

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, November 13 and 14, 1984,  
10:00 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman; Representative  
Laverne W. Schroeder, Vice Chairman; Senators  
Donald V. Doyle and Dale L. Tieden; Representa-  
tives James D. O'Kane and Edward G. Parker.  
Also present: Joseph Royce, Committee Counsel;  
Kathryn Graf, Governor's Administrative Rules  
Coordinator; Phyllis Barry, Deputy Code Editor;  
Loanne Dodge, Research Analyst.

New Member

Chairman Priebe convened the Tuesday meeting  
10:00 a.m., Room 24. He introduced Representa-  
tive Edward G. Parker as the newest member,  
who succeeds Representative Ned Chiodo. Chiodo  
resigned to assume his duties as Polk County Aud-  
itor.

Chairman Priebe then recognized Michael Burdette  
and Harry Davis for the following:

SECRETARY OF  
STATE

SECRETARY OF STATE  
Charge accounts for UCC Searches, 7.4.....IAC

The Department had agreed to report on 7.4,  
charge accounts for Uniform Commercial Code  
searches. Davis said it is related to fees  
for the searches and he indicated there were  
no problems.

PLANNING AND  
PROGRAMMING

The Office of Planning and Programming was  
represented by Lane Palmer, Jack Conway, Richard  
Webb and Melanie Johnson. The agenda follows:

PLANNING AND PROGRAMMING[630]  
Job training partnership program, 19.3, 19.744 to 19.765, 19.801, 19.821, 19.9 to 19.13 ARC 5035 *FEAN* 10 10 81  
Community development block grant nonentitlement program, ch 23 ARC 5036 *FEAN* 10 10 81  
Iowa rental rehabilitation program, ch 26, filed emergency after notice ARC 5049 *FEAN* 10 21 81

ch 23

Palmer informed the Committee that chapter 23  
will aid in distribution of \$25 million in grants  
to small cities--less than 50,000 population and  
for all counties. The new economic development  
set aside will be incorporated in the program.  
Reference to the Wall Street Journal was added in  
response to ARRC request. In response to question  
by Tieden, Palmer said that approximately 35 comments  
were received on various point systems.

ch 26

Webb led the discussion of chapter 26. Although  
he did not draft the Notice, he was knowledgeable  
of the rules in his capacity as program specialist.

PLANNING AND  
PROGRAMMING  
(Continued)

26.10(2)

Webb spoke of the funding commitment schedule to local projects -- via federal regulations. Discussion of 26.10(2) which provides waivers by the Governor. It was Committee consensus that the language was broad. Graf said an attempt was made to narrow the provision by adding "extenuating circumstances." O'Kane pointed out the words "undue hardship" did not address specifically to whom it would apply. Webb indicated the waiver was a requirement and would be relevant to the applicant. Priebe preferred deferring the matter until the ARRC had an opportunity to peruse the federal language. Webb agreed to return in the afternoon for further discussion. Doyle questioned why records would be retained only three years instead of five -- 26.7(5). Webb stated that the program law requires three years. Also, city recordkeeping differs from that of private individuals. No other questions.

Ch 19

Johnson explained amendments to chapter 19 and the changes made as a result of ARRC comments. Tieden was advised that definition of "older individual" was by federal regulations. She explained that Title II provides training programs for disadvantaged adults, youth and handicapped who have problems finding employment. Title III relates to the dislocated worker program.

WATER, AIR  
and WASTE  
MANAGEMENT

Mark Landa, Rex Walker and Mike Murphy were present for the following:

WATER, AIR AND WASTE MANAGEMENT[900]  
Emission standards for contaminants, 23.1(2) and "ss," 23.1(3) and "a", ARC 5012, E, 10 10 81  
Hazardous waste, 111.1(1), 111.2, 111.3, 111.6, 111.14 ARC 5013, E, 10 10 81  
Public water supply systems and wastewater treatment plants, certification of operators, 81.9(1), 81.9(8), 81.10(6)  
ARC 5025, A, 10 10 84

Ch 23

Landa said that new source categories have been added in chapter 23 amendments. In addition, emission standards for hazardous air pollutants relevant to asbestos was added. Landa indicated the Department had contacted each company affected by the rules. No comments were received. Schroeder questioned the meaning of "bulk gasoline terminal" -- 23.1(2)pp, and asked if suppliers were contacted. Walker said petroleum marketers were notified--it was his understanding the definition referenced the large terminals.

Ch 141

In reviewing amendments to chapter 141, Schroeder was interested in the effect on small communities or suppliers. Landa said these rules did not address specific requirements for testing water.

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WATER, AIR  
and WASTE  
MANAGEMENT  
(Continued)

Priebe referenced the complaints concerning the dumping of paint in the Lake Mills landfill by Minnesota residents. He recalled an Attorney General's opinion has been issued indicating that Lake Mills does not have to accept the paint. Priebe wondered if these rules would impact that situation. Landa responded that the opinion specifically addresses a rule adopted by reference to allow the Department to permit disposal of hazardous waste from small quantity generators into permitted sanitary disposal projects. The Minnesota waste is not hazardous, but could be refused by the landfill operators. Priebe requested that the Department contact Harris Honsey at Lake Mills to clarify the Department's position. Landa agreed to report to Priebe later in the day.

Ch 81

Murphy said that amendments to chapter 81 will implement 1984 Acts, H.F. 2387, §2. Operators of small water distribution systems serving less than 250 may be certified without written examination. Murphy continued that a public water supply is defined as having 15 service connections or serving more than 25 customers regularly. Priebe questioned 81.9(8), second sentence, which provided, "The certificate will only be proof... that the operator is qualified..." Murphy interpreted the law to be optional, not mandatory on the Department. The city should make an effort to retain a regularly certified operator.

General discussion as to whether legislative intent was to exclude smaller communities from the certification process. Priebe thought the legislature tried to eliminate cost for smaller communities. Murphy spoke of the two approaches followed in developing the rules -- 250 population, anything below that was a separate class. In Murphy's opinion, use of "may" as opposed to "shall" in the legislation provides an option.

Committee members agreed to peruse the legislation and Priebe asked that the matter be reviewed again by the Department.

COMMERCE  
COMMISSION

Ray Vawter, Dennis Downing, Dan Hanson, Cindy Dilley and Lois Santos appeared on behalf of Commerce. Also present: Todd Schulz, Iowa Telephone Association.

The following agenda was reviewed:

COMMERCE COMMISSION(250)  
Electric transmission lines, 11.1(1), 11.2, 11.3(2), 11.5(4) to 11.5(6), 11.5(8) ARC 5064 ..✓..... 10-21-84  
Uniform extension policies, 19.3(10) b(1), 19.3(10) b(2) "2" and (3), 20.3(13) b(1), 20.3(13) b(2) "2" and (3), 21.3(12) b(1),  
21.3(12) b(2) "1," "2" and (3) ARC 5023 ..✓..... 10-10-81  
Service supplied by water utilities, ch 21 ARC 5024 ..✓..... 10-10-81  
Energy adjustment clause, 20.9(4), ARC 4712 terminated ARC 5022 ..✓..... 10-10-84

COMMERCE  
COMMISSION  
(Continued)

- ch 11 Downing, Office of General Counsel, reviewed amendments to chapter 11, in response to legislation which states that franchises will no longer be required for transmission lines of less than 34.5 Kilovolts. However, for those lower lines, maps and notice are required as an alternative to the franchise requirement. Vawter briefly discussed distribution lines for Tieden.
- ch 19 Amendments to uniform extension policies were considered.  
et al O'Kane asked for explanation of "no more than thirty days" prior to construction. Vawter indicated this would be the startup of the construction. In some instances, customers were paying 3 months in advance. Interest bearing bonds are allowed. A home builder in O'Kane's area had reported on excessive costs. Doyle raised question re separate metering-21.3(1). He pointed out situations in older "towns" where one line was run into a building with submetering. He wondered if the rule would preclude this practice. General discussion. Vawter said that submetering could create a problem with a supplier being classified as a distributor or utility. Priebe asked that a provision be drafted to cover situations such as county fairs.
- 21.3(1) Energy adjustment clause 20.9(4) was terminated since it proved to be unworkable.
- 20.9(4)

AGRICULTURE

Elizabeth Duncan, Director, Regulatory Division, and Galen Robertson were present to review the following:

AGRICULTURE DEPARTMENT[30]  
Bulk food operation, ch 36 ARC 5026 ..... 10/10/84  
Iowa-foaled horses and Iowa-whelped dogs, breeders' fund, 14.2(3), filed emergency ARC 5048 ..... 10/21/84

- ch 36 Duncan advised that no unfavorable comments had been received on chapter 36. Schroeder was told the Department had not changed the rule to indicate labeling provisions because some ordinary provisions will not be applicable or enforceable. Duncan clarified that the rules do not address labeling practices. Schroeder was concerned about possible discrimination in labeling requirements for health food stores. Duncan was willing to work with Schroeder on the question. Discussion of the "30 inches above the floor" requirement in 36.5(4) as being too high. Priebe suggested one foot off the floor. Schroeder suggested adding provision that the "opening" of the product module be 30" off the floor. Duncan emphasized intent was to prevent contamination of the food. No formal action.
- 14.2 Amendment to 14.2(3) was acceptable.

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VETERINARY  
MEDICINE

Dr. Merle H. Lang, State Veterinarian, gave a brief overview of the following rules intended to prevent drug residue from getting into food products.

VETERINARY MEDICINE, BOARD OF [S12] 10 10 84  
Standards of practice, ch 9 ARC 5038

9.1

Proper doctor-client relationship has been defined. Lang noted that dispensing and use of prescription drugs was set out in the veterinary practice Act. [ch 169] Lang assured Priebe there was authority for the rules. Examples of restricted drugs included brucellosis, rabies and pseudorabies vaccines. Mail order products are of concern also. Priebe challenged the lack of a date certain in rule 9.1. Lang stressed that the industry favors the rules since there will be better control over drugs or products and without control, the FDA will eliminate their use. Priebe interpreted the rules as giving veterinarians "exclusive distribution." O'Kane was advised that the definition in 9.1(3) came from the FDA requirement. Graf questioned requirement that the veterinarian visit the animal "on the premises" since, in some instances, it could be brought to the clinic. Discussion of the broad spectrum of drugs. Doyle viewed 9.1(3) as relieving the veterinarian of liability. Department officials disagreed. Tieden saw the rule as "tightening." Duncan stated that the rules reflect definition in Code §155.3(10). Priebe suggested adding a date certain in rule 9.1 and a period after "diagnosis of the medical condition of the animal(s)" in 9.1(3)b.

MOTION

Schroeder moved to object to 9.1 on the grounds that it exceeds the statutory authority and that 9.1(3) b and c are unreasonable. The objection can be cured by inclusion of date certain on federal restriction of the drugs. The motion to object carried with 5 ayes; Tieden voted "no." Dr. Lang reiterated that the federal regulation requires the veterinarian to go to the premise. The Department agreed to return to the Committee with copies of the federal rules. [see P.3208] After discussion, the Committee was willing to reconsider their objection but would insist on inclusion of a date certain.

BEER AND  
LIQUOR

William Armstrong was present for Beer and Liquor Control Department. The following was considered:

BEER AND LIQUOR CONTROL DEPARTMENT [150]  
Liquor licenses — beer permits, temporary transfers, 1.18(2) ARC 5004 ✓ 10 10 84  
Operation of liquor stores, gift certificates, ch 13 ARC 5005 ✓ 10 10 84  
Procurement leasing of liquor stores, 9.10, 9.13(1) ARC 5003 ✓ 10 10 84

- 4.18(2) Armstrong advised that the city of Malcolm problem had been resolved with the adoption of subrule 4.18(2).
- ch 13 Armstrong explained that the Council had not yet acted on the Governor's rescission of chapter 13 by Executive Order 9, 11/2/84. It was the consensus that the rules could be editorially removed from the IAC without further action.
- ch 9 Amendments to chapter 9 were considered. Doyle considered it somewhat unusual for the real estate committee to take action rather than the Department head -- 9.10. Armstrong pointed out that the "Council is the policymaking body." Schroeder interpreted 9.13(1)e as providing a distinct advantage to existing lessees and unfair to those who go out for the first bid. Armstrong was amenable to an equitable solution. Consensus was that the bidding process should be utilized in all instances.
- Recess Committee was in recess for lunch at 12:20 p.m.
- Reconvened Schroeder reconvened the meeting at 1:45 p.m. in Committee Room 116. A quorum was present.
- BOARD OF MEDICAL EXAMINERS Jim Krusor represented the Board of Medical Examiners for:  
Physicians' assistants, 136.5(1) and "j," "k" to "n," 136.5(2), 136.5(3), 136.5(4) "d," 136.5(5) "a," "b" (2) and (3), "c" and "d," 136.5(6), 136.6, 136.7 - ARC 5000. 10 10 84
- Also present: Ed Friedmann, Physicians Assistant, Advisory Committee, and Bill Case, Physicians Assistant.
- 136.5 Discussion of satellite offices and the definition of "temporary absence." Krusor stated that rules 136.6 and 136.7 were patterned from those found in IAC 470--135. Friedmann commented that the rules significantly change disciplinary powers of the Board over physicians assistants. Two concerns: There is no physicians assistant on the Board of Medical Examiners; subjective interpretation of disciplinary power will be required. Friedmann pointed out 136.6(3)d which allows no input from physicians assistants. He spoke of a provision they had attempted to include, which would require peer review for any disciplinary matter in re physicians assistants to assure a voice. Krusor pointed out that peer review committees are appointed on an "as needed basis." Priebe opined that the "may" in 136.7 should read "shall." Friedmann took the position that physicians assistants should have been consulted. He asked that

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BOARD  
OF  
MEDICAL  
EXAMINERS  
(cont.)

136.7

Motion to  
Delay

HEALTH  
DEPARTMENT

this aspect be considered. Krusor told Priebe that the law did not speak to peer reviews. It was his opinion that under chapter 258A, this would be between the Board and Peer Review Committee. Krusor said that the Board would take the position that medical services under physicians assistants jurisdiction would be within the domain of the physician. Priebe thought a peer review committee should be established and the ARRC recommended two physicians assistants and two MD's to serve. Krusor was not convinced that an established committee was needed. Graf expressed a concern as to whether there was intent to use the peer review committee. Priebe viewed rule 136.7 as being ambiguous. Krusor emphasized that much study was involved in developing the rule. Protocols were discussed by Friedmann and Krusor. Krusor saw that as a totally separate issue. Krusor took the position that, under the Code, physicians assistants would not be allowed to issue prescriptions. In the matter of peer review committee--Tieden asked about the possibility of a separate one for each case; perhaps appointed by the Department head to offer some assurance to physicians assistants. Priebe wondered about appointing extra committees, if needed. Krusor advised Friedmann that he knew of no one who had been called in for incompetency. Parker commented that if the physicians assistant is to assume responsibility, why not have them serve on the Peer Review Committee. Graf was especially interested in a compromise. O'Kane moved that Items 7 and 8 [rules 136.6 and 136.7] be delayed for 70 days to allow time for further study. Tieden seconded the motion. Motion carried viva voce.

Peter Fox, Mark Wheeler were present for the Health Department. Keith Rankin, Barber Board; Roger A. Nowadsky, Legislative Counsel, League of Iowa Municipalities.

The following agenda was reviewed:

HEALTH DEPARTMENT [170]

Psychology examiners, educational qualifications for licensing, 140.5(10) to 140.5(12) ARC 5016. *F*..... 10 10 81  
Barbershops and barber schools, equipment, 153.7(2)"a" ARC 5017. *F*..... 10 10 81  
Public swimming pools, 10.1(4), ch 15 ARC 5060. *N*..... 10 21 84  
Hospitals, billing services and posting prices, 61.5(3), 51.5(4) ARC 5031. *N*..... 10 10 84  
Psychology examiners, fees and nomenclature of licensure office, 140.1(3), 140.4(9), 140.8(3), 140.9(1) to 140.9(3),  
140.10(6), 140.10(6), 140.201, 140.10, 140.107 ARC 5014. *N*..... 10 10 84  
Psychology examiners, specialty certification, 140.11, 140.12, filed emergency after notice ARC 5018. *FEAN*..... 10 10 81  
Cosmetology examiners, sanitation -- beauty salons and cosmetology schools, 150.9 ARC 5015. *N*..... 10 10 84  
Speech pathology and audiology, informal settlements, 156.110 ARC 4999. *N*..... 10 10 84

ch 140

No questions re amendments to chapter 140.

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HEALTH  
DEPARTMENT  
(Cont.)

ch 140

140.11

Fox gave brief explanation of 153.7(2)a and noted similar change in cosmetology rules. Fox said some studies have indicated formula may be carcinogenic. Wheeler said a hearing on 51.5(3), (4) was held October 30 -- no adverse comments were received. Re chapter 140 amendments, Fox said all fees were placed under one rule for simplification; and appropriately licensed health practitioners will be permitted to certify disability waiver for continuing education. Tieden opined the licensure fees were high but fees are set to just "break even." No opposition had been voiced on the Notice. There are 250 to 300 psychology examiners. Tieden referred to 140.11 reasoned that it was the University, not the Board, that determined requirements of the doctor. Fox responded that as a matter of practice it was the University. Tieden thought "Doctor degree from an approved doctor program" would have been sufficient. According to Fox, the criteria was copied from that set at a national level.

ch 15

Wheeler reported that the public hearing has not been held on chapter 15 but interest has been shown. Chairman Priebe recognized Nowadsky who quoted from a prepared statement. He contended that pools would be closed, the rules are broad and exceed scope of authority. They will make the state and cities vulnerable to liability. Wheeler urged Nowadsky to appear at the public hearing.

156.110

Re 15.4(4)c(1), Wheeler agreed to refer O'Kane's questions, on where the water would be drained, to the Engineer. Priebe requested Wheeler to provide the Committee results of the hearing. Schroeder indicated several areas that needed perusal. No recommendations for 156.110. Tieden asked that the rules be re-Noticed if there are a great number of changes.

Recess

Committee in recess to return to Room 24.

CIVIL RIGHTS  
COMMISSION

Chairman Priebe reconvened the Committee at 2:55 p.m. and called on Artis Reis, Director of Civil Rights Commission for the following:

CIVIL RIGHTS COMMISSION(240)

Rules of practice, advocacy and affirmative action division, 1.2(2)"c" ARC 5029 ..X..... 10/10 84

In response to Tieden's concern, Reis did not envision that the program would eventually be "picked up" by the state. No action.



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PLANNING  
AND  
PROGRAMMING  
26.10(2)

Discussion resumed on OPP subrule 26.10(2). Webb returned with federal regulation 511.5 highlighting the waiver provision of the rental rehabilitation program. The Committee wanted assurance that the Governor had authority to make waivers under this program. Royce asked who had delegated the power from the federal level to the Governor. Webb explained that last April, each state had the opportunity to determine whether they or HUD would implement the rules. Tieden had no qualms with the Governor having the waiver discretion. Schroeder saw the waiver provision as a "grey area" and he preferred guidelines. Webb thought the HUD Secretary could waive specific program requirements and with these rules, the Governor would also have, given extenuating circumstances, the opportunity to waive provision imposed by these administrative rules. Schroeder was comfortable with the fact that the waiver would be in writing. Graf concurred. Priebe asked Webb to confer with Royce on the issue.

HEALTH DATA  
COMMISSION

Denise Horner and Kim O'Hara, Insurance Department Attorneys, were present on behalf of Health Data Commission for the following:

HEALTH DATA COMMISSION[465]  
Submission of data, 6.3(5) ARC 5006 ..... 10-10-84  
Posting and submission of hospital price information, ch 8 ARC 5007 ..... 10-10-84

6.3(5)

O'Hara reviewed 6.3(5). No recommendations. Tieden was told by Horner that there would still be a wide variance because of different services offered by hospitals. She cited University of Iowa Hospitals as opposed to small rural hospital. The Health Data Commission was hopeful of developing another type of report within the next few months on different patterns of practice around the state. Tieden and Schroeder were interested in knowing if both listings would be posted. Which charge would be posted. The Committee was advised that the charge rather than prospective payment costs would be posted. Horner said the Health Data Commission has no authority to require everyone to pay identical costs. Schroeder thought that should be pursued with possible bill draft. No other questions.

INSURANCE  
DEPARTMENT

Kim O'Hara presented the following:

INSURANCE DEPARTMENT[510]  
Agents' licensing, hearings, ch 10, 3.3 ARC 5020 ..... 10-10-84  
Continuing education for insurance agents, ch 11 ARC 5021 ..... 10-10-84  
HMO, governing body, 10.4 ARC 5008 ..... 10-10-84

10.4(7)

O'Hara described the modifications since the Notices. Schroeder questioned 10.4(7) as to why an applicant would be prohibited from taking all tests at one time.

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INSURANCE  
DEPARTMENT  
CCont.)

11.7(2)

He saw as more important whether or not the individual could pass the test. O'Hara said the personal lines test would have to be amended. General discussion. Discussion of 11.7(2)e. Doyle viewed the provision as being vague. Royce saw no need for it since Code chapter 258A was specific. O'Hara said the Department wanted to be sure "all bases were covered." It was agreed that the Department should adopt an emergency amendment to paragraph e to read as follows: "any other disciplinary action as provided by statute."

40.4

No questions re 40.4

CORRECTIONS  
DEPARTMENT

Schroeder in the Chair. Broxann Keigley represented Corrections Department for the following:

(CORRECTIONS, DEPARTMENT OF 291)

Board of parole inmate interviews, 20.13 ARC 5027. *✓* 10, 10 84

Departmental procedures, institutions, community-based corrections, 1.6(1)g, 6.1, 10.4(1), 20.10(6), ch 27 title, 20.2, 20.1,

20.6(3), 20.10(3)e, 20.10(7)b and "e," 20.14, 24.2(1)b, 40.3, 40.5(8), 44.8 ARC 5056 *✓* 10/24 84

Also present: Joe Thornton, Attorney, Des Moines Register, and Gordon Allen, Assistant Attorney General.

20.13

Keigley reviewed changes from the Notice. In response to Des Moines Register, anyone presently on an approved visitor list will not be required to go through approval process for Board of Parole interviews. Doyle recalled his earlier question on 20.13(2) as to persons excluded from visiting privileges and whether the exclusion applies only to aggravated misdemeanors. Keigley believed serious misdemeanors would be included. Keigley was willing to attempt a more definitive answer. She reasoned that 18 months in paragraph a was the approximate time it would take a parolee to receive final discharge. Re 20.13(1), Thornton questioned the necessity for 15 days' advance notice. He noted that the Board of Parole, under open meetings law, need only issue agenda one day in advance of the meeting. He preferred a commitment from the Department of Corrections to clarify that adequate notice for the public and press for inmate interviews would be provided. Keigley responded that in many instances, 15 days does not apply--e.g. news media. Schroeder felt the need for last minute waiver of the 15-day requirement due to circumstances. Keigley saw no problem in granting authority to the Director to make an exception to the rule. Thornton anticipated 5 or 10 late notice requests and suggested another approach would be for the Board of Parole to commit to a "well-in-advance notice policy."

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CORRECTIONS  
DEPARTMENT  
(Cont.)

Keigley was authorized to submit an emergency amendment on the matter. Thornton thanked the Department and Committee for their responsiveness.

1.6(1)g  
et al

According to Keigley, miscellaneous amendments to departmental procedures were basically "cleanup" in nature. She recalled that a definition of "medical practitioner" had previously included chiropractor. The department has developed two versions of the definition which are noticed. The Medical Society has voiced opposition to inclusion of "chiropractor." The Board of Pharmacy Examiners is concerned with inclusion of physicians assistants under the definition. She suggested possible legislative action on the subject may be necessary. Keigley called attention to language that was inadvertently stricken in 24.2(1)b. The last two sentences will be included in the adopted version. No other questions.

ch 20

PAROLE BOARD

Robert "Tim" Tangeman presented the following Parole Board amendments:

PAROLE BOARD OF[615]  
Records review, 3.10 ARC 5032..... 10/10/84  
Conduct at parole proceedings, 3.21 to 3.24 ARC 5033..... 10/10/84

3.10

Tangeman said the purpose was to cover Board procedure in 3.10 with regard to trying to break the "cap" rate for institutions. No questions from ARRC. Priebe questioned why the staff, rather than the warden, were making these decisions with respect to entering and leaving the interview room--3.23(3). Graf commented if "warden" were substituted, it would require him to sit in on all the interviews. The restrictions are imposed by the warden and the staff carries them out.

3.23(3)

3.24(7)

Discussion of 3.24(7). Priebe raised questions about "Still photographers shall not assume body positions inappropriate for spectators." He took the position that the requirement should apply to TV cameramen, as well. He recommended that "Still" be stricken. Allen noted that the rules were copied almost verbatim from supreme court rules governing court rooms. A concern was that "still" photographers would lie on the floor to obtain photos. Thornton offered substitute language "as provided by law or as provided by chapter 28A" for "except as otherwise necessary or proper" in 3.21. Tangeman was amenable. Thornton cautioned that if many spectators are barred from meetings because of lack of room, the Board might still be found in violation. He was hopeful the Department would adopt

3.21

PAROLE BOARD  
(Cont.)

the attitude of the Court toward use of cameras in the court room. Their rules have been followed four years with few problems.

3.23(8)

Doyle called attention to last sentence of 3.23(8). Tangeman saw no problem since there would be no break for lunch in the middle of an interview and spectators change with the inmate. Doyle suggested addition of "preference will be given to family members." Thornton was of the opinion that 3.23(2) addresses spectators in a vague way--could be interpreted to allow people to leave interviews. Schroeder interpreted 3.24(1) as preventing the Department from making a film for the legislature. Tangeman said intent was to have rules identical to the courts.

REGENTS

The Committee brought up the objection to parietal subrule 2.2(5) voted at their August 15 meeting.

Objection  
Withdrawn

Schroeder moved to withdraw the objection. Motion carried.

Vice Chair

Representative Schroeder formally resigned as Vice Chairman of the ARRC and moved that Representative James O'Kane be elected to fill the vacancy. Motion carried.

Recess

The Committee recessed at 4:20 p.m.

Reconvened

Chairman Priebe reconvened the Committee meeting in Room 24, at 9:00 a.m., Wednesday, November 14, 1984. All members and staff present.

ARTS  
COUNCIL

Sam Grabarski appeared on behalf of the Arts Council for the following:

ARTS COUNCIL[100]

Policies and procedures, programs, 2.3(1)f.d., 2.3(2)f.b(15) and (17), 2.3(3)f.c(13) and "e," 2.3(5)f.b(12) and "g," 2.3(6)f.a(10) and "e," 2.3(7)f.a(15), 2.3(8)f.k., 2.3(9)f.a(6), 2.3(10)f.a(17), 2.3(11)f.d., 2.3(13)f.c(14), 2.3(18)f.c" ARC 5019. N..... 10/10/84  
Policies and procedures, folk arts apprenticeships program, 2.3(20) ARC 5062, also filed emergency ARC 5061 N.F.F. 10/21/84  
Forms, folk arts apprenticeships program, 3.13, filed emergency ARC 5063 C.F...... 10/24/84

Grabarski explained the change in 2.3(2)b(5). Applicants who tour, for example, Garrison Iowa Old Creamery, Theater, would not constitute a repeat application in view of the fact they visit different areas of the state. Discussion of 2.3(10)a(7). Previously, an artist was not paid until after the evaluation form was received. If sponsors were tardy, the Council was forced to hold up payment. Royce wondered if there were anything that could be done to keep the Toby Tent Show operational. Grabarski said they were seeking ways to qualify them under state and federal guidelines. A technical problem is that the show operator

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ARTS COUNCIL has retained Missouri citizenship and is not eligible.  
cont'd Priebe reiterated Committee opposition to filed emergency rules. Re 3.13 -- no questions. Grabarski announced that he would be leaving Iowa for employment in Minnesota. He said it had been a privilege to work with the ARRC for five years.

MERIT  
EMPLOYMENT

Clint Davis and Emmeline Wynn were present for Merit Employment agenda as follows:

MERIT EMPLOYMENT DEPARTMENT[570]

Miscellaneous amendments to requirements of the merit employment system in the administration of certain types of personnel actions. 1.1(13), 1.1(15), 1.1(27), 1.1(29) to 1.1(31), 1.1(35), 1.1(51), 2.3, 3.1(5), 3.4(1), 4.4(3), 4.5(1)"g," 4.5(3), 4.5(4)"e" to "h," 4.5(6) to 4.5(9), 4.5(16), 4.7, 5.5(9), 5.8(2)"f," 5.12, 6.6(9), 7.8, 7.15, 8.7, 8.11, 9.1 to 9.3, 9.8, 9.9, 10.1(1), 10.3, 10.4, 11.2, 12.1(4)"b," 12.2(8), 12.5(1), 12.5(3), 14.7, 14.13 ARRC 5059 ..N..... 10:21 84

In response to Tieden, Davis said when changes are extensive, the Department does not attempt to use strike-throughs and underscoring. Comments had been received from District 7 of Human Services concerning the proposed amendments. District 10 concurred with their recommendations. A private citizen had asked that provision for probationary pay increase for professional employees be retroactive to July 1, 1984 but that will not be suggested or considered.

- 2.3 In re 2.3, Davis referenced Executive Order 50 which provides parameters for nonstate employment. The rules will coincide with the Order.
- 3.1(5) A substantial change in 3.1(5) addresses allocation and reallocation of positions and archaic language was changed.
- 4.4(3) Subrule 4.4(3) establishes probationary period for professional managerial employees where they would be granted an increase with satisfactory performance.
- 4.5(7) Subrule 4.5(7) provides for administration of pay on demotion. It sets forth provisions for employees who have had their salaries red circled. Three situations were identified.
- 12.5(3) Re 12.5(3), Doyle asked, "Do they pay their own witness fees--even the winner?". Davis answered that as he understood it, Code section 622.69 provides that those subpoenaed by either party--the party is liable for the appearance fee. Davis was unsure whether this could be assessed to the losing party but would check. Doyle said that would be the normal procedure. It did not seem that the winning party should have to pay and he asked for clarification. No action taken.

EMPLOYMENT  
SECURITY

Joseph Bervid presented the following amendments:

Employers contribution and charges, claims and benefits, 3.2(1) to 3.2(3), 3.66, 4.2(1)"e," 4.16(2), 4.16(3), 4.17(1) ARRC 5051 ..N..... 10:21 84

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EMPLOYMENT  
SECURITY  
(Cont.)

Bervid stated they tried to redefine what constitutes wages paid--employment security tax is due when wages are paid--3.2. Provision from the Code, which allows an employer to post a bond in the amount of disputed tax, was added as subrule 3.66(3). In answer to O'Kane as to "bond experience in this area," Bervid said the amount of tax liability or the bond sufficient for payment, may be posted. This had not come up since he had been with the agency. O'Kane and Bervid discussed case law -- Bervid did not believe this would be "dubbed" acquiescence." The statute allows for filing of bond and contest of liability. Doyle questioned use of "attach any real or personal property" in 3.66(4). Bervid quoted the Department of Revenue statute-- "any real or personal property" and indicated they do not read in an exception for homestead. Doyle referenced law clarifying homestead lands. Bervid recalled that it referred to judgment creditors and added that Employment Security was not a taxing body. They do attach lien to homestead but have never collected. Bervid agreed to pursue this matter for the ARRC.

Minutes

Doyle moved approval of the October minutes. Carried vivi voce.

Legislative  
Veto

The Committee discussed the impact of the constitutional amendment which granted legislative veto of administrative rules. Consensus was that the Committee should continue to function as before. Mention was made of amending ARRC rules of procedure and Royce was requested to peruse them and meet with legislative leaders to consider necessary changes to implement the Constitution. Graf was hopeful the legislature would allow opportunity for an agency to correct problem areas.

O'Kane took the chair.

COUNTY  
FINANCE

Ronald Amosson and Gary Meyer were present for review of 1.1(3) and chapter 5 pertaining to annual financial reports published under Notice and 10/10/84 IAB.

5.4

Discussion of 5.4. Meyer indicated counties had made significant changes in their accounting systems which follow generally accepted accounting principles-- requirements can be waived for only three years. O'Kane was told that many counties have new forms and there were problems which have been corrected. Amosson commented favorably on the county Act.[70GA, ch123]

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COUNTY FINANCE (Cont.) Average increase over the last few years was 9½ percent and this year, county budgets increased six percent.

CITY FINANCE Rules of the City Finance Committee were before the ARRC as follows:

CITY FINANCE COMMITTEE[230]  
Law enforcement officer training reimbursement, ch 6 ARC 5040, also filed emergency ARC 5039 *N.Y.F.E.*..... 10/21/84

ch 6 Warren Jenkins explained that ch 6 implements 1984 Acts, House File 2247, §1 and provides reimbursement to cities and counties for training of law enforcement officers. It was filed emergency to expedite information to cities and counties.

Recess Recess for 30 minutes.

Reconvened Chairman Priebe reconvened the meeting at 10:50 p.m.

TRANSPORTATION DEPARTMENT Carol Padgett and Ruth Sckluzacek were present for the following:

TRANSPORTATION, DEPARTMENT OF[820]  
Vehicle registration and certificate of title, (07,D) 11.2(11), 11.2(12), 11.38 ARC 5041 *E.*..... 10/21/84

Schroeder noted "No white light to the rear" was still listed under the column "Lights" in 11.2(11). The Committee authorized the Department to adopt an emergency rule to make the necessary change.

CONSERVATION COMMISSION Ross Harrison and Marion Conover appeared to review:

CONSERVATION COMMISSION[290]  
Trotlines, where permitted, 20.1 ARC 5053 *E.*..... 10/21/84  
Fishing regulations, 108.1, 108.2 ARC 5054 *E.*..... 10/21/84  
State migratory waterfowl, habitat, and trout stamp design contests, winning entrants, 73.2(1), 73.2(2), 73.2(3)"a"  
ARC 5052 *N.*..... 10/21/84

20.1 Conover said that 20.1 was revised as recommended by Tieden to permit use of trotlines in the Turkey River from the mouth to the dam. It was noted that paddlefish snagging will be permitted statewide. Tieden observed that these fish rarely bite. O'Kane had heard that dams on the Missouri had created problems with reproduction of paddlefish. Conover said the Mississippi River population is healthy but he admitted that some spawning areas had been removed by dams on the Missouri. The Commission plans to work with Nebraska on that matter.

ch 73 Discussion of 73.2 which was implemented three years ago. Harrison reported a slowdown on print sales because of deluge of wildlife prints on the market. Imposition of limits is needed. Schroeder was informed there never has been over 950 of any stamp print made in Iowa and 95 percent are sold within 9 months of issue.



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CONSERVATION  
COMMISSION

The Commission does not ask for their money until the artist receives orders and has sold most of his or her prints. Schroeder suggested restriction in the rule to collect on "the number of prints sold the first year." Harrison stated they have avoided having to audit the artist's business. Department officials contacted other states and they all advised against taking a percentage of what the artist says he has sold. Artists may delay selling until it is economically feasible for them. Priebe wondered if "not less than" a given number would be preferable to "at least..." This would allow for more production of the prints. Harrison stated that they do allow more. The Iowa stamp contest is the oldest in the nation. No one appeared at the public hearing held this morning. Previous winners had input in the rules. Harrison concluded that the Fish and Wildlife Trust Fund is credited with approximately \$25,000 from the prints.

REVENUE  
DEPARTMENT

Carl Castelda appeared to review the following amendments intended to implement 1984 Acts, House File 2503 and Senate File 2354:

REVENUE DEPARTMENT[730]  
Taxable sales, sales and use tax on services, 16.51, 26.17, 26.39, 26.48 ARC 5037 .N..... 10/10/84

O'Kane referenced a letter from Iowa Small Business Employers re insurance premium tax. Castelda indicated he had been in contact with the Insurance Department in resolving the matter. The Insurance Department takes the position that rules are unnecessary in this area and that there is no expertise to challenge the insurance statute. Castelda was willing to contact Tony Schrader of the Insurance Department again and ask for an update. Doyle and Castelda discussed problem faced by some of Doyle's constituents re income tax returns. If a person unknowingly receives erroneous information from an employer or bank, the federal IRS waives the penalty, but Iowa does not. Castelda stated that the penalty is waived when it can be shown erroneous information was provided by Revenue employees or by competent tax practitioners. Doyle referenced specifics about banks, CPAs and a lawyer but Castelda was of the opinion they probably had not met the burden of proof. Discussion of the new statute providing for a regulatory flexibility analysis--S.F. 475. Castelda pointed out that their agency had received no guidelines on format to follow relative to the new law. Department staff is drafting rules on what is required when a request under S.F. 475 is made of the agency.



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AGRICULTURE

Chairman Priebe called up the objection voted by the ARRC on Agriculture rule 9.1 on November 13. Department officials had agreed to include a date certain.

Objection  
Removed.

Schroeder moved that the objection be removed from rule 9.1. Motion carried.

Deaf  
Services

The Committee reiterated their concern that rules relative to deaf services had not yet been submitted. Priebe referenced problems in southern Iowa and asked that all brucellosis rules be made an item of special review at the December meeting.

Brucellosis

DEPARTMENT  
OF PUBLIC  
INSTRUCTION

Proposed revision of Special education rules, chapter 12, published as ARC 5011, in IAB 10/10/84, were presented by DPI officials -- Frank Vance, Director, Division of Special Education, Fick Fischer, Assistant, and Jim Reece, staff.

Vance reviewed the changes which will clarify many areas, remove legalese, as well as address federal mandates. They have attempted to include what has been demonstrated as good professional practices and they have received considerable support. At Doyle's suggestion, Vance was amenable to amending the rules to ensure that "parents" would include "guardian." Doyle took the position that 12.41 was verbose and suggested that the rule merely "say what relevant evidence is." Doyle referred to 12.40(2) and pointed out that the hearings are not formal. Royce was willing to work with the Department on the final draft. No further questions.

No agency  
Representa-  
tive

No agency representative was requested to appear for the following:

COLLEGE AID COMMISSION[215]  
Iowa guaranteed student loan program, amendment to ch 10, ARC 5055 .F. .... 10/21/84

PHARMACY EXAMINERS, BOARD OF[620]  
Legal status of prescriptions, 6.12 ARC 5034 ...F. .... 10/10/84

REGENTS, BOARD OF[720]  
Personnel, reduction in force, 3.1044) ARC 5047 ...F. .... 10/24/84

TRANSPORTATION, DEPARTMENT OF[820]  
General requirements for highway construction, (06.6) 1.1. filed emergency ARC 5050 .F.F. .... 10/24/84

Schroeder indicated concern with 6.12, pharmacy rule with respect to refilling of prescriptions. He thought it could read "shall not be honored beyond 30 days". It was noted the rule had gone into effect at midnight.

11/14/84

Recess  
Reconvened

Committee recessed at 11:50 a.m. for lunch.  
Reconvened at 1:00 p.m. with O'Kane in the Chair.

DENTAL  
EXAMINERS  
BOARD

Jan Brown, Kristie Burt and Connie Price appeared on behalf of Dental Examiners Board.

DENTAL EXAMINERS, BOARD OF[320]  
Definitions, organization, licensing, 1.8, 1.9, 5.2(1), 5.2(4), 5.3 to 5.5, 6.1 to 6.4, 7.1(4), 10.2(1), 10.2(2), 13.1(2), 13.2(4), 14.2, 51.1(1) ARC 5030 *N*..... 10/10/84  
Applications, 11.1, 11.2(2)a, "c," "d" and "f," 11.3(2)a, "b" and "e," 11.4, 11.5(2)c, "d" and "f," 11.6 ARC 5009 *N*.... 10/10/84

According to Price, the two sets of rules are updated to reflect autonomy of the Board from the Department of Health. In chapter 11, the Board has addressed credentials for dental hygienists for licensure. O'Kane asked about current status of licensees and Price responded that licensure by credential is statutorily allowed for both dentists and dental hygienists. She added that there is "a national swing" toward requiring hygienists to take their own state or regional examination for licensure. Iowa has had a liberal policy. Discussion of reciprocity.

Tieden questioned 11/3(2)e, new language, with respect to the five years. Price clarified that this is not a probationary period. Tieden was surprised to see the term "jurisprudence" in 11.5(2)f. Price advised that this basically is to ensure that applicants have read the rules and laws pertaining to dentistry--no one has failed a jurisprudence exam. No recommendations.

HUMAN  
SERVICES

The following agenda was before the Committee:

HUMAN SERVICES DEPARTMENT[498]  
ADC and medical assistance, eligibility, 40.7(2), 40.7(4)d, 76.8 ARC 5042 *F*..... 10/24/84  
ADC, Application, granting assistance, unemployed parent, recoupment, unemployed parent workfare program, 40.7(1)e and "f," 41.1(5)b, "11.5(6), 41.6(2)b," 41.6(6)d," 41.6(9), 41.7(5), 41.7(6)a," 41.7(8), 41.7(10), 41.8(1), 41.8(2)b(2), 42.6, 46.1, 46.4, 46.4(5), 46.4(6), 46.5, 46.5(3)d," 46.5(4), 59.5(4), *filed without Notice* ARC 5045  
(see also Notice ARC 5046) ..... 10/21/84  
Family and group day care homes, 110.5(8) to 110.5(11), 110.9(3) ARC 5013 *F*..... 10/21/84  
ADC, medical assistance, public assistance, amendments to chs 40, 41, 42, 46, 59, 75 and 95 ARC 5046 (For substance of these rules, see *filed emergency* ARC 5044, and *filed without notice* ARC 5045) *N F E F E N*..... 10/24/84  
ADC, unemployed parent workfare program, medical assistance, collections, 40.1(2), 40.1(5), 41.2(7)b, 41.4(1)b, "41.6(1)b" and "i," 41.7, 41.7(2)a, "b," "c(3), "d" and "e," 41.7(6)a," 41.7(9)a(1), (2) and (5), 41.7(9)b(1) and (2), 41.8(2), 41.8(2)a," 59.3(5), 75.1(19) to 75.1(22), 95.3(1) to 95.3(3), *filed emergency* ARC 5044 *F E*..... 10/24/84  
ADC, continuing eligibility, 40.7(1)b" ARC 5001 *N*..... 10/10/84  
Medical assistance, prescriptions, 78.1(2)e" ARC 5002 *N*..... 10/10/84  
Medical assistance, method and level of reimbursement, 78.1(3) ARC 5057 *N*..... 10/24/84  
Adoption services, certification of adoption investigators, 200.4, 200.5, 200.11, ch 107, also *terminates* ARC 4671 notice  
ARC 5058 *N N N*..... 10/21/84

Department representatives included: Mary Ann Walker, Cynthia Tracy, Charles Ballinger, Morris Gater, Dan McKeever, John J. Barber, Joe Mahrenholz, Don Herman, Dan Gilbert, Norma Ryan, Harold Poore, Miriam Turnbull, Dan Mack and Tom Bower (physical therapists).

40.7  
76.8

ARC 5042 -- no recommendations were offered for 40.7 and 76.8.

ch 41  
et al

Amendments to chapters 41, 42, 46, 59 [ARC 5045] were considered to have a "negative" impact.

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HUMAN  
SERVICES

Walker explained that the federal deficit reduction Act affected state's ADC programs in many ways and the rules are modified accordingly. Four major changes provide in part that real property is not exempt as a resource, but can be as a homestead; a standard filing unit is mandated; all income of members must be considered in determining a grant. Previously a child's social security income could be excluded. Walker told Schroeder that it has been an established practice of the Department to hold many hearings on matters affecting many clients. Royce referenced a 1978 Iowa Supreme Court case requiring this approach -- a poverty law issue.

ch 110

Discussion of 110.5(8) which the ARRC had taken exception to when it was under Notice -- legislation on the subject had failed to pass this year. Care centers for children will be required to maintain an individual file of information on each child. Poore stressed that protection of children was their concern. Similar rules in chapter 109 have been in effect for ten years. Royce advised O'Kane that the Department's action was not unlawful. Poore emphasized the rule was well publicized but no questions or comments were received.

110.5(9)

Walker advised that disabilities and disease referenced in 110.5(9) would be determined by the physician. In response to Parker, the rules apply to 2500 facilities. O'Kane had no problem with allowing the rules to go into effect.

Discussion returned to ADC amendments contained in ARC 5044 which were described by Walker as having "positive" impact. In response to Schroeder question re 41.2(7), Walker said if an absent parent pays child support, the client's eligibility for assistance will not be affected. Walker said 67,000 checks will be issued for October totaling \$313,000.

40.7

Re 40.7(1)b--ADC continuing eligibility provides that recipients residing out of state must report income on a monthly basis.

78.1

78.1(2)c eliminates an unnecessary form. Walker recalled there had been previous selective review of 78.1(13). Schroeder noted a possible problem with rules relative to direct supervision by physician's assistants--Health Department rules reviewed yesterday.

HUMAN  
SERVICES  
(Cont.)

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After general discussion, Schroeder asked them to work with Board of Medical Examiners to seek a compromise. Parker said there seemed to be a conflict with Medical Board's position. There was discussion of whether or not physicians assistants could prescribe medicine-- it was Herman's understanding they could not. Herman pointed out the rule was patterned after the Medicare program. O'Kane thought there was a good possibility these rules could not be made compatible with our licensing statute re physicians assistants. The rules must conform with the Medicaid and Medicare programs. Walker commented they had struggled with this controversial area. General discussion as to "medically underserved areas."

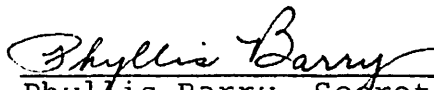
Adoption services amendments to chapter 200 and chapter 107 were reviewed. Turnbull briefed the Committee with respect to the certification of adoption investigators and adoption services to ensure that investigators are qualified -- chapter 200. Walker interjected that comments had been supportive. Turnbull pointed out that the service includes study and investigation--not placement. Turnbull assured Schroeder that investigation was general in nature, no legal work.

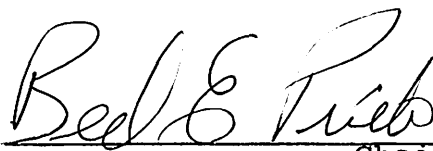
O'Kane spoke of his intent to refer the adopted version to the Commission on Professional and Occupational Regulation. Under Code chapter 2B, certification of a new occupation must be sent to that Commission.

Adjournment Parker moved adjournment at 2:45 p.m.

Next meeting scheduled for Monday and Tuesday, December 3 and 4.

Respectfully submitted,

  
Phyllis Barry, Secretary  
Assisted by Vivian Haag,  
and Bonnie King

  
Chairman

\_\_\_\_\_  
Approved