corkery appeared for the Department.

No questions re 41.2(9) a and c, 76.6(4), 40.7(4) et al.

41.7

Discussion of amendments to 41.7(6) et al. which will exempt bona-fide loans as income and resources for the ADC Program. Walker explained that the federal government is now recognizing certain loans are not really income. Thompson assured Clark that grants for college were not affected. However, any excess for living expenses might be counted as income.

Ch 65

Walker described amendments to Chapter 65 which provide that foster children will not be included as members of the food stamp household unless foster parents elect to do so. Also, advance earned income tax credits will not be considered as income. Clark was advised there were no foster homes receiving food stamps.

No questions re 75.1(2) and amendments to Chapters 77, 78, 79 and 80.

176.17

With respect to 176.17, Walker indicated that the Inspections and Appeals Department was responsible for investigating cases of dependent adult abuse in facilities under the jurisdiction of Human Services. The amendment clarifies that Inspections and Appeals is responsible for processing requests for correction or expungement of the abuse reports. No questions.

Ch 201

Discussion of amendments to Chapter 201 pertaining to subsidized adoptions. Corkery responded to question by Clark as to why the age limit for subsidy eligibility was lowered from four to two years. Corkery pointed out that most of these children are of a minority race and it is very difficult to place them.

Committee Business Senator Tieden moved approval of the minutes of the March meeting as submitted. Motion carried.

Health
Data
Commission

Chairman Priebe recognized Barry who sought ARRC approval to publish in the Iowa Administrative Bulletin certain data submitted by the Health Data Commission pursuant to Iowa Code chapter 145.

Motion

Barry called attention to rule 411--7.1(145) wherein the Commission had included the Iowa Administrative Bulletin as one method of notification, although it was not a statutory requirement. Tieden moved that Barry be authorized to publish the information submitted by the Health Data Commission. Motion carried.

Meeting Dates The following tentative meeting dates were agreed upon: May 9 and 10; June 6 and 7; July 11 and 12, 1989.

ENVIRONMENTAL
PROTECTION
COMMISSION
Ch 133

Mike Murphy represented the Commission for the following:

Murphy said that the proposed Chapter 133 describes guidelines for groundwater cleanup. Rules were mandated by the Groundwater Protection Act to be adopted by July 1, 1989. Six public hearings will be held starting April 11, 1989. Murphy said that most of the federal rules had been adopted. Clark recommended inclusion of a date certain for the Publication referenced in 133.3(1)b.

Priete referred to preamble language relative to the goal for cleanup of underground storage tanks. He wanted to ensure that the rules would not supersede pending legislation. Murphy saw no problem since legislation this session would provide financial assistance.

EDUCATION DEPARTMENT

The following Education rules were before the Committee:

Educational opportunities outside a student's resident district, ch 16 ARC 9701.	3/8/89
Vocational rehabilitation division hearings on applicants' and clients' appeals, 56.14 ARC 9700	318789
Procedures for charging and investigating incidents of abuse of students by school employees, ch 102 ARC 9702 F	3/8/89
Child development coordinating council, 64.4(2), filed emergency ARC 9699. F.E.	3/8/89

Dr. Ralph Childers gave a brief overview of revised rule 56.14. No questions. Carol Alexander and Kathy Collins reviewed the remaining rules and no recommendations were made.

NATURAL RESOURCE COMMISSION

The following rules of the Natural Resource Commission were explained by Richard Bishop:

Waterfowl and coot hunting seasons, 91.1 to 91.3, 91.4(1), 91.4(2)"j" and "k" ARC 9716	3/8/89
Pheasant, quart and gray (Hungarian) partridge hunting seasons, 96, 1(1), 96, 2, 96, 3 ARC 9720	9.8/80
Common singe, Virginia rail and sora, woodcock and ruffed grouse bunting seasons, 97 Lto 97 AARC 9718. A	979790
Wild turkey tall hunting, 99 1(2), 99.1(3), 99.4 ARC 9717	9,0.00
r arrowry regulations for bunding game, 102.3 ARC 9724	170 00
Deer hunting regulations, 106.1, 106.2, 106.1, 106.5(2)"d" and "e." 106.6, 106.7(4), 106.7(5), 106.8 ARC 9729 A	47/07011
Rabbit and squierel hunting, 107.1 to 107.3 ARC 9722 M	3/8/89
strik, muskrat, raccom, badger, opossum, weasel, striped skunk, fox tred and gray), beaver, covole, ofter and	
spotted skunk sensons, 108.1, 108.1(2), 108.2 to 108.5, 108.7(2)"i" and "k" ARC 9721	979790

Ch 91

Bishop advised that the duck population would be down again this year and regulations would not be more liberal. They could be more restrictive if the Canada drought continues. He pointed out that goose hunting would cover a greater portion of the Missouri River area.

Ch 96

With respect to hunting seasons set out in Chapter 96, Bishop said there were no recommended changes from last year. The Commission decided to allow an earlier harvest of grey partridge since it is plentiful.

Ch 97 99.1

No questions re 97.1 to 97.4. In 99.1(2) et al., Tieden and Bishop discussed wild turkey hunting zones and the advantage of avoiding large concentration of hunters in

102.3

one area. No questions re 102.3.

Ch 106

Bishop briefed the ARRC concerning changes in the deer hunting rules. He advised Schrader that discharge of firearms from a roadway was prohibited to address NATURAL RESOURCE COMMISSION problem areas in zones 1, 2 and 10. Bishop spoke of indiscriminate shooting in northern Iowa where there is open, flat country. Priebe was supportive of the rule--106.7(5). Tieden would support the restriction in every zone. Discussion of the number of licenses for hunting with bow and arrow and guns.

Chs 107, 108 No questions re 107.1 to 107.3 and 108.1 et al.

ECONOMIC
DEVELOPMENT
DEPARTMENT
23.6, 24.3,
24.4

Lane Palmer and Mike Miller appeared for review of:

CDBG transfer of funds, 23.6(3), filed emergency ARC 9729

Emergency shelter grants program, 24.3, 24.4 ARC 9730

3/8/89

Palmer spoke of a number of uncertainties in the previous year concerning block grants.

No Committee recommendations for either rule making.

LIBRARY DIVISION Shirley George appeared on behalf of the Library Division to explain the following:

George reviewed the general organization and operation of the Library Division and distributed copies of the Library Services and Construction Act Handbook (LSCA) and a Report of 1988 Grants.

Tieden asked Royce to comment on the rules. Royce advised that greater detail was needed in terms of structuring the grant program, e. g., eligibility and the criteria for selection. George pointed out that this information was contained in the Handbook. Royce reiterated that this should be reflected in the rules in more detail and that the Handbook could be adopted by reference. Royce spoke of the detailed appeals process in Iowa and recommended that contested case rules be drafted. Priebe suggested that George work with Royce and Burnett and she was amenable.

Doyle questioned procedure for appeal hearing in 1.3(2)c(5)"3" but Royce thought it would be acceptable since it reflects common practice. No formal action.

REVENUE & FINANCE DEPARTMENT

The following agenda was presented by Carl Castelda, Deputy Director of the Department:

There was brief discussion but no action was taken.

PUBLIC DEFENSE DEPARTMENT Ellen Gordon appeared on behalf of the Department for review of:

Disaster services - enhanced 911 telephone systems, ch 10, ARC 9725, also filed emergency ARC 9726. A. e.f. 3/8/89

Priebe was interested in knowing if the rules would increase telephone costs. He recalled that telephone officials had quoted 25 cents for 911 last fall but now contend that more money would be needed for the base rate and automatic call distributor.

PUBLIC DEFENSE

Gordon noted that "base rate" and "base rate area" were defined in the rules but will be deleted since they are Continued not applicable to Iowa. She was not sure about "automatic call distributor" since that subject was not brought out in the hearings.

> Priebe commented on the complicated routing process and wondered what could be done to correct that problem. Gordon noted that local governments may make lease agreements for their data base. Much of the U. S. West network is handled in Minneapolis, for example. the data base is necessary to get the caller's name and address on a computer screen.

Gordon advised Tieden that costs were averaging between \$300,000 and \$400,000 per county to implement the enhanced 911 system so sparsely populated counties will be faced with problems. It was Doyle's understanding that costs for regular 911 calls had decreased for counties such as Woodbury. General discussion. Priebe reasoned that after purchase of the original equipment, costs should decrease. Gordon said there were 160 telephone companies statewide and some overlap. She did not disagree that cost factor was a big problem. Gordon emphasized that comments from the hearing would be considered for the final draft of rules. No action taken.

TRANS-DEPT.

The following rules of the Transportation Department were PORTATION before the Committee:

Competition with private enterprise, ch 25 ARC 9734 . F.	3/22/89
Vehicle registration and certificate of title, 400.1(9), 400.1(10), 400.3, 400.3(1), 400.3(5), 400.3(6), 400.3(12) to	
400.3(20), 400.4 <u>,</u> 400.4(2), 400.4(3)"f," 400.6(1) io 400.6(19), 400.16(6), 400.16(6), 400.17(6), 400.41, 400.41(2)"f"	
ARC 9697 . F.	:1/8/89
Tourist-oriented signing, 119.1 to 119.6 ARC 9737	9/99/20
Train speed ordinances, 800.15 ARC 9698	3/8/89

Ruth Skluzacek reviewed amendments to Chapter 400 regarding kit vehicles. She offered examples of the kit vehicles. There was discussion of salvage vehicles and collegiate vanity plates. Revenue from these special plates is deposited in the Road Use Tax Fund.

Deferred The remaining rules were deferred temporarily and Chairman Priebe called up the Racing Division rules.

RACING & GAMING DIVISION

The following rules for Racing and Gaming Division were before the Committee:

INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella" Practice and procedure before the racing commission and board of stewards, greyhound racing, mutuel departments, thoroughbred racing, 4.14, 7.2(12), 8.1, 8.2(4)"m," 8.6, 10.2(6)"h," 10.3(25), 10.4(6), 10.4(10)"c," 10.4(21) ARC 9709

Mick Lura informed the Committee that the revision requested by the ARRC at their February meeting had been rejected by the Commission. The ARRC had voted an objec-10.4(14)a tion to 10.4(14)a on the grounds that it was unreasonable in not excluding owners of horses. The rule states that no licensee or employee at a track may consume alcohol which would constitute a blood level of .10 percent while on duty or in a restricted area.

4-10-89

RACING & GAMING DIVISION Continued Objection Vote

Royce advised ARRC that the objection as it stands [IAC 2/22/89] does not need renewal, but it could be expanded to include .05 percent.

After further discussion, Pavich moved a new objection to 10.4(14)a. Motion carried. Royce drafted the following:

At its April 10, 1989, meeting the Administrative Rules Review Committee voted to object to the language contained in 491 IAC 10.4(14)"a" on the grounds that it is unreasonable. The committee has two basic concerns. First, the committee believes that these provisions are over inclusive in that they regulate the conduct of certain licensees who are not at the track in an official capacity. Second, the committee is concerned that these provisions may be too lenient in that they allow certain key officials and licensees to have any level of alcohol at all.

The rule states that no licensee or employee at a track may consume alcohol which would constitute a blood level of .10 per cent or .05 per cent, while on duty or in a restricted area. The committee notes that this would apply to owners of race horses. It was the opinion of the committee that an owner who is simply acting as an observer should not be subject to this restriction. The committee generally approves of this restriction but requests that the division provide an exemption for owners of horses if those owners are not actively working during the race.

The committee also objects to that provision in that it allows certain officials and licensees to have any blood alcohol at all. It is the opinion of the committee that it is unreasonable to allow jockeys, stewards or judges to have even a .05 blood level. In the case of a jockey even the mild euphoria of a .05 alcohol level could create a disaster on the track. In the case of either a steward or a judge it is essential that their perception and judgment be completely unclouded, to insure fair and accurate regulation of the races.

These rules have been adopted in final form, appearing as part of ARC 9759, published in XI IAB 20 (4-5-89).

Priebe clarified that today's objection would supersede the February 13 version.

Schrader consulted with Lura with respect to testing for potential trainers. Schrader had heard that only one out of seventeen had passed the test. Lura assured him that was inaccurate information. A written test is administered by the stewards. Each track has separate rules on the procedure for entering horses as well as a "barn test" whereby stewards select three other trainers for additional testing, e.g., how to saddle a horse. Most failures result from the written test which can be retaken.

In response to question by Priebe as to the function of the detention barns, Lura said that law requires horses which have had Lasix administered to be under observation four hours prior to a race.

TRANSPOR-TATION DEPARTMENT Resumed Ch 25 Chairman Priebe called up remaining rules of the Transportation Department, which had been temporarily deferred.

No questions regarding Chapter 25.

Ch 119

Steve Westvold discussed amendments to Chapter 119. He said that the tourist-oriented directional signing program was begun two years ago on an experimental basis and was now a permanent program. Tieden reasoned that a viable tourist attraction should not have distance restrictions from a primary highway. He continued that some very popular tourist attractions in his area would not meet the restrictions. Westvold explained that mileage requirements were from the federal government. He referred to the private directional program which permits a sign up to 50 miles off the highway. Westvold admitted that it would be more difficult for an agricultural activity to qualify.

TRANSPOR-TATION DEPARTMENT Continued The intent of this private program is to include signs for motorists' services, gas, food, lodging, for examples. Schrader was informed that during a two-year period, the Department estimated a cost of \$130 per sign, but that was inadequate. The proposed \$50 per sign in 119.6(1) was an effort to establish a fee structure--cost of fabrication and installation would be additional. West-vold offered examples of agricultural businesses which could qualify--Christmas tree farm, orchard, "you pick it" fruit and vegetable operation, any livestock operation, if the public were welcome to tour. No Committee action.

Harvey Sims, Operations Manager and Superintendent of Railroads, gave overview of 800.15 intended to implement Iowa Code section 327F.31. There was discussion of delay at track crossings. If the time exceeds 10 minutes consistently, the public could contact DOT to work with the railway officials.

No Agency Reps No agency representatives were requested to appear for the following:

ENERGY AND GEOLOGICAL RESOURCES DIVISION[565] NATURAL RESOURCES DEPARTMENT[661]**umbr-bls** Energy use evaluation, severe hardship consideration, 7.1(2), 8.6(6)*c" ARC 9744	3/22/89
HISTORICAL DIVISION[223] CULTURAL AFFAIRS DEPARTMENT[221] "mobrella" State historical society of lowa — fees, 13.6(2) ARC 9748 . A	3/22/89
INSPECTIONS AND APPEALS DEPARTMENT[481] Food establishments — exceptions to current federal standards, 30.2, 31.1, 32.1 ARC 9710 F. Food establishment licenses, 30.6 ARC 9749 A PROFESSIONAL LICENSURE DIVISION[645]	3/8/89 3/22/89
PUBLIC HEALTH DEPARTMENT[011] "umbrella" Licensure of nursing home administrators, 141.5(1) ARC 9727 . £	3/8/89
Hearing aid dealers, 120.212(8)"d" ARC 9703	3/8/89
REAL ESTATE COMMISSION[193E] Profeedural Licensing and Regulation Diction(1123) COMMERCE DEPARTMENTIALI "under ella" Business conduct, 1.37, 1.38 ARC 9719	3/8/89
SECRETARY OF STATE[721] Election forms and instructions, 21.3 to 21.5 ARC 9785. F. Uniform commercial code, ch 30 ARC 9742 Payment for services, telecopier service, 2.3, 2.5 ARC 9741	3/22/89 3/22/89 3/22/89
TREASURER OF STATE[781] Informal claims for second injury fund, ch 10 ARC 9733 .F.	3/22/89
UTILITIES DIVISION[199] COMMERCE DEPARTMENT[181]*umbrells* Declaratory rulings, 2.2(6), ch 4 ARC 9738	3/22/89 3/22/89 3/22/89

Adjourned

The meeting was adjourned at 11:15 a.m. Next regular meeting was scheduled for May 9 and 10, 1989.

Respectfully submitted,

APPROVED:

Phyllis Barry
Assisted by Vivian Haaq