

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, November 12 and 13, 1985.

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

Members Present: Senator Berl E. Priebe, Chairman; Representative James D. O'Kane, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives Edward J. Parker and Betty J. Clark. Also present: Joseph Royce, Committee Counsel; Barbara Burnett, Governor's Administrative Rules Coordinator; Phyllis Barry, Deputy Code Editor; and Vivian Haag, Executive Administrator.

Convened Chairman Priebe convened the Committee in Room 24, 10:10 a.m., Tuesday, November 12, 1985. All members were present.

CONSERVATION COMMISSION The following agenda was reviewed by Les Fleming, Superintendent of Grants-in-Aid, and Marion Conover, Fisheries Supervisor:

Recreation, tourism grants to county conservation boards, ch 71 ARC 6059 F 10 23 85
Fishing regulations, 108.2(2), 108.2(3), 108.2(5) ARC 6060 F 10 23 85
Commercial fishing, 110.7 to 110.9 ARC 6061 F 10 23 85

ch 71 Fleming said the Commission had addressed concerns expressed by the ARRC when the rules were under Notice. One person appeared at the public hearing but no statements were made re chapter 71.

ch 108 In re chapter 108 amendments, Conover indicated no changes had been made since Notice. No comments were received, although a public hearing had been scheduled. O'Kane asked status of paddlefish snagging on the Mississippi River. Conover said Conservation had consulted with Illinois, Wisconsin, and Missouri. It was determined that the population was somewhat smaller but healthy. Conover added that Nebraska had proposed similar rulemaking for the Missouri River. It was O'Kane's understanding that western Iowa fishermen support this. Discussion of the reason for length limits on bass--for lakes, 14", and for streams, 12". Conover pointed out that bass grow faster in lakes than in streams.

O'Kane asked if the Commission had considered stocking sauger. Conover advised that the plan was to stock "saueyes"--the hybrid. Two other states have reported some success in this areas.

Priebe asked that Conservation officials be informed that, following a 5-inch snow, he received 14 telephone inquiries asking why there was a

CONSERVATION
COMMISSION
Continued

pheasant season with snow on the ground. Conover said he would pass the age-old question along to Director Wilson and Al Farris. Priebe commended the Commission for apprehending the illegal pheasant hunters at Mt. Ayr and imposing \$17,000 in fines.

No recommendations re 110.7 to 110.9.

AGRICULTURE
DEPARTMENT

Bette Duncan, James M. O'Connor, John Hinshaw, and Dr. G. E. Schoel appeared for review of Agriculture rules as follows:

Registration of Iowa foaled horses and Iowa-whelped dogs, 14.41(2), 14.43 ARC 6065 *E* 10/23/85
Animal welfare, 20.5(4) ARC 6014 *E* 10/9/85
Weights and measures, 55.33, 55.47 ARC 6066 *E* 10/23/85

ch 14

Duncan reported the amendments to chapter 14 remain substantially the same as the Notice. Priebe received an affirmative answer to his question on whether or not a person not in a qualified kennel and raising one dog for commercial racing would be required to be licensed. Hinshaw suggested that the Jockey Club be requested to reserve the name prior to application being sent in.

20.5

Duncan said that 20.5(4) enunciates what has been the policy and expands on the Code definition as regards commercial kennels. No comments had been received.

Amendments to weights and measures rules update citations to A.S.T.M. standards and rescind rule 55.47 which provided for "half-price" gasoline sales.

TRANSPORTA-
TION DEPT

Don East, Office of Maintenance, Dwight C. Stevens, Traffic Engineer, Larry R. Jesse, Al Chrystal, Driver Services Director, Norris Davis, Executive Assistant, Sharon Green, Oversize Permit Section, Dennis Ehlert, Operating Authority Director, appeared for review of:

Highways, utilities within the right of way, (06.C) Article C title and ch 2, (06.D) Article D title and ch 1 ARC 6055 *E* 10/23/85
Highways, signing manual, (06.K) 2.1(2) ARC 6056 *E* 10/23/85
Allocation of farm to market road funds, (06.Q) 16.1, 16.1(1)"c" and "d," appendix ARC 6044 *N* 10/23/85
Denials, cancellations, suspensions and revocations, (07.C) ch 6 ARC 6001, also filed emergency ARC 6000 *N, E* 10/9/85
OWI and implied consent, driver licenses, financial responsibility, (07.C) 11.3(2)"b," 11.4(2)"b," 11.5(2)"a," 13.3(2)"a," 13.3(10)"a" to "c," "e" and "g," 13.13(12)"a," 13.20, 13.21, 14.2, 14.3(1), 14.4(2), 14.5(1), 14.5(2)"a"(2), 14.6(1), 14.6(6), implementation clauses of 14.3 to 14.6 ARC 6002 *N* 10/9/85
Special permits for operation and movement of vehicles and loads of excess size and weight, (07.F) ch 2 ARC 6043 *N* 10/23/85

East described amendments to articles 06C and 06D of their rules. The last revision occurred in 1973. The Department of Transportation had consulted with the Commerce Commission, Utility Associations and major utility companies. No comments were received since Notice. Priebe was concerned that the rules were deficient in not spelling out the policy re access control. Royce saw no problem with the adoption by reference. East agreed to distribute copies of the technical policy to utilities.

[06,K]2.12

Stevens recalled that the Signing Manual had been officially adopted in October 1979. Changes made by the Federal Highway Administration will be adopted in the third supplement. When finally

TRANSPORTA-
TION DEPT
Continued

approved, the Manual will be distributed to all cities, counties, and other public agencies responsible for installing signs.

O'Kane called attention to Doyle's earlier request to change the message on signs used at climbing lanes to "keep right except to pass." Stevens replied that presently, "slower traffic keep right" signs are used, but Doyle's request was presented to the Highway Division. Stevens shared his written response with the Committee. In summary, the Department concluded the change would need approval of the Federal Highway Administration. An estimated 750 signs would be needed at \$85 per sign. There was no assurance that signs would change driving patterns. Doyle was under the impression that the Manual provided for either type of sign.

Deferred

Stevens clarified that was true in 1963, but two subsequent manuals reference only "keep right except to pass" signs. He continued that a brief survey was made of five states bordering Iowa and to the west. Varied usage of the subject sign exists. Committee members wondered how other states circumvented the federal mandate and O'Kane pointed out that the Signing Manual had force of law under the Iowa Code and he asked that further discussion of the matter be deferred until Wednesday. So ordered by Chairman Priebe.

Priebe brought up the matter of three bridges under construction and resulting detours in his district. One contractor had been the successful bidder on the three bridges but took bankruptcy before completion of the work. Priebe requested that the bidding procedure be reviewed. Department officials agreed to pursue the matter and report to Priebe. Clark inquired as to jurisdiction over signs at highway junctions where state highway intersects with a county road. She described a hazardous situation at the intersection near her Rockwell home and indicated she had received differing opinions from DOT personnel.

Stevens advised that DOT cooperates with the county and furnishes signs. Stevens reasoned that, within a small city, it would be county responsibility.

[06,Q]ch 16

Jesse presented amendment to [06,Q]chapter 16, which was intended to implement 1985 Acts, SF 413. The number of years that counties may borrow ahead on their farm-to-market road funds was increased from two to four years. No questions. Chrystal explained amendments to [07,C]chapter 6 and there were no questions raised.

TRANSPORTA-
TION DEPT.

[07,C]
chs 11, 13 &
14

Chrystal reviewed proposed amendments to [07,C] chapters 11, 13 and 14 which would implement 1985 Acts, SF 570, pertaining to timely payment for traffic offenses. Tieden referred to 6.22(2)d and wondered what option might exist for a defendant when the Department and clerk of court disagree on the person's ability to pay. Chrystal discussed an AG letter opinion wherein the issue was addressed. Although the law places the decision-making with the DOT and clerk of court, the informal opinion suggested leaving it to the discretion of the magistrates would be easier. Chrystal continued that out of eight claims, three were from indigents. He suspected "many who will be caught under the legislation are those who have a time payment plan and have defaulted on it." The courts have been liberal and cooperative with citizenry.

O'Kane in the chair. Royce saw defect in both the Act and the rules in that they contain no fixed standard to describe indigent persons. He recommended a chart similar to those used by Human Services for calculating ADC.

[07,F]ch 2

Ehlert said that amendments in [07,F]chapter 2 would comply with statutory changes. An addition, approved by federal authorities, and requested by industry, would allow overweight movements on the interstate system. Tieden viewed 2.4(4) as somewhat confusing. Ehlert explained that proof would be required to verify that the permit was for the same vehicle and same type of load.

BOARD OF
NURSING

Dorothy Jackson, Associate Director of Nursing Practice, and Cliff Readout appeared for the following Board of Nursing agenda:

License to practice -- registered nurse/licensed practical nurse, 3.16(1)d and "j" ARC 6020	10/9/85
Continuing education -- providers, 5.3(6) ARC 6045	10/23/85
Registered nurses, additional acts which may be performed by, 6.021 ARC 6019	10/9/85

Discussion of 3.1(6)d and j which requires payment of license fee by certified check or money order, not personal check. O'Kane asked about the notification process. He suspected that most would follow usual custom and send personal checks. Doyle reasoned that the policy of other licensing boards could be followed, i.e., certification would be withheld two weeks until the personal check has cleared. Immediate certification would require receipt of the fee by money order or certified check. The Board contended that a two-week delay would impose hardship on nurses in a new state. Readout saw no problem with the rule and assured Tieden that the profession would be apprised of policy changes.

In response to observation by O'Kane, Jackson agreed that fewer LPN's were working in hospitals.

BOARD OF
NURSING
Continued

Doyle noted that although most nurses subscribe to mal-practice insurance, there is no statute requiring it. Jackson did not have information as to what other states were doing. She was aware that the only mid-wife clinic in Des Moines had been denied insurance by the national company.

5.3(6) Tieden questioned the need for 5.3(6) since each CE program was approved by the Board. Jackson pointed out that programs were reapproved only every five years.

6.4(2) New provisions in 6.4(2) will allow registered nurses with additional education to serve as members of ambulance crews--does not apply to volunteers or to basic ambulance squads. Tieden saw another category of nurses being created. He was also concerned that rigid restrictions would eliminate much ambulance service. Jackson emphasized that a nurse was not required but if one is to serve, qualifications in 6.4(2) must be met. O'Kane could foresee a "turf battle among respiratory therapists, paramedics, EMTs, and RNs." Jackson stated that all interested groups had reviewed the rules. Priebe resumed the chair.

WATER, AIR & Department representatives were Mark Landa, Bill
WASTE MANAGE- Barrdurski, Vic Kennedy, and Randy Clark. The follow-
MENT DEPT ing was considered:

Flood plain development, forms, 70.3, 70.4(1), filed emergency ARC 6029 *FE* 10.9.85
Underground storage tanks, ch 135 ARC 6031, also filed emergency ARC 6030 *N.Y.F.E.* 10.9.85
Hazardous waste, fees for transportation, treatment and disposal, 111.0(1), 111.2, 111.3, 111.5, 111.6, 111.6(1),
119.7(1), 119.8, amended notice ARC 6032 *A.N.* 10.9.85

70.3 Priebe raised question in 70.4(1) as to use of
70.4(1) "facsimile". After discussion, it was consensus
that the words "or on a form that is substantially
similar to the approved application form" should be
substituted for new language in the last two lines
of 70.4(1). There was unanimous consent for the
Department to adopt the amendment under emergency
rulemaking.

ch 135 Landa explained new rules to regulate underground
storage tanks as set out in chapter 135. Under
present statute, fuel oil tanks are exempt. However,
the federal government realizes the magnitude of
the issue and possible change may be forthcoming.
The purpose of the rules is to provide the regulated
public a form for making notification of number of
tanks, types, physical condition, and location. The
DWAWM will work with the fire marshals in various
cities in an attempt to locate buried tanks. There
are no complete records. Those withholding knowledge
of tanks from authorities could be subject to a \$5000
per day fine. Federal legislation imposes a \$10,000
per day fine per tank. Also, there are special pro-
visions in the legislation determining liability.
In response to Tieden as to how funds would be handled,
Landa answered that they are accumulated in an account.

WATER, AIR & Money not used in program administration will be transferred into the Hazardous Waste Remedial Fund at the end of the year.

WASTE MANAGEMENT DEPT

Tieden mentioned the continuing problem with landfills in the northern Iowa counties receiving hazardous waste from Minnesota and wondered if DWAWM had considered working with surrounding states on the subject. Landa stressed that states have options to be more restrictive than the federal government. Since Iowa has only a federal program, the Department has no control. Landa added that they do regulate wastes which aren't hazardous through their special waste authorization program. An individual or company is required to obtain special authorization before disposal of toxic waste. Landfills do not report to the Department when waste is refused and there are no records of contents being dumped by trucks.

Priebe referenced the continuing problem at Lake Mills-- Minnesota firms depositing paint waste in Iowa landfills. Landa advised that the Department was reviewing this matter and he was aware that one company no longer uses the landfill.

135.3(6) Doyle took the position that notification provisions in 135.3(6) were limiting. He asked if forms were available to county or city assessors and was told they will be computerized. Doyle was informed that assessors' records on storage tanks are not being used-- only those of fire marshals and delivery personnel.

COMMITTEE BUSINESS

Donovan Peeters, Legislative Service Bureau Director, and State Representative John Connors appeared before the Committee to discuss possible legislation to require less frequent publication of the Iowa Administrative Code Supplement. Peeters had been directed by the Legislative Council to study the impact of rules on Code and Session Laws publications.

Chairman Priebe described the rulemaking process and the ARRC function. Committee consensus was that the biweekly publication of the Bulletins should continue. There was discussion of possible change from biweekly to monthly updating of the IAC. Peeters indicated that interested persons would be contacted for their views, i.e., the Bar Association and subscribers. Priebe pointed out that Iowa is the "Model State" for administrative rules. Connors expressed his appreciation to the Committee for their time.

Recess

Chairman Priebe recessed the Committee at 11:55 a.m. Reconvened at 1:35 p.m.

INSURANCE DEPARTMENT

Fred Haskins appeared for the following agenda:

Deposits by a domestic life company in a custodian bank or clearing corporation. 32.3(1), 32.3(2), 32.3(4), 32.3(13), 32.3(3)	
ARC 6015	10/9/85
HMOs, external review. 40.5(1)(b) to (d) ARC 6004	10/9/85
Life and health self insurance plans 35.20 ARC 6016	10/9/85

INSURANCE
DEPARTMENT
Continued
ch 32

Also representing the Health Department were Dr. Lloyd D. Holm, Dana Petrowsky and J. H. Buckley.

Haskins gave brief overview of amendments to chapter 32 which were favored by the industry. Priebe referenced Insurance Company of Algona that had complained about increase in deposit and the larger minimum requirements. Haskins said a number of exceptions had been granted from the minimum capital and asset figure--deposits are not required from casualty companies.

Tieden referenced a newspaper article in the Sunday paper and asked Haskins if a law would be needed to increase the reserve in casualty companies. Haskins was of the opinion this could be accomplished by rule under Code chapter 505. Haskins cited current problems with the competitive casualty industry. He predicted that the reserve issue would definitely be controversial. Tieden was hopeful the Insurance Department would be cognizant of the effect on small insurance companies.

40.5 Buckley offered background on HMO rules which were a joint venture with the Health Department. No Committee recommendations.

35.20 Haskins said that rule 35.20 follows statutory mandate of 1984 Acts, SF 503, dealing with self-insurance by life and health plans of the state and county school districts. Haskins stated that the immediate problem with counties is their liability insurance. General discussion. No action.

HEALTH DATA
COMMISSION

Royce
Directive

An agency representative was unable to appear for review of amendments to their contested case procedure. The proposed amendments to rules 2.1, 2.7, 2.8(2) were published in 10/9/85 IAB as ARC 6017. Priebe questioned use of "reasonable" opportunity in 2.8(1) and asked Royce to contact Denise Horner on the matter.

BUREAU
OF LABOR

Walter Johnson, Deputy Commissioner, represented the Bureau of Labor for:

*Occupational safety and health standards for general industry, 10.20 ARC 6007 ... 10 23 85
Hazardous chemicals risk -- right to know -- discussion*

10.20 No recommendations for 10.20. Johnson informed the Committee that Labor had completed their draft on rules intended to implement the hazardous chemicals risk "right-to-know" law. Copies were available for Committee distribution.

Johnson sought Committee guidance as to whether the proposal should be published in the IAB and the Committee concurred that the rules should be published. Tieden thought definitions of hazardous chemicals should be more detailed. Johnson pointed out that OSHA has a list of 600, and by reference, the Department has pulled in three basic sources.

BUREAU OF
LABOR
Continued

For the employer's information, the manufacturer must list chemicals or compounds which may be hazardous. It was noted that the proposed rules lacked dates certain on CFR references. Johnson agreed to include the information on the adopted version.

Minutes

Doyle moved approval of the October minutes after a typographical error was corrected. Motion carried.

Declaratory
Rulings
Model Rules

The seven-page model rules on declaratory rulings and petition for rulemaking were ready for perusal by interested persons. It was agreed that copies should be distributed to state agencies and not printed in the IAB. Short recess.

LOTTERY

Chairman Priebe reconvened the Committee and called on Lottery officials for the following:

Licensing, operation, purchasing procedure, 3.1(3), 3.7(2)c, 4.6(1), 5.2(1), 5.3(3), 5.7(5), filed emergency ARC 6018 ~~FE~~ 10 9 85

Nicky Schissel and Charles Shutt represented the Lottery Agency. There was brief discussion of the newest Lottery game. In review of 3.7(2)c, it was pointed out that "dignity of the state" was stricken since the language was in the statute.

Priebe expressed preference for a reduction in the \$25,000 fee relative to consultant contracts in 5.7(7) to be more consistent with other agencies.

LIBRARY
DEPARTMENT

Claudia Muller represented Iowa Library Department for their proposed rules, being chapter 1, ARC 6023, Notice, IAB 10-9-85. Complete revision of the rules was necessary to comply with statutory changes. Public hearing was held and members of the Iowa Regional Library System asked for a one-year delay of any rules that might impact them. Muller indicated that the Library Commission had no problem with the request.

1.2(3)b

Discussion of quorum requirements in 1.2(3)b. There was agreement that the last line should read: "An affirmative vote of the majority of the Commission." Muller advised that language in 1.3(2)b was from federal guidelines. The Committee suggested specifics as to deadline date and Muller was amenable to substituting "eight weeks" for "six to eight weeks." With respect to oral notification of fines or penalties in 1.3(3)a(4), Doyle preferred written notice. Muller stated that most borrowers were state employees and there had been no problem with telephone reminders. There are only a few habitual offenders. Committee consensus was that some form of written notice should be utilized.

Royce advised that the proposal should include a detailed description of programs.

LIBRARY
DEPARTMENT
Continued
Royce
Directive

Royce was directed to work with Burnett and Muller to develop a more detailed appeals procedure. Responding to Parker, Muller said the legislative intent is for all federal funding to be disbursed to local libraries, but because of their financial situation, only 50 per cent is distributed.

MERIT
EMPLOYMENT

Merit Employment Department was represented by Clint Davis, Deputy Director, for review of the following:

Definitions, compensatory time, pay, certification, probationary status, temporary assignments, discharge, scheduling and postponing hearings, administrative decisions, 1.1, 1.566, 4.6, 4.7, 7.9, 9.1, 9.2(2), 10.3, 11.2(1), 12.3(5), 12.3(6), 12.3(7), 12.4, 11.9, 11.10(6) ARC 6036 ... *N* 10 9-85

7.9

In response to Tieden's question, Davis said the Department was recommending that agencies keep accrual of compensatory time to a minimum until the issue is resolved at the federal level. Davis described rule 7.9 as a mechanism by which an applicant can be removed from the referral list for a period of time from the appointing authority. Davis indicated that a highway patrolman ready to retire should be able to transfer sick leave, vacation, etc. to another state agency.

O'Kane suggested that the Supreme Court case referenced in the preamble should be specified when the rules are adopted. In discussion of the Garcia case, Davis said that rules on overtime were placed in abeyance for a time. However, the Department is now in the process of rules on compensatory time accrual--one set for police and fire protective services, and another set for nonprotective service. Federal legislation called for April 1986 implementation.

12.4

Priebe noted that 12.4 did not include a reason for denial of a hearing by the director. Davis agreed to modify before adopting.

COMMERCE
COMMISSION

Ray Vawter, Jr., Diane Munns, Dan Hanson, Dennis Downing, and John Pearce represented Commerce Commission for the following:

Application for transfer of utility property, 7.4(13) ARC 6024 ... *N* 10 9-85
Gas and electric utilities, second payment plans and electric service limiters, 19.4(10), 20.4(11), 20.4(23) ARC 6025 ... *N* 10 9-85

Also present: J. B. Kelley and Stephen W. Southwick, Iowa Southern Utilities; Kent M. Ragsdale, Interstate Power; Christopher Cook, Iowa Public Service; Sheila K. Tipton, Iowa Power and Light and Iowa Gas Company; Jack Clark, Iowa Utility Association; Todd Schulz, Iowa Telephone Association; John Lewis, Iowa Utility Association.

7.4(13)

According to Hanson, subrule 7.4(13) would be applied to major transfers of utility property. The Commission has statutory authority to review discontinuance, reduction, or abandonment of service. Four requests for oral presentation were received.

COMMERCE
COMMISSION
Continued

Southwick contended that the rulemaking exceeded statutory authority. He continued that Code §476.20(1) refers to disconnection of utility service to individual households. Further, Southwick questioned authority for Commerce to issue bonds--subrule 7.4(13), paragraph c. Ragsdale echoed Southwick's remarks.

Hanson maintained that Code §476.20 was not limited to individual disconnections--"service to a community" or part of a community is included. The test which the Commission proposes to apply is whether the "purchaser or the transferee is ready, willing and able to undertake the obligations of utility service." Hanson admitted that many comments pertain to Commission authority over bonds and mortgages and this matter will be considered.

Tipton spoke in concurrence with Southwick and Ragsdale. She quoted from section 7B of the Federal Natural Gas Act--somewhat similar to the Iowa statute. In several cases since 1959, the Federal Power Commission held that a transfer of utility property was not a discontinuation of service.

Hanson said the definition of property helps Commerce to make the distinction as to whether transfer of property would limit service. The rules do not purport to pass on the contract. Parker asked what had prompted the rulemaking and sales of telephone utilities and Peoples' Natural Gas Company were cited. O'Kane was of the opinion that the Commission had sufficient authority for the rulemaking.

Tipton referenced Code sections 476.20 and 476.2 and reasoned that 476.20, the more specific statute, would control. She cited Consolidated Freightways case where the Court held that section 476.2 of its import does not give the Commission specific authority to do anything.

Tieden saw a need for legislative clarification in section 476.2 and there was mention of referring the matter to the legislature at a later date.

19.4 et al

Munns addressed rules on gas and electric utilities, second payment plans. Comments had been received and oral presentations would be held in Des Moines and Dubuque in January 1986. O'Kane in the chair.

Parker asked for information on the incidence of disconnects, percentage of delinquent accounts, and comparison between this year and last. Munns agreed to send a copy of the completed report on the effect of the moratorium as well as the pilot program.

No other questions.

AGING
COMMISSION

11-12-85

Thom D. Freyer appeared for the Commission on Aging.
The following agenda was considered:

Long term care ombudsman program, 4.2(1) to 4.2(3), 4.2(4)"c" to "g," 4.2(5) to 4.2(16), also notice - ARC 5252 terminated
ARC 6037 *N.Y.* 10 9 85
Grants to area agencies, timeframe for use of funds, 9.1(4) - ARC 6038 *N.Y.* 10 9 85

Also present: Blaine Donaldson, Care Facility Administrator, and Lyle Krewson, Iowa Association of Homes for the Aging.

Freyer presented background on the Commission's second attempt to amend the long-term care ombudsman program rules. Members of an Advisory Committee and Care Review Committee reviewed the amendments and a hearing was held November 4. One overriding concern was the scope of the Care Review Committee and the long-term care ombudsman program in terms of its statutory authority. Freyer reported that the Commission considered the economic impact of the rules to be minimal. Volunteer time would increase but it would be federally funded under the Older Americans Act. Clark referenced different complaint procedures. Priebe took the chair.

Responding to O'Kane, Freyer said that the Commission recognized obligation under both federal and state law to implement the program--CRC is a state mandate. Tieden suggested consistency in use of terms throughout the rules.

Priebe recalled an economic impact had been requested on the first Notice. [February '85 minutes, p. 3068] He was aware that the CRC was doubtful they would have time to conduct the required evaluations.

Freyer emphasized that a substantial change in the rules removed facility evaluation which, in effect, eliminated economic impact. He admitted that volunteers had a legitimate concern but the annual review of each resident's need is required by law.

Donaldson contended there would be economic impact on the care facilities. Further, 4.2(4)a seemed to duplicate the investigative process of the Health Department. Donaldson questioned ethics of allowing the resident aide or ombudsman access to personal and medical records. In his opinion, this would jeopardize his license. Donaldson opposed the great increase in the amount of paperwork for facilities. He could foresee this program becoming "a major branch of government."

Freyer defended the rules as providing for resolution of complaints prior to the formal regulatory process. Access to records is statutory--CRC access is restricted. Freyer continued that Committee size

AGING
COMMISSION
Continued

Krewson addressed the Committee and distributed written comments. He concurred with Donaldson's position. He concluded there is "economic impact to long-term care facilities when neither state nor federal pays the bill--Title XIX reimbursement has dropped from 74th to 50th percentile." Priebe feared volunteers would be less willing to serve.

Economic Impact Statement

After further discussion, O'Kane moved that the Commission on Aging be requested to provide an economic impact statement on their proposed amendments to rule 4.2(249B) as published in 10/9/85 IAB. Motion carried.

There was brief explanation of 9.1(4). No questions.

RECESS

Chairman Priebe recessed the Committee at 4:03 p.m.

Wednesday
November 13
Reconvened

Chairman Priebe reconvened the Committee in Room 24, 9:00 a.m. All members and staff present.

COLLEGE AID
COMMISSION

James Shay, Executive Director, reviewed 6.1, advisory council for student aid programs, ARC 6010, filed, IAB 10-9-85. Shay pointed out the importance of the Advisory Council in the financial aid process. He described the Iowa Student Loan Liquidity Corporation as a secondary market and a private not-for-profit corporation. In response to Tieden, Shay was of the opinion that the corporation was statutory. [Higher Education Act of 1965, Title IV]

Priebe questioned whether there was statutory authority to change the terms of the Advisory Council from two to four years. A perusal of the Code revealed no statutory provision.

Motion to
Refer to
GA

Doyle recommended that pertinent information regarding the Council be included in the rules. He then moved notification of appropriate legislative committees without recommendation. Carried. O'Kane and Parker out of the room and not voting. Tieden requested that the rules reflect the fact that staggered terms are provided.

**SUBSTANCE
ABUSE**

Janet Zwick, Deputy Director, Iowa Department of Substance Abuse, reviewed the following:

[illegible]

SUBSTANCE
ABUSE

Zwick informed Tieden that there were six halfway houses and seven residential facilities in the state.

Doyle indicated that a uniform order for admission to a halfway house was being developed. He asked Zwick to contact Nancy Shimanek, Supreme Court Liaison, for more information.

REVENUE
DEPARTMENT

Carl Castelda appeared on behalf of the Revenue Department for the following:

Retention of records and returns by the department, 6.6	ARC 6073	F	10 23 85
Exemption from sales tax, electricity, steam, and other taxable services, 17.2, 17.3	ARC 6081	F	10 23 85
Taxable and exempt sales determined by method of transaction or usage, sales and use tax on services, 18.13, 26.56 to 26.67	ARC 6074	F	10 23 85
Sales tax, foods for human consumption, 20.1 20.1(1) b to e 20.1(2) c, 20.1(3), 20.2, 20.5, 20.6	ARC 6075	F	10 23 85
Sales and use tax, rental of recreational vehicles, recreational boats and motor vehicles subject to registration, 26.68, 33.8, 34.10	ARC 6076	F	10 23 85
Games of skill, chance, bingo and raffles, 91.6(1) f, 92.8, 94.1, 94.10(6)	ARC 6027	F	10 9 85
Interest, 10.2(5)	ARC 6069	N	10 23 85
Corporation income and franchise tax, estimated tax payments for minimum tax, 52.5(1), 58.5(1)	ARC 6072	N	10 23 85

Also present: James D. Meyer, Counsel, and Richard Newell, Hy-Vee Food Stores, Inc., and Richard W. Phillips, Iowa Taxpayers Association.

Castelda made brief comments on pending matters unrelated to the agenda. An Attorney General's opinion, released Tuesday, supported the Revenue Department's position that Health Care Facilities are not exempt from sales tax on building materials. A specific statute would be needed.

Motion to
Refer to
GA

Doyle moved that a copy of the AG opinion be sent to the Speaker of the House and the Lt. Governor for referral to appropriate committees. Motion carried. O'Kane out of the room and not voting.

Castelda also reported that the Appellate Court had decided on the Hy-Vee case relating to the sales tax exemption for electricity used in processing and whether certain operations in the food stores would be considered as processing. The Department plans to ask the Supreme Court to review the Appellate Court's decision that electricity used for meat cutting machines was part of the processing.

Priebe and Castelda discussed tax exemption for electricity used in grain drying.

6.6

O'Kane in the chair. Agenda items were considered and no questions were posed for 6.6. Castelda stated that amendments to chapter 17 were identical to Notice. Meyer commented that Hy-Vee had filed application for further review of the Court of Appeals' decision with respect to method of calculating refund. He contended that it was the intent of the legislature to exempt processing not only by manufacturers but by operations like Hy-Vee which serve as a manufacturer. Meyer distributed copies of their letter to the Revenue Department.

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Continued

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Castelda responded that the issue had been reviewed and researched on numerous occasions with the conclusion that the GA did not intend to include retailers in the definition of manufacturer based on property tax law.

O'Kane pointed out that an early version of the bill seemed to include grocery stores but it was not legislative intent to include them. In response to Parker as to what would constitute "primary", Castelda said the Department looks at the broad spectrum of business, receipts, source of gross receipts, types of activities included in that business. In some situations, that has become a fairly difficult process--there is no case law.

Newell spoke in support of the exemption for Hy-Vee. Discussion of the Code definition of "manufacturing" which Phillips considered to be broad and which does not address the primary purpose.

Royce advised that the Department is charged with the duty of providing an interpretation that best implements the statute. The only question presented to the ARRC is whether that interpretation is within the scope of the Department's authority. No action taken.

18.43 et al No change from Notice on amendments to 18.43, 26.56 to 26.67 except for security and detective services which were deleted and submitted separately.

26.56 Tieden pointed to what he considered to be a "gray" area in 26.56 relative to broadcasting signals. Castelda responded that the two taxable services were somewhat interchangeable--tax has been imposed on communication services for years. The rules set out a basic definition of "Cable" and what is taxable. If the definition is not specifically met, it may also be taxable as a communication service. Castelda continued that satellite transmission is superseding cable and the GA may want to consider eliminating terminology of "cable TV". Tieden was told that a rule on lobbying had been submitted and a public hearing was scheduled for November 26.

ch 20 et al No recommendations were offered for amendments to chapter 20, 26.68, 33.8, and 34.10.

Rules pertaining to bingo and raffles were modified after Notice to provide that security officers were not subject to the minimum wage requirements and compensation for employees. Bingo operators will be requested to maintain general information as to the number of players rather than a list of individual players. Castelda explained that an exception had been made to Code chapter 80A whereby if one

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DEPARTMENT
Concluded

security officer was hired, that person would not have to be licensed. Doyle noted that the rule provides "one or more" and Castelda agreed to review the statute. Castelda agreed to review subrule 10.2(5) for possible clarification. No questions re 52.5(1) et al. Priebe resumed the chair.

PLANNING &
PROGRAMMING

JoAnn Callison and Lane Palmer were present for consideration of:

Community development block grant nonentitlement program, ch 23 ARC 6035. *F* 10 9 85
Iowa community cultural grants program, ch 18, filed emergency after Notice ARC 6034. *F E A N* 10 9 85

ch 23

Palmer briefed ARRC on the major changes made in Chapter 23 since the Notice. Priebe spoke in support of creating jobs and said "people should not be paid to retain their jobs." Clark opined that some employers could take advantage of the situation. According to Palmer, the retention language had existed since last year. However, OPP included qualifying language-- "retaining jobs that would otherwise be lost." Questions have arisen re use of funds in this manner and stringent standards have been applied. Priebe preferred deletion of the "retention" language when rules are amended. No questions re chapter 18. Brief discussion of the "point value." No other comments.

ch 18

HUMAN
SERVICES

Mary Ann Walker, Don Kearney, Marie Thiesen, Ruth Schlesinger, Cynthia Tracy, Nancy Haigh, Dan Gilbert, C. S. Ballinger, Suzanne Boyde and Jim Krogman were present for the following agenda:

Food programs, monthly reporting, 65.19(6) ARC 6049. *F* 10 23 85
Medical assistance, persons covered, 75.1(6), 75.1(7), 75.1(15) ARC 6050. *F* 10 23 85
Medical and health services, applicant and recipient responsibilities, 76.10 ARC 6051. *F* 10 23 85
Work incentive demonstration program (WIN CMS), 90.1, 90.3(1), 90.5, 90.8, 90.9, 90.13, 90.13(2), 90.13(3), 90.17, 90.18 ARC 6052. *F* 10 23 85
Licensing and regulation of child foster care facilities, mandatory reporting of child abuse, 112.10 ARC 6053. *F* 10 23 85
Licensing and regulation of foster family homes, record checks, 113.13(1) ARC 6054. *F* 10 23 85
Volunteer services, ch 12 ARC 6077. *N* 10 23 85
ADC, application for aid, granting assistance, recoupment, 40.1, 40.7(4), 41.5(2), 41.7(9)(a)(5) and "k," 46.7(5) ARC 6005. *N* 10 9 85
ADC, need standards, 11.8(2) ARC 6078. *N* 10 23 85
Supplementary assistance, medical assistance, purchase of service, payment for foster care and foster parent training, in-home health related care, reductions, 52.1(3), 54.3(15), 78.2(2)(a), 79.1(2), 79.1(3)(g), 81.6(16)(b), "c," and "e," 150.3(5)(p) and "r," 156.6(1), 156.7(1), 177.4(3), 177.9(3) ARC 6047, also filed emergency ARC 6046 and filed without Notice ARC 6048. *N, F, A, F, E, W, N* 10 23 85
Medical assistance, 78.1(2)(a)(2) and "e," 78.1(11), 78.1(18), 78.1(15)(b)(12), 78.1(15)(c)(2), 78.1(15)(d)(1) to (3), 78.1(15)(e)(1), 78.1(15)(f)(4), (6) and (7), 78.1(15)(g), 78.1(15)(h)(1), 78.6(2), 78.11(3), 78.11(6), 78.11(7)(f), 78.28, 79.8(1), 79.8(6) to 79.8(10), 79.9 ARC 6021. *N* 10 9 85
Medical assistance advisory council, quorum, 79.7(5)(a) ARC 6006. *N* 10 9 85
Medical needs, 86.1 to 86.4, 86.6(2), 86.6(4)(a) and "e," 86.6(5)(b), 86.8(2), 86.8(4), 86.10, 86.12 ARC 6079. *N* 10 23 85
Child care centers, records, 109.2(1)(b) ARC 6007. *N* 10 9 85
Licensing and regulation of child foster care facilities, 112.5(1)(f), 112.6(1) to 112.6(3) ARC 6080. *N* 10 23 85
General provisions, fees for day care, 130.4(3) ARC 6008. *N* 10 9 85
Social services block grant, 153.2(1), 153.2(4), 153.3(3), 153.5(6), 153.6, 153.7 ARC 6009. *N* 10 9 85
Payments for foster care and foster parent training, 156.1 to 156.5, 156.14 ARC 6013. *N* 10 9 85

65.19
75.1

No questions re 65.19(6) and 75.1(6). Walker reported there was an estimated fiscal impact of \$44,500, \$19,000 of which would be state funds. Priebe questioned whether 5 days' reporting time was sufficient in 76.10(3).

76.10

ch 90

According to Walker, amendments to chapter 90 were revised for clarification. Tieden questioned change from 4 to 8 weeks in 90.13(3). Kearney's reply was that a 4-week period did not provide adequate time for counselors to work with clients. Kearney explained that because of limited federal funding, projects are geared to areas with greater job opportunities.

HUMAN
SERVICES

According to Walker, 112.10 was clarified re mandatory reporting. No questions re 113.13(1) or chapter 12.

In re 41.7(9)k, Clark and Priebe expressed displeasure with retrospective budgeting. Walker distributed a memorandum pertaining to the disparity between levels of ADC. Human Services was instructed by legislation to increase ADC basics schedule of needs by 5.7 per cent.

Tieden called attention to a situation where an ADC recipient applied for a position at a local liquor store and was advised that state policy prevented her from being hired. Walker was unaware of such a policy.

52.1(3)
et al

Amendments to 52.1(3) et al implement the 3.85 per cent budget reduction. According to Walker, the maximum medical assistance reimbursement rate for intermediate care facilities was approximately \$30.50. Brief discussion of surplus ADC funds which were applied to the state budget deficit. Providers, rather than clients, bore the brunt of cuts. Priebe expressed strong feelings that Title XIX cuts were inequitable compared to ADC. He was concerned that care facilities would be forced to turn away older people who are unable to work. Tieden interjected that the matter would have to be faced by the next legislature.

Ch 78 &
79

Walker said amendments to chapters 78 and 79 were in response to a court case and they will be renoticed.

79.7(5)a

Tieden defended the quorum requirements in 79.7(5)a for the 28-member Medical Assistance Advisory Council (MAAC) on which he serves. Royce will review the statute to determine whether this is lawful. Priebe favored that a quorum consist of two-thirds of those present to pass an issue.

109.2
et al

No questions re 109.2(1)h, amendments to ch 112, 130.4(3) and amendments to chapter 153. Re chapter 156, hearings are being held on the complex set of rules which will allow for recovery of foster care service costs.

TRANSPOR-
TATION
DEPT

Delay
06, ^K2.1(2)

Chairman Priebe brought up rule [06,^K2.1(2) deferred from yesterday. O'Kane moved that a 45-day delay into the General Assembly be imposed on the rule relative to the signing manual. Motion carried. O'Kane thought the legislature should review the statute governing the adoption by reference of this manual.

Recess

Committee in recess to move to Committee Room 116.

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HEALTH
DEPARTMENT

Committee was reconvened in room 116 and the following agenda was considered:

Cosmetology continuing education, disciplinary procedures, 151.11(2)(b), 151.11(3)(d) ARC 6061	FE	10 23 85
Outpatient diabetes education program, pharmacist, 9.2, 9.6(2)(4), 9.6(4), 9.7(2) filed emergency	ARC 6011 FE	10 9 85
Intermediate care facilities, skilled nursing facilities -- admission and retention of persons with histories of dangerous or disturbing behavior, 58.39(2), 59.14(2) ARC 6068	N	10 23 85
Homemaker-home health aide services, amended implementation of ch 80, filed emergency	ARC 5994 FE	10 9 85
Birth certificates -- when filing fee required, 95.1 ARC 6003	N	10 9 85
Financial assistance to eligible end-stage renal disease patients, 141.6(2) filed emergency	ARC 5995 FE	10 9 85
Deaf services of Iowa, ch 126, notice ARC 5689 terminated	ARC 5997 N	10 9 85
Advanced emergency medical technicians and paramedics, training and certification of and services performed by, 132.14, 132.81(1), 132.81(2) ARC 6012, also filed emergency	ARC 5996 N, FE	10 9 85
Optometry examiners, reinstatement fee, 143.10(5), 143.1(5) ARC 6063	N	10 23 85
Optometry examiners, declaratory rulings, 143.11 ARC 6062	N	10 23 85
Social work examiners, license renewal, 161.7(2) ARC 5998	N	10 9 85

J. N. Buckley, Mike Guely, Donald Kerns, Carson Whitlow, Mark Wheeler, Peter Fox, and David J. Fries represented the Department.

No questions re amendments to chapter 151.

After brief description of the outpatient diabetes education program rules, Wheeler indicated that a licensed pharmacist will be included as requested by ARRC. Committee concurred that this would remove their opposition.

ch 126

No questions re amendments to chapters 58, 80 or 95.1. Guely pointed out that chapter 126 had been reduced by ten pages. Priebe commended the Department for their efforts. Guely suspected that contractual funding for 1986 was extremely bleak. He advised Sioux City legislators that the position for an interpreter in that area would not be filled for the remainder of the fiscal year due to the 3.85 per cent budget reduction. He clarified that it would be necessary to lay off an interpreter in order to place one in Sioux City. No questions re amendments to chapters 132, 143 or 161.

Recess

Recessed for lunch to reconvene in Room 24 at 1:30 p.m. Reconvened at 1:35 p.m.

No Agency
Reps

No agency representatives were requested to appear for the following:

ARCHITECTURAL EXAMINERS, BOARD OF[80] Registration, 2.2(1), 2.2(2) ARC 5999	FE	10 9 85
BLIND, COMMISSION FOR THE[60] Appeals and hearings, 4.12, ch 10 ARC 6039	FE	10 9 85
CIVIL RIGHTS COMMISSION[210] Contested case motions, 1.8, 1.8(2), 1.8(5), 1.8(7) ARC 6042	FE	10 23 85
CORRECTIONS, DEPARTMENT OF[291] Director, organization, institutions -- mail, 1.5, 1.6(1)(1) 1.6(1), 20.9(1)(c) ARC 6026	FE	10 9 85
EMPLOYMENT SECURITY[370] Claims and benefits, 4.7(2)(c)(2), 4.7(2)(c)(5) ARC 6010	FE	10 9 85
EMPLOYMENT AGENCY LICENSING COMMISSION[350] Reports, forms, 9.4, 10.1, 10.4 ARC 6041	N	10 9 85
REGENTS, BOARD OF[720] Administration of the pay plan, 3.39, filed emergency	ARC 6058 FE	10/23/85
TRANSPORTATION, DEPARTMENT OF[820] Roadways, river transportation, divisions 10 and 11 titles amended (10,10 2.1) ARC 6057	FE	10 23 85

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Committee Business There was brief discussion of meeting dates for January and plans for a December social function. It was agreed the Committee would meet on Wednesday and Thursday, January 8 and 9, 1986.

Adjourned Chairman Priebe adjourned the meeting at 2:15 p.m. The next meeting will be Monday and Tuesday, December 2 and 3, 1985, in lieu of the statutory date.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary
Assisted by Vivian Haag

APPROVED

Bert E. Priebe

CHAIRMAN