MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting — The regular meeting of the Administrative Rules Review committee (ARRC) was held on Tuesday and Wednesday, September 13 and 14, 1994, in Room 22, State Capitol, Des Moines, Iowa.

Members present — Representative Janet Metcalf and Senator Berl E. Priebe, Co-chairs; Senators H. Kay Hedge, John P. Kibbie, William Palmer and Sheldon Rittmer; Representatives Horace Daggett, Minnette Doderer, Roger Halvorson, and David Schrader.

Also present: — Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Kimberly McKnight, Administrative Assistant; Caucus staff and other interested persons.

Convened: — Representative Metcalf convened the meeting at 10 a.m. and recognized Laurie Wolf, Iowa College Student Aid Commission, for the following:

COLLEGE STUDENT AID COMMISSION[283]
EDUCATION DEPARTMENT[281]"umbrella"
Cosmetology and barber grants, ch 34, Notice **ARC 5001A** 8/17/94

Ch 34 — In response to Metcalf, Wolf explained the issue of eligibility of schools with a high default rate. In order for a school to be eligible for Title IV program, they must have a default rate of less than 25 percent for three consecutive years. A school with a default rate of 20 percent must file a plan with the federal Department of Education and the state agency on a plan to reduce the default rate. All schools must meet certain federal Department of Education standards. Wolf reviewed qualifying standards which ensure that the department will be no more restrictive with cosmetology schools than with community colleges for the Iowa Vocational/Technical Grant or private schools for the Iowa Tuition Grant. Twenty-four schools have applied for eligibility. Wolf continued that three schools exceeded the 20 percent default rate on the federal level as well as at state level. Out of 34 cosmetology schools in the state, 10 elected not to apply for the program. In response to Kibbie, Wolf explained that schools associated with community colleges were ineligible for the program because those students could access the Iowa Vocational/Technical Grant.

Schrader reasoned that success of the program should be documented. Wolf referred to Iowa Code section 714.25 which requires the department to collect information from the schools regarding the placement rate. Schools use reporting standards established by the Department of Education in 1990. The Department had some negotiations with school sectors on this issue.

Metcalf expressed concern that three applicants were over the 20 percent default rate. She suggested that the rules require schools to be under 20 percent default rate. Kibbie opined that even 20 percent was not tolerable. Metcalf suggested that a point system might be more useful. Priebe took the position that schools with the lowest default rate should have a higher priority for grants. In response to Hedge, Wolf replied that the state of Iowa uses a cumulative default rate and the federal Department of Education uses a cohort rate for an 18-month period—both were similar. Hedge preferred a short time period. Wolf commented that other grant programs in the state were based on need and that was the reason the Department didn't include a default rate. In response to Halverson,

COLLEGE AID (Cont.)

Wolf said that schools provide training and placement for the student but government restrictions preclude a school from assistance in repaying a loan. When schools enter into a direct loan program, they work directly with the federal government and there will be no defaults. Students will be allowed a thirty-year repayment schedule and, after thirty years, any remaining balance would be forgiven. Cosmetology students would receive a Pell Grant or a student loan, or both.

There was consensus that the rules should be rewritten and renoticed. Metcalf asked the Department to work with Royce.

DENTAL EXAMINERS

Linda Pickering, Secretary, represented the Board for the following:

DENTAL EXAMINERS BOARD[650]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Sale of goods and services, ch 8, Filed ARC 5009A 8/17/94
Patient records — retirement or discontinuance of practice, 27.10, Filed ARC 5008A 8/17/94

Ch 8

No questions on Chapter 8.

27.10

Priebe was concerned with the amount of notification required in this rule. No Committee action.

AGRICULTURE

Chuck Eckermann, Supervisor of the Pesticides Bureau; John Hinshaw, Bureau Chief of Horse and Dog Program; and Ron Rowland, Director of Regulatory Division, were present for the following:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Chemigation — use of pesticides and fertilizers in irrigation distribution systems, division I preamble, division II preamble, 45.80 to 45.87, Notice ARC 4719A Terminated ARC 5019A 8/17/94
Pesticides — establishment, assessment and collection of civil penalties, commercial pesticide applicator peer review panel, division III: preamble, 45.100 to 45.105, Filed ARC 5020A, See text IAB 4-13-94 ..... 8/17/94
Registration of Iowa-foaled horses and Iowa-whelped dogs, 62.15(2)"d," 62.15(3) to 62.15(5). 62.25(2)"d," 62.25(3) to 62.25(5), 62.35(2)"d," 62.35(3) to 62.35(5), 62.43, Filed ARC 5067A 8/31/94
Revocation or denial of permit or license for feeder pig dealer, feeder pig dealer agent, livestock dealer, or livestock dealer agent, 66.20, Filed ARC 5061A 8/31/94

45.80 to 45.87

Eckermann stated that 16 people attended the public hearing on amendments to Chapter 45 and much opposition was voiced. He cited statutory problems in dual jurisdiction response and reporting and the fees for certification of applicators and for permits. The Department would work with the industry in revising these rules.

45.100 to 45.105

Eckermann stated that all comments were favorable on adopted amendments to Chapter 145.

62.15(2)"d" et al.

Rowland noted a change from the Notice on amendments to Chapter 65 clarified that written or faxed notice be given to the Department before the breeder of an Iowa-foaled horse may use the veterinarian's affidavit. Priebe felt that this was a major change and was concerned with disciplinary procedures in 62.43(99D). Rowland responded that registration was for greyhounds in Iowa. Priebe thought "Iowa" should be added before "registration" in the last sentence of 62.43. No formal action.

66.20

Rowland commented that the Department had relied on 66.20 in a case where a company was defrauding farmers and the Department prevented one of the principals from getting a new license.

Committee Business — Metcalf called for disposition of the August minutes. Rittmer requested a change on page 27, last line of last paragraph of EPC. He asked that the words ". . . rules should be more stringent." be changed to " . . . rules were always applied uniformly."

Minutes Motion — Priebe moved for approval of the minutes as corrected. Motion approved.

COMMUNITY ACTION — Rod Huenemann and Cathy Hamilton were present for the following:

COMMUNITY ACTION AGENCIES DIVISION[427]
HUMAN RIGHTS DEPARTMENT[421]"umbrella"
Community services block grant — antipoverty services, 22.1(1)"b," 22.5, 22.6, 22.9(1), 22.14(1)"d,"
Notice **ARC 5037A** 8/31/94

Ch 22 — Huenemann stated that amendments to Chapter 22 would implement changes in statute. In response to Daggett, Huenemann stated that funds were relatively steady and that impact would be quite minimal. Homeless people were currently served in all geographic areas of the state with these funds as well as a small grant program that goes to community action agencies.

ECONOMIC DEV. — David Lyons, Director; LuAnn Reinders, Tourism; Robert Henningsen, Head of Business Development and Expansion; Melanie Johnson, Counsel; Brice Nelson, Legislative Liaison; and Mike Miller, Business Finance Bureau, were present from the Department. Diann Weinman and R. Craig Slayton were present from the Department for the Blind.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
Self-employment loan program — individuals with disabilities, 8.1, 8.2, 8.3(6), Notice **ARC 5004A** 8/17/94
High technology apprenticeship program, ch 17, Filed Emergency **ARC 5007A** 8/17/94
Targeted small business financial assistance program — persons with disabilities, 27.2, 27.4(6)"a,"
Notice **ARC 5005A** 8/17/94
Tourism promotion — licensing program, financial terms, 60.5(4), Notice **ARC 5006A** 8/17/94
New jobs and income program — eligible projects and median wage calculation, 62.2,
Filed Emergency After Notice **ARC 5029A** 8/17/94

8.1, 8.2 and 8.3(6) — In review of ARC 5004A, Lyons spoke of the need for corrective legislation with respect to the self-employment loan program. He thought intent was for the state of Iowa to leverage available federal dollars for assistance to disabled populations entering the work force. However, the definition adopted by the legislature was the ADA definition. The funding comes through the vocational rehabilitation portion of federal law and, therefore, it had to follow the vocational rehabilitation federal definition of disability. Lyons believed that the statute required the Department to adopt the language included in the rule. However, they will develop a process to allow the Department to start a portion of the program specifically related to vocational rehabilitation definitions to allow a drawdown of matching dollars. A second portion would provide broader application and the Department would submit legislative recommendations.

It was noted that Title I of the Vocational Rehabilitation Act involved federal funds on vocational rehabilitation.

Doderer arrived.

Miller advised Daggett that the program was a joint effort of several agencies and a number of meetings were held with Vocational Rehabilitation, Department for the Blind, and Inspections and Appeals. There would be a clear line of responsibility in the detailed rules which would be adopted.

ECONOMIC DEV. (Cont.)

Lyons responded to Hedge that definition in 8.2(15)"4" would have to be based on case law determinations of the federal ADA Act and would be subject to change. The ADA was becoming more prescribed as cases come through the courts and by adopting federal law, other states' interpretation of the statute would be considered.

27.2 and 27.4(6)"a"

Miller stated that new definitions in 27.2(15) mirrored the earlier version. With respect to 27.4(6)"a," Priebe was informed that the provision was statutory—the businessowner must be a woman. Persons with disabilities were added to the definition of "targeted small business." A female does not have to be disabled to qualify.

Ch 17

Lyons stated that under Chapter 17, the funding approach for the first year would be on a formula basis and after that it would be on a competitive bid basis. Daggett wanted to ensure "a level playing field." Lyons said that community colleges were relying on this process to continue to serve some populations that would have no money next year.

60.5(4)

Reinders stated that no comments were received on 60.5(4). In response to Halvorson and Priebe about income expectations from licensing and royalties, Reinders stated that they have a goal of $50,000 a year. The money goes for promotion of tourism in Iowa and there was no renewal, only a yearly contract. Priebe took the position that percent of royalties should be spelled out to avoid favoritism. Reinders stated that the Department wanted some latitude in the percentage and that a formula might be the solution.

62.2

Lyons provided background on amendment to 62.2 which included definitions of "average county wage scale" and "eligible project." Nineteen comments were received on the rule and most favored inclusion of the value of health and dental benefits in wage determination. However, because of ARRC opposition, these benefits were removed following the Notice.

Rittmer opined that the controversial rule making should have been renoticed instead of Emergency Adopted. Royce advised the Committee could not delay these rules, but had three options: take no action, general referral to the legislature which would not impact enforcement, or vote an objection which would be a legal action stating that the rule was unlawful for some reason.

Motion

Rittmer moved to object to 62.2, definition of "Eligible project". Discussion followed. Palmer requested a clarification on determining "average county wage."

Lyons defended the Emergency filing because applicants were asking about the process. Secondly, the Department was trying to tie the program directly to the legislation which basically specified the new jobs and income program. DES figures were used in calculating all of the new jobs created in the community times 1.3 or 130%. The Department was trying to compare new jobs brought into a community.

Palmer was concerned about Polk County's wages and contended that the change from average wage to average starting wage would make a difference of approximately $3 an hour. He also maintained that adding "may" to the last sentence of "eligible project" exceeded the legislative intent. Lyons assured Palmer that no projects would be restricted by the April time frame. "May" was not intended to allow more projects. The Department followed a case-by-case analysis of whether or not there had been an initiation of production and they

ECONOMIC DEV. (Cont.)

needed a "hard target" to determine whether initiation occurred by putting in design capacity. Palmer requested the Department's breakdown of how this starting versus prevailing would impact Polk County, a copy of the minutes of the hearing on June 28 and a report on written and oral comments. Palmer suggested clarification of issues before the next legislature meets.

Lyons asked if the Committee would be comfortable with a continuation of a case-by-case analysis of initiation of production. He assured them that all comments made at the ARRC meetings were referred to the Board for consideration. He would report the ARRC was not comfortable with the "one-third" rule and might actually be more uncomfortable with it than with the present system of a case-by-case analysis of initiation of production. Metcalf concurred with that as a fair assessment and added that the goal of the New Jobs Program was not to encourage planned development but to encourage prospective development.

Schrader stated that intent was for resources to be used to encourage and foster development that would not have occurred. Further, the bill was clear that $11 an hour index or 130 percent of the average county wage should be used. He suspected that some favored an $11 ceiling. Lyons responded that of the three or four applicants who have discussed this, none were paying $11—they were all above that level. Schrader emphasized that comparison was not between new jobs and new jobs. The rule provides for starting wages and those wages could be for a job that has been in existence for many years. He viewed this as a way to lower the wage level in the bill. He declared that inclusion of "average *starting* wage" was disregarding the law. Schrader offered as a friendly amendment to Rittmer's motion to object by including the entire rule in the objection. Rittmer agreed with Schrader and urged review by the next session versus amending the rules.

Priebe concurred with Schrader but pointed out that the rule was already in effect. Lyons stressed the importance of testing the program so flaws could be addressed by the General Assembly. Priebe interjected that the Department had changed the law by rule.

In response to Hedge, Lyons stated that contracted help such as security was not included. Halvorson indicated that he would not vote to object because of difficulty of determining when production begins and because this was a **new** jobs program.

Royce advised that the objection would reverse the burden of proof to the Department in case of a court challenge. The court assumes a rule to be valid and a person attacking it must show by clear and convincing evidence that the rule is unlawful. The effect of an objection depends on how likely it is that a rule will be challenged in court. Daggett was interested in ramifications to the Department. Lyons reasoned that an objection would create enough uncertainty that the applicant would not pursue the project. In order to be considered for NJIP, the company must have at least $10 million invested in the state of Iowa—a $10 million project would not go forward with a pall on it. Currently, there was only one formal application but five or six potential applicants.

Daggett was sympathetic to both sides of the issue. Priebe felt very strongly that the Department and the Committee must follow the Code not intent.

Johnson pointed out that the original rule did not contain the starting wage language.

ECONOMIC DEV. (Cont.)

Schrader agreed with Priebe regarding the role of the Committee. Palmer complimented the Department for attempting to make this program work but he added that the Committee had responsibility to ensure that rules carry out mandates or public policy of the legislature. He concluded that rule 62.2 exceeded or redirected the intent of the legislation and the Committee's only alternative was to object.

Kibbie asked that the entire Committee be provided with information previously requested by Palmer. Lyons informed Kibbie that of the nineteen comments, most related to health and dental insurance and the one-third of design capacity.

Objection Vote

The motion to object to amendments to 62.2 carried nine to one. Metcalf admonished Lyons that this was a very clear message to take back to the Board. Metcalf recommended rescission of the rule and a moratorium on applications between now and the rescission.

Royce recalled a discussion with Arthur Bonfield, author of the Administrative Procedure Act, as to when it was appropriate for an agency not to write a rule. Bonfield advised taking that approach when the Department does not know what the policy should be—a rule embodies an overall policy. Royce stated that an agency must follow a case-by-case basis until there is information to make an overall policy. Metcalf suggested following Code language on the wage requirement and proceed on a case-by-case basis. Schrader stated that a rule could be implemented to complement the legislation.

Ethics Postponement

Metcalf asked that Ethics and Campaign Disclosure be postponed until 2:45 p.m. today. The Agency agreed.

Recess

Metcalf recessed the Committee at 12:05 p.m. for lunch and reconvened it at 1:30 p.m. for the following Education Department agenda:

EDUCATION

EDUCATION DEPARTMENT[281]

Appeal procedures — open enrollment, 6.3(1), 6.11(1), 6.11(3), 6.11(7), Notice **ARC 5060A** 8/31/94

6.3(1) et al.

Ann Marie Brick, Legal Counsel, and Don Helvick represented the Department for these rules. Daggett asked if the Director could answer an appeal and Helvick responded that was usually assigned to the legal staff. Helvick clarified that the amendments applied only when people miss the timeline because of good cause such as moving into the district or reorganization. No Committee action.

EPC

Don Paulin, Ubbo Agena, Diana Hansen, Wayne Farrand and Dennis Alt were present for the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Sewage sludge, 23.1(2), 23.1(2)"k," ch 67, 68.9(1), 69.14(1)"c," 100.2, 102.15(3), 103.2(1)"o," 103.6(1), 103.6(1)"b"(9), 103.6(2), 120.2, 120.3(1), 121.1(1), 121.2(2), 121.3(1), 121.3(1)"a"(1), (3), and (7), 121.3(1)"b," "e," and "k," 121.3(1)"l"(2) and (4), 121.3(1)"m," 121.4(1), 121.4(1)"a"(12), 121.4(1)"b," 121.4(1)"b"(7), 121.4(1)"c"(9) and (10), 121.4(1)"d," 121.4(2)"a," 121.4(2)"b"(4) and (9), 121.4(2)"c"(1) and (3), 121.4(3), Filed **ARC 5017A** 8/17/94
Water-quality — chemical constituents, 61.3(3), table 1, Filed **ARC 5016A, See text IAB 5-11-94** 8/17/94
Public water supply systems and wastewater treatment plants, 81.1, 81.2(3) to 81.2(8), 81.6(1), 81.6(2), 81.7, 81.8(1), 81.10(8), 81.10(10), 81.10(11), 81.12(2), 81.13(1), 81.13(1)"a," 81.14, Filed **ARC 5015A, See text 5-11-94** 8/17/94
Special Review: Location of animal waste storage basins, ch 65 ..... IAC

23.1(2) et al.

Farrand stated that comments received related to distances from wells and residences for sludge application sites. Action on the national level challenged parameters to be measured and whether or not it was appropriate. The Agency will request EPA delegation for the permitting authority required in the Clean Water Act for this area to allow the state to do the permitting. Farrand clarified that sewage sludge for these rules was limited to domestic sludge. The main emphasis of these rules will allow sewage sludge to be applied more easily and more beneficially to agricultural land based on the needs of the crops.

61.3(3)

No Committee action.

81.1 et al.

No recommendations.

Special Review

As requested by Priebe there was special review on earthen waste storage. He was aware that some do not meet the 1,250 feet requirement so a liner is added. Most complaints have to do with the odor. Paulin stated that four years ago the law was changed and earthen storage basins with a liner and lagoons had the same distance requirements. The Department agreed that it was appropriate that the installation of a liner would not automatically allow disregard of the separation distance. Priebe cited an instance of breakage and pollution of two wells. SCS has admitted their error because the separation distance should have been applied even though the storage wasn't large enough to require DNR permitting. Priebe contended that SCS should be held responsible. He suggested a resolution by the Committee to discourage use of liners.

Paulin questioned what legal position the DNR would take. Royce stated that a recommendation was probably appropriate but the wording was crucial. He was requested to draft some language. Halvorson was aware of a farmer who can't use his lagoon system because of lack of top soil. Paulin pointed out the three situations being discussed were not related. The rules address a very specific problem whereas Halvorson's deals with the Department's authority to use soil structure as a determination as to whether a lagoon should be built.

Motion to Refer

Priebe moved that Code section 455B.130(5) be referred to the General Assembly for study. Rittmer asked about formed waste storage tanks and Paulin stated that permits would be required only if there were over 5,000 hogs, one-time capacity. The formed tanks do not require permits up to that level. Agena stated that the main concern with that size of operation would be the waste disposal, there should be no discharges. The separation distance applies on any lagoon, but the earthen structure other than a lagoon must meet separation distance where liners aren't used. Agena cautioned that elimination of the earthen waste structure portion of

EPC (Cont.) the definition could potentially bring all of the pits under buildings into the same separation distance requirement.

There was unanimous consent to refer the issue to the General Assembly.

DNR John Beamer, Gregory Jones, Nancy Exline-Downing, Randy Clark, Eileen Bartlett and Terry Little were present for the following:

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Agricultural lease program, ch 21, Notice **ARC 5065A** 8/31/94
Snowmobile and all-terrain vehicle registration revenue cost-share program, ch 28,
Notice **ARC 4857A** Terminated **ARC 5066A** 8/31/94
Boat motor regulations — George Wyth Lake, Black Hawk County, 45.4(2), Notice **ARC 5063A** 8/31/94
State parks and recreation areas, state forest camping, 61.3(1)"a" and "b," 61.5(7)"a" and "e," 61.5(9)"f,"
61.22(1), 62.8, 62.9, Filed **ARC 5062A** 8/31/94
Falconry regulations for hunting game, ch 102, Filed Emergency After Notice **ARC 5064A** 8/31/94

Ch 21 Beamer stated that revision of Chapter 21 was the result of an ASCS ruling that the Department, according to their definition, was an operator rather than a landowner as far as the programs were concerned. This ruling created a hardship on cooperators since a consensus of all the people under one farm management unit was necessary to make applications for disaster payments, for example. No Committee action.

Ch 28 Exline-Downing stated that comments from snowmobile and all-terrain vehicle user groups and DNR staff prompted the Commission to terminate rule making on Chapter 28. Existing rules were extremely confusing and will be rewritten.

45.4(2) Clark explained that revision in 45.4(2) would allow unrestricted horsepower at no-wake speed on George Wyth Lake. Exline-Downing stated that the Iowa Code defines wake as being allowed if other users of the area are not disturbed or there is no damage to the shoreline. Doderer suspected it would be difficult to enforce. The Department received one letter and a petition with a hundred signatures requesting use of a larger motor on the lake.

61.3(1)"a" et al. In review of amendments to Chapter 61 there was discussion of use of "hitching" animals to trailers—61.5(7)"e." Consensus was that "tying" would be preferable in this rule. In response to questioning from Priebe, Exline-Downing cited a shortage of facilities for tying horses at Brushy Creek and the rule would allow campers to tie their horses to trailers.

Ch 102 According to Little, Chapter 102 was revised to be in conformance with federal falconry regulations. Priebe observed lack of specific dates for the geese season. Little responded that the Department wanted to avoid refiling this rule every year and so it referred to the rules which have the specific dates. There is quite a bit of time available to falconers when gun season is not open. In response to Hedge, Little discussed the stringent training process for a falconer. A falconer must be an apprentice to a master falconer for two years before a license can be considered.

HUMAN SERVICES

Attending from DHS for the following agenda were Mary Ann Walker, Doris Taylor, Denise Middleswart, Roger Fee, Jo Lerberg, Maya Krogman, Barb Bosch, Gary Gesaman, Marian Howard, Mike Murphy, Amy Canfield, P.C. Keen, Lucinda Wonderlich, Joe Mahrenholz and Glenna Clark.

HUMAN SERVICES DEPARTMENT[441]

Support enforcement services — administrative seek employment orders, debtor offset, 7.1, 98.71 to 98.76, 98.81, Notice **ARC 5010A** 8/17/94

Standard of need test, 41.26(1)"d," 41.27(2)"c," 41.27(8)"b"(6), 41.27(9)"a"(2) and (3), 46.24(3)"a," 60.5(5), Filed **ARC 5038A** 8/31/94

Child day care, 49.3, 49.23, 109.6(3)"f," 110.5(5)"b," 110.5(7), 130.2(7), 130.2(7)"c" and "d," 130.3(1)"d"(2), 130.4(3), 130.7, 170.2(3)"h," 170.2(4)"a," "b," "d," "f," "g," 170.4(1), 170.4(6), 170.4(7)"a" and "f," 170.7, 170.8, Filed **ARC 5039A** 8/31/94

SSA RCF and maximum in-home health-related care reimbursement rates, 52.1(3), 177.4(7), 177.4(8)"b," Filed **ARC 5040A** 8/31/94

Food stamp program, 65.1, 65.28(11)"b," 65.29(7), 65.29(8), 65.30(2), 65.30(4), 65.30(5), 65.33, 65.43, 65.101, 65.128(11)"b," 65.129(10), 65.129(11), 65.130(2), 65.130(6), 65.130(7), 65.133, 65.142, Notice **ARC 5041A**, also Filed Emergency **ARC 5042A** 8/31/94

FIP-related Medicaid eligibility, 75.19(1)"e," Notice **ARC 5013A** 8/17/94

Medically needy certification periods and medical expenses used to meet spenddown, 76.5(1)"a"(1), 86.1, 86.5(2)"a," 86.14(1), Notice **ARC 5012A** 8/17/94

Estate recovery of medical assistance, 76.12(1), 76.12(7), Notice **ARC 5011A** 8/17/94

Medicaid payment for fertility drugs, 78.1(2)"a"(2), Filed **ARC 5043A** 8/31/94

ICF/MR admissions, conversion or construction, 82.6(4), 82.19(5), 82.19(6), Filed **ARC 5044A** 8/31/94

Cash bonus program, rescind ch 92, Notice **ARC 5045A** 8/31/94

Foster care, 156.6(1), 156.8(2), 156.9(2)"a"(5), 156.9(2)"b," 156.11(3)"c," 156.20(1)"b"(3)"4," 185.11(2)"f"(9), 185.11(6), 201.5(9), 202.8(5), 202.17(1)"a" and "b," 202.17(2), Filed **ARC 5046A** 8/31/94

Family planning services — provision of injectable contraceptives, 173.1, Filed Emergency After Notice **ARC 5047A** 8/31/94

7.1 et al.

Walker stated that eight people came to the hearings and four letters were received on revision in 7.1 et al. Most of the comments were unrelated to the rules. Suggestions were made to make the caretaker of the child more responsible for the support they receive.

Rittmer had received lengthy letters on child support problems and Walker offered assistance of the Child Support Unit for responses.

41.26(1)"d"

Walker stated that no comments were received and no revisions were made to Noticed 41.26(1)"d." No Committee action.

49.3 et al.

No comments were received and no revisions were made in final child day care amendments. No questions.

52.1(3) et al.

In response to Daggett, Walker stated that the reimbursement rate was raised to comply with federal requirements. The Department must pay out at least the same amount as last year. Priebe asked about repercussions for failure to meet the requirements and was told that all Medicaid funds could be lost. The Social Security Administration would notify the Health Care Plans Administration of the deficiency. Priebe asked about amount in total dollars because of the 2 percent in SSA RCF and Murphy cited $400,000. Walker stated that this maintenance of fiscal effort had been a mandate every year since the federal government took over programs for old age assistance, aid to the blind and aid to the disabled.

Halvorson asked how the increase was figured and Walker explained that the Department must pay the same amount each year and it cannot be less. As social security goes up each year, the amount the Department pays is less unless they increase payments. Murphy added that total expenditures in one calendar year equal or exceed total expenditures in the prior calendar year. The federal government wants to ensure that people not the state benefit from any increase.

HUMAN SERVICES (Cont.)	There was a discussion of procedure for sudden increases or decreases in population. Murphy reiterated that the state had total discretion but must spend the same amount each year.
65.1 et al.	In review of Chapter 65, Priebe questioned the household composition policy—meals cannot be purchased or prepared together. Priebe and Doderer reasoned that this was a ridiculous and unenforceable policy. Clark reminded that this was federally mandated but Doderer maintained that someone should complain to them. No Committee action.
75.19(1)"e"	In review of 75.19(1), there was discussion of Medicaid eligibility and advantages of excluding income of certain family members.
76.5(1)"a"(1)	No Committee action.
76.12(1) and 76.12(7)	Schrader expressed concern that there was no timeline relative to estate recovery—76.12(7). Department officials offered detailed explanation of the procedure. Keen stated that a claim would be placed on the estate at the time the recipient dies and only the assets at the time of the death would be counted. Keen continued that a person who was institutionalized but expected to return home would not receive a claim. If a person would not be expected to return home, the Department would establish that everything paid out from that point on would be subject to estate recovery. Schrader was uncomfortable with the burden being placed on the individual to establish that they would not be able to return home. Keen emphasized the Department would make a determination with the contractor. Schrader felt if nothing were done, it should be a burden on the department to initiate action, not to have action by default of the individual. Keen discussed appeal rights and the physician's statement. No Committee action.
78.1(2)"a"(2)	No questions on 78.1(2)"a"(2).
82.6(4) et al.	Walker pointed out that amendments to 82.6 and 82.19 were intended to implement Senate File 2313. A committee was studying HF 2430 for later implementation of rules by the Department. In response to Daggett, Walker stated that all counties have case management but not all was provided through the Department.
Ch 92	No Committee action on Chapter 92.
156.6(1) et al.	No questions on 156.6(1) et al.
173.1	Walker reported on the comments on 173.1. A laboratory had urged the Department to continue paying for Norplant. The Department had decided against payment since Norplant was very expensive; they had no way to remove the implant if necessary and finally, the Department had received an increase in requests for injectable contraceptives and a decrease in requests for the implantable. Services were performed by family planning clinics and funded by grants. No action.

ETHICS

Kay Williams, Director, and Lynette Donner, Assistant Attorney General, were present for the following:

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
Complaint, investigation, and resolution procedure, ch 1, rescind 4.7, Filed **ARC 5024A** 8/17/94
Definition of "yard sign," 4.5(5), Notice **ARC 5023A** 8/17/94
Loans or obligations forgiven or transferred; interest and imputed interest, 4.15, Notice **ARC 5021A** 8/17/94
Lobbyist quarterly reports and lobbyist client reports, 4.33, rescind 13.2, Notice **ARC 5022A** 8/17/94
Requests for board opinions, 5.2, 5.3, Filed **ARC 5025A** 8/17/94
Contested case procedures, ch 7, Filed **ARC 5034A** 8/17/94

Ch 1 and 4.7

In review of Chapter 1, Priebe asked for the definition of "legal advisor." Donner replied that although the term was used in the Code, there was no specific definition. In most instances, it would be an Assistant Attorney General. However, the Board had the final decision. The next step would be judicial review in the District Court as provided in Code section 17A.19. Doderer raised question concerning "independent" as opposed to "permanent" legal counsel. Williams noted that the word "independent" was notwithstanding the provisions requiring most agencies to use the Attorney General as their legal counsel and the legal counsel hired by the Board was not be someone in the Attorney General's office. Doderer interpreted "independent" to mean independent of the Department and the Attorney General. Williams responded that the statute allows the Board to contract for outside legal counsel in particular instances. Doderer requested inclusion of a definition of "legal counsel" in the rules.

In response to Doderer, Williams stated there had been four investigations which excluded the press and other outsiders. In one of the cases there was an informal settlement which became public record. The Code does not address the release of the information and the Board does not have a specific rule but was in the process of establishing policy. Williams continued that the statute speaks clearly about procedure when probable cause exists—everything becomes open.

Doderer referenced Code section 68B.32A and pressed for information on the Department's authority to close a meeting. She also asked for a written response concerning closing of all of the public record after a meeting. Williams stated the Board made a determination that the Code was specific about the release of information when probable cause was found and she referenced 68B.32B(11). Williams opined the Board believed that there was nothing there and to release it would be political in nature. The Board was trying to remain nonpartisan and not be swayed by political views.

Priebe asked for Senator Michael Gronstal's response. Gronstal stated that some people wanted records closed to protect innocent people against political charges. He asked if a transcript would be released if an individual requested it. Williams stated that the Governor had made such a request but it was not granted. Gronstal failed to understand how the person giving the testimony could be refused; he didn't see the point of the secrecy and he questioned the grounds to exclude people in state government. Gronstal had assumed that once the investigation was complete, the records would be released. Williams acknowledged that she was part of the reason Gronstal assumed that. Gronstal continued that the only justifiable reason to keep it confidential was if the Department were continuing to investigate. According to Williams, the Board took the position they were not required to release the record in question and it was a policy decision (unanimous) on their part not to release it. One member recused from any discussion even to legal points and voting. Gronstal declared that the fact the records which showed insufficient evidence to proceed were secret leaves everyone in doubt.

ETHICS (Cont.) Doderer referred to Code section 68B.32C(11) regarding contested cases and Williams responded that there was insufficient evidence for probable cause to start a contested case proceeding. When a case is not contested it can be kept secret; only if the Board disagreed with the complainant would it ever be published. At the request of Doderer there was discussion of charges in the Dick Woods case.

In conclusion, Doderer opined the system and the law should be studied.

4.5(5) There was brief review of 4.5(5) relative to placement of yard signs. Donner stated there were no comments at the hearing on the rule.

4.15 There was discussion of amendments to rule 4.15. Schrader reasoned that loans to a campaign, unless they were secured, were almost the same as gifts. He requested the Department to consider logging every loan, at the time of inception, with an interest rate and those carried year after year would not have interest computed and added on.

Doderer thought there should be some point when a loan would be closed with debt eliminated. She saw no reason for endless quarterly reports. Williams pointed out that debt could be forgiven. However, Doderer contended that many times the debt was not forgiven and she maintained the statute of limitations should run out so the account could be closed. Williams pointed out this would require legislation.

Rittmer favored showing in the record that the debt was closed out but not paid in the event the person might seek office again. Williams called attention to the need for redefining "campaign property." She cited examples of having to file every year because signs could not be sold or donated. The current Code says that campaign property consists of equipment, supplies or materials purchased with campaign funds for more than $25. Williams stated that everything in a campaign must be sold at fair market value or donated to the political party committees or to a charity before the campaign can close. Rittmer reasoned the items could be destroyed. No formal action taken.

4.33 and 13.2 No questions.

5.2 and 5.3 No recommendations regarding 5.2 and 5.3.

Ch 7 No questions on Chapter 7.

Recess Metcalf recessed the meeting at 3:45 p.m. until 9 a.m. Wednesday, September 14, 1994.

Reconvened

Metcalf reconvened the meeting at 9 a.m. with all members and staff present. The following was considered:

CORRECTIONS DEPARTMENT[201]
Restitution, 20.11, Notice **ARC 5035A** 8/17/94

Fred Scaletta, Corrections Department, and Robin Humphrey, Assistant Attorney General, represented the Department. Also present were George D. Petersen, Carolyn Johnson and Anita Mann.

20.11

Scaletta provided background on restitution in general. In January of 1991, the Department developed a rule which gave the Department authority to deduct moneys from any credit to an inmate's account to pay for restitution but did not implement this rule at that time. In August of 1991, the Corrections Board approved a policy to implement this procedure and from then until March 1992 the Department took steps to notify inmates and others that this rule would be implemented. In February of 1992, the ARRC reviewed that rule after request by the Citizens' Aide/Ombudsman to determine whether there was sufficient authority for the Department to take money from outside sources. Money from outside sources included any money sent to inmates. The Department would deduct the same percent from that money that was entered into their restitution plan that the Department had been previously taking from allowances paid to the inmates for work assignments in the institutions. The Ombudsman's Office opposed this practice. A motion by the ARRC concurring with the Ombudsman that the Corrections Department lacked the authority to deduct this money by rule only was defeated on a five to five vote. Scaletta continued that in March 1992, the Department implemented the practice and a number of inmates have filed lawsuits against the Department.

One case from Federal District Court was handed to Magistrate Court for a recommendation on the issues. The Magistrate Court submitted a recommendation to District Court in June and the court ruled that the administrative rule as written did not give authority to deduct money from outside sources. The Department had moved from a discretionary rule to a requirement which they believed would satisfy the court.

Humphrey spoke of a decision by the 8th Circuit Court of Appeals that affects rule 20.11. In this case the Department had deducted restitution from a section 1983 judgment that was paid to the inmate's attorney and later transferred to the inmate's prison account by the attorney. The Department took deductions to pay restitution and a suit was filed through the District Court and was appealed. Initially, the District Court found the action was improper and deprived the inmate of the benefit of his victory in section 1983 and he was entitled to the entire amount of the judgment. The 8th Circuit reversed the decision by stating the inmate got the benefit of the money and, therefore, there was no impropriety in taking the deduction for restitution payments. Factual circumstances: the way the money came into the inmate's account was considered under the Department's definition, an outside source; it was not money an inmate had earned in prison as an allowance and the 8th Circuit found no problem with this deduction.

Scaletta responded to Doderer that the Code definition of "restitution" included the Crime Victim Compensation Program, court costs, attorney fees and expense of public defender. As of today that definition also includes fines. He added that child support comes under separate guidelines; however, it takes priority over restitution.

CORRECTIONS (Cont.)

Petersen spoke on behalf of one of the inmates in Fort Madison as to the unfairness of using money sent to the inmates from outside sources, usually family. He declared that these costs had already been paid from taxes. Petersen spoke at length about unfair treatment relative to restitution, e.g. orders for merchandise by inmates are assessed approximately a 5 percent surcharge by the institution handling it; items could be purchased through another vendor for a lower price than the vendors required by the institution.

Mann, a 7th grade teacher in Des Moines, concurred with Petersen and voiced opposition to Fort Madison having control over all moneys sent to prisoners. Inmates want any interest earned on this money to go toward restitution. She concluded there should be an accounting of the money.

Scaletta provided statistics as follows: In one week in January 1991, the Iowa State Men's Reformatory took in $32,900 from outside sources which averaged $25.80 per inmate, based on 1,275 inmates, that one week. Allowances paid to inmates range from $20 to $40 per month. In February of 1991, another week averaged $14.71 per inmate. Scaletta understood that family and loved ones want the inmate's stay more comfortable. However, he argued that the inmate's basic needs were taken care of by the state. Scaletta stated that four institutions have money in interest accounts. Those accounts contain all the money controlled by the institutions. This money was generated by sales from pop machines (inmates and staff), commissaries, telephone rebates and money for inmate accounts and was placed in one big account which was broken down into different funds.

A review by the Auditor's office found no violation of rules. All money in this account will be spent for the inmates, e.g., $3,171 was for library books, $12,000 for law supplies to update and provide an adequate law library, movie equipment, weight and exercise equipment, tools for hobbies and crafts—all money accumulated in those accounts will be used to benefit inmates in some way. Scaletta pointed out that Iowa Code section 910.7A automatically enforces a lien against property for restitution judgments.

Humphrey reiterated section 910.7A was the legislature's clear statement that a restitution judgment was a lien against all property of an inmate. Scaletta added that the rule currently allowed the Department to take up to 50 percent of money and the proposed rule would not change. The judgment would allow 100 percent as it is written. The Department as a standard takes 20 percent and the only reason that would fluctuate would be for child support and counties have numerous restitution plans. For three offenses, the Department could take 30 percent instead of 20 and apply 10 percent to each one. The Department did not intent to exceed 50 percent.

Metcalf recommended use of "shall" for "will" in 20.11(7).

Humphrey advised that the rule clearly followed intent of the law and the revision would remove any ambiguity.

Doderer suggested additional language to clarify that inmates pay the same as anyone else for outside items. Also, inmates should understand that unless they have a certain amount in a savings account, interest would not be earned. Scaletta stated that inmates could not use their money to make purchases for other inmates.

CORRECTIONS (Cont.)

In response to Palmer, Scaletta was unsure about the profitability of the canteens but knew the Department had authority to add an administrative cost to the purchase price for canteen operation. Scaletta emphasized there were only a few vendors who would do business with correctional institutions. He stressed security problems and extra costs for special packaging. Palmer asked for information on profitability of the canteens. He was concerned about hardship if prices were arbitrarily set. Scaletta agreed to provide information.

Priebe took exception to comments by Petersen and declared that taxpayers were not at fault because of crimes committed. He felt no obligation to the convicts and resented Petersen's statement.

Halvorson saw no problem with the rule and he could foresee an administrative nightmare with separate accounts.

Hedge opined that the 20 percent was not unduly harsh. He added that if members of the public had debts or a judgment against them, their last dollar would be used to pay it off regardless whether the dollar came from inheritance or other sources. In response to Rittmer as to the percent of restitution paid, Scaletta stated that there were 40 each month who pay off restitution. The Department was averaging about $180,000 before this process was implemented and now it was $400,000 a year. This was accomplished without a staff increase. The Crime Victim Assistance Program's collections have increased tremendously. The amount assessed to a defendant goes directly to the victims of the inmate's crime. No formal action.

GENERAL SERVICES

Dean Crocker represented the department for the following:

GENERAL SERVICES DEPARTMENT[401]

Uniform standards for printing purchases, 5.8, Notice **ARC 5051A**, also Filed Emergency **ARC 5052A** 8/31/94
Policies governing purchasing, 7.1, 7.3, 7.3(1) to 7.3(5), 7.4, 7.4(1), 7.4(2), 7.5(2), 7.5(6), 7.6, 7.7, 7.9, 7.14, 7.15"2," 7.16(1)"3," 7.16(2), 7.17(1), 7.18, 7.20, 8.2(2), 8.3(1), 8.3(2), 8.4(1)"a," "b," and "e," 8.4(3)"b" and "c," 8.5, 8.5(1) to 8.5(4), 9.1, 9.1(1), 9.1(3), 9.1(5), 9.1(6), 9.2(1), 9.2(2)"b," 9.3, 9.3(1), 9.3(4), 9.3(5), 9.3(7), 9.3(10), 9.3(11), 9.3(14), 9.3(17), 9.3(20), 9.4(3), 9.4(5), 9.5, 9.6(3), 9.7, 9.7(3), 9.7(5), 9.8, Notice **ARC 5053A** 8/31/94
Purchasing directly from targeted small businesses, 7.3(4), Filed Emergency **ARC 5054A** 8/31/94
Inventory guidelines for state of Iowa personal and real property, ch 10, Notice **ARC 5055A** 8/31/94
Terrace Hill Commission, weddings, receptions, fees, 14.1, 14.2, 14.3(2), 14.7(3), 14.7(8), 16.4, Notice **ARC 4742A** Terminated **ARC 5000A** 8/17/94

5.8; 7.1 et al.; 7.3(4) There were no questions on 5.8; 7.1 et al. or 7.3(4).

Ch 10 In discussion of new Chapter 10, Crocker clarified that only the software not the computers would be excluded from the definition of personal property.

14.1 et al. No Committee action.

REVENUE AND FINANCE

Carl Castelda, Deputy Director, was present for the following;

REVENUE AND FINANCE DEPARTMENT[701]
Sales and use tax, 11.4(1)"b," 11.6(2), 12.9, 26.2(8), 26.71(1)"a" and "b," 26.71(5), 32.1,
Notice **ARC 5032A** 8/17/94
Corporate income tax, individual income tax, withholding, 38.1(8), 38.15, 38.16, 40.23, 40.38, 40.38(5), 40.41(1), 40.45, 41.5(6)"a," 42.2(6), 43.3(7), 43.3(9) to 43.3(12), 46.1(2), 46.2(1)"c" and "d," 46.2(3), 52.7, 53.8(1)"a,"
Notice **ARC 5033A** 8/17/94
Motor fuel, special fuel, cigarette tax, tobacco tax, 63.3(1)"i," 63.3(2)"i," 63.3(6), 63.3(6)"g," 63.3(7)"d," 63.17(1) to 63.17(3), 63.22, 64.4(4), 64.5, 64.7(1), 64.7(4), 64.7(5), 81.11, 83.3(1)"3," 83.3(2), 83.4,
Notice **ARC 5031A** 8/17/94

11.4(1)"b" et al.

In response to Metcalf, Castelda stated that provisions relating to the taxpayers' bill of rights were generally effective with assessments with some recurrence beginning on or after January 1, 1995. The issues that were in the Department's tax bill such as the change in the definition of mixed solid waste were basically effective July 1, 1994. These rules contain nonsubstantive changes. Castelda added that the Department tries to adopt rules by tax type. He stated that the taxpayer bill of rights required many administrative changes within the agency. A steering committee with eight subcommittees was working through this process and rules were just one part of that.

Halvorson asked if services in repair or reconditioning had always been exempt. Castelda replied the exemption came in the early 1980s—the repair would be exempt from tax if the repaired item, when sold, would be subject to Iowa sales and use tax. The Attorney General's staff pointed out this was unconstitutional because of interstate commerce violations. Castelda had called attention to four or five similar exemptions for possible Code amendment by the LSB.

38.1(8) et al.

In review of revisions in 38.1(8) et al., discussion focused on 40.45 which provided for exemptions from state individual income tax on pensions, annuities, deferred compensation and other individual retirement accounts which would be received by certain nonresidents after January 1, 1994. In response to Hedge, Castelda stated that the bottom line for cost of nonresident pension as far as fiscal estimate was $200,000. Initially, the Department estimated that full compliance with the statute would bring in $8 to $10 million. However, a study within the agency revealed only 10 percent compliance which reduced the figure to about $1 million. A recent Michigan court case ruled that state could tax only the amount of money the individual contributed. Because most of the money being paid out of pension plans was earnings, the Department's estimate was further reduced to the area of $250,000 which was not worth the expense of the administration. Thus, the Department joined with the business groups that opposed the position and went to the General Assembly for statutory change.

Castelda described similarities between Michigan and Iowa statutes and offered examples of taxpayer's situations.

Daggett was informed that the Iowa Income Tax Instruction booklet would contain approximately four additional pages this year. The Social Security Computation Form would be included, also.

Halvorson and Castelda discussed pretax for pensions. Under new legislation, there would be a pretax benefit for federal tax purposes but not for state tax. This would result in a different amount of reportable income for Iowa purposes when someone retires and starts drawing pensions. Rules addressing this issue would be filed soon. Castelda reported that 68 percent of Iowa taxpayers use practitioners for preparing taxes but on a nation-wide average it was only 42

REVENUE (Cont.) percent. In response to Halvorson, Castelda agreed that every time Iowa does not couple with federal, problems were compounded. Rittmer observed that property assessments had also been complicated and Castelda agreed. No Committee recommendations.

63.3(1)"i" et al. No Committee action.

Special Review Kibbie requested a special review for the October agenda regarding sales tax on replacement parts for aircraft. Great Lakes Aviation, an Iowa-based airline, which had been in existence since 1979 and had only 7 percent of their air miles in Iowa, questioned sales tax on repair parts and labor. So ordered by Metcalf.

RACING AND GAMING Karyl Jones and Jack Ketterer, Director, represented the Department and James Campbell represented Iowa West Racing Association for the following:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Incorporation of model rules of the Association of Racing Commissioners International, 2.2(1), 3.14(1), 3.14(2), 4.1, 4.4(1), 4.4(5), 4.5, 4.27(2), 5.14, 5.15, 5.15(3), 5.15(5), 5.15(9), 5.16, 6.3, 7.1 to 7.4, 7.5(1), 7.5(3), 7.5(9)"a," 7.7(4)"d," 7.8(1), 7.8(4)"l," "q," "r," and "t"(1), 7.8(5), 7.8(6)"a" and "c," 7.8(10) to 7.8(13), 7.9, 7.9(3)"c" to "f," 7.9(4), 7.9(5), 7.10(2), 7.10(3), 7.10(9), 7.12, 7.14(6), 7.14(11), 7.14(12), 7.15(4), 8.2(13)"g"(1), 8.3(12)"h," 10.1, 10.2(1)"i" and "m," 10.2(2), 10.2(3)"e," "g," and "h," 10.2(6)"a"(4) and (5), 10.2(6)"d"(2), 10.2(8) to 10.2(12), 10.2(14), 10.2(16), 10.3, 10.4, 10.6, 10.6(3)"a," "e," "f," and "i," 10.6(4), ch 11, 12.12, 20.11(4)"a," 20.11(4)"a"(2), 20.11(7), 20.14(1)"f," ch 22, 24.11(2), 24.29(8)"a"(3), 25.11(2)"a," 25.14(3), Filed **ARC 4996A** 8/17/94
Occupational and vendor licensing, ch 13, Filed **ARC 4999A, See text 6-8-94** 8/17/94
Excursion boat and racetrack enclosure gaming, ch 20 title, 20.10(1)"c," 20.10(4), 20.10(5)"b" to "d," "f," "h" to "j," 20.10(9), 20.11(4)"c," 20.12(1)"s," 20.20, ch 21 title, 21.10, 21.13, 24.21, 24.21(1), 24.21(3), 24.26(5)"g"(12), 25.11(1), 25.11(2)"b" and "c," 25.11(3), 25.12(1), 25.13, 25.14(1), 25.14(2), 25.15, 25.20(4), 25.20(5), 26.10(1), 26.10(2), 26.10(2)"e" to "j," 26.10(4) to 26.10(6), 26.19(2), 26.20(3), 26.21, Filed **ARC 4997A** 8/17/94
Video machines, 25.11(2)"b," Notice **ARC 4998A** 8/17/94

2.2(1) et al. Priebe asked about 22.15(2) relative to transportation of gambling devices for testing. Ketterer explained that the applicant would be responsible for cost of inspection, testing or any investigation.

Ch 13 Chapter 13 was before the Committee and Royce asked to what extent the agency regulates vendors. Ketterer stated that the Commission must approve any contract in excess of $50,000 and this was done at a Commission meeting. Other vendors such as providers of hay to Prairie Meadows must obtain a vendor's license to gain access to the barn area. This would not be a contract that would be presented to the Commission. The Department would ask for a DCI check of the person's background. Royce asked if contracts were actually investigated or researched. Ketterer was aware of allegations that one of the means for organized crime to infiltrate gaming and launder money was through contracts. Some investigations would depend on the amount of the contract and who was involved. No Committee action.

Ch 20 et al. Hedge asked if there were any significance to the change in the name from "excursion gambling boat" to "excursion boat" in Chapter 21. Ketterer stated this was done to include racetracks—a license may be obtained for a racetrack enclosure and for an excursion boat.

25.11(2)"b" The Commission received a petition for rule making as part of the rules from the Racing Association of Central Iowa which was later joined by Iowa West Racing Association requesting a definition of "video machines." These groups were in the process of making plans for adding limited types of gaming to their facilities and wanted some clarification on this. The Commission was really unsure as to what the legislature intended. Input from legislators and lobbyists failed to

RACING (Cont.) provide a consensus so the Commission and the staff decided to follow a strict reading of the statutory language and request clarification by the legislature. Video machine was defined as any video poker, video blackjack or video keno machine which required a decision between the time the bet was made and the game played. The Commission was unsure whether or not the legislature intended to distinguish between that type of slot machine and a slot machine with just the electromechanical reels that show the fruit or the sevens and the bars across.

Two additional issues should be addressed with this definition. Ketterer continued that if it were a game approved by the Commission, it should be allowed, and keno was likely to be approved. If one of the riverboats was interested in keno and the Commission was satisfied with the integrity of the game and the rules, the Commission would approve it. If a racetrack asked for keno, Ketterer questioned whether legally they could refuse it. It is a game of chance that is authorized by the Commission, it is not a table game of chance or a video machine.

Ketterer also apprised the Committee of a constitutional referendum coming up in Missouri that would require any game of chance to be subject to a constitutional referendum. The Supreme Court decision in Missouri distinguished between games of chance and games of skill—poker and blackjack were games of skill whereas a slot machine and a keno game were really roulette or games of chance. In Missouri there were boats operating with poker and video poker and blackjack and video blackjack but not the slot machines and other games of chance because of the pending referendum. Iowa refers to table games of chance and Ketterer was unsure how that would be perceived in judicial review. The Commission wanted guidance from the legislature as to exactly what types of games they anticipated at the racetrack enclosures.

Halvorson asked if there were any other state that had a similar prohibition. Ketterer responded that as far as video machines, there was not. Halvorson asked if a Supreme Court decision in Missouri would have an impact on Iowa and Ketterer was unsure. Halvorson commended the Department for doing the best job possible with the language it was given.

Priebe also concurred with the Department in their decision not to allow video poker, video blackjack or video keno. Schrader was interested in remarks regarding games of chance versus games of skill. He opined that poker may be either. Schrader asked if the Commission or the staff had been approached by racetrack facilities with the question regarding poker or an advisory opinion on the Commission's position. Ketterer stated that no inquiry had been made about any table games or how they were defined. He raised the Missouri issue because it may surface in Iowa.

Kibbie reasoned that table games were blackjack and craps where players stand around a table and gamble, it is not "something with a handle on it"—slots usually include videos. He agreed that the Commission had acted appropriately.

RACING (Cont.) Co-chair Metcalf recognized Campbell who stated that his organization had filed a memorandum with Royce listing concerns raised by the rules. He urged development of a meaningful body of law. Campbell could foresee a level of confusion being created which the legislature should correct immediately. He continued that the Iowa Supreme Court had stated that "anything with a handle on it is a slot machine." Campbell urged the Committee to take a strong stand on the issue. Halvorson pointed out that the rules were only Noticed and that the Committee could take no action since the issue was a legislative matter.

REAL ESTATE Susan Griffel, Education Director and K. Marie Thayer were present for the following:

REAL ESTATE COMMISSION[193e]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Continuing education records, 3.3(5) to 3.3(10), 3.4(3), 3.7, Filed **ARC 5018A** 8/17/94

3.3(5) et al. Griffel reviewed changes from the Notice of Chapter 3 amendments. No comments had been received. No questions.

PUBLIC HEALTH Jill France represented the Department for the following:

PUBLIC HEALTH DEPARTMENT[641]
Burial-transit permits, 101.4(1) to 101.4(4), 101.6(1) to 101.6(3), Notice **ARC 5057A** 8/31/94
Declaration of paternity registry, ch 105, Notice **ARC 5059A** 8/31/94

101.4(1) et al. France told the Committee that amendments to Chapter 101 were to clarify and use the same terms as the Code relative to burial-transit permits. No recommendations.

Ch 105 No questions on Chapter 105.

MEDICAL EXAMINERS Ann Martino, Executive Director of the Board; Denny Carr; Teena Roush and Gail Beebe were present for the following special review of the Board's existing rules and policies regarding investigations and surveillance of physicians on probation.

Martino stated that the nature of the probation depends in part on the type of violation. If, for example, there were a substance or chemical abuse problem, the physician would be required to receive appropriate treatment, provide documented evidence that treatment was completed then they would be placed on five-year probation. During probation they would have to work with a treatment counselor approved by the Board and be subjected to random urine tests, the nature of which varies depending on the severity of the problem. After-treatment such as AA or NA would also be required. In addition, the physician must submit quarterly reports to the Board indicating their progress and make an annual appearance. Probation officers may appear at any time to request a urine sample, for example.

Priebe did not have a problem with the Board's procedure but he was opposed to a male probation officer entering the bathroom of a female physician while she was in the shower. This seemed to be harassment, in his opinion. Martino indicated that they have one full-time male officer and one female investigator from the staff. Martino stated that the incident to which Priebe spoke did occur late in the evening. The male investigator walked into the bathroom because there was indication that the physician in question was hiding. This was the kind of behavior which indicated someone might be "falling of the wagon." If there has been any indication that someone had previously violated probation and had to get

MEDICAL EXAMINERS (Cont.)

subsequent treatment as in this case, they would be under suspicion. Martino stated with absolute certainty that in 99.9 percent of the cases, investigators do not need to take the extra step. Priebe was convinced that the Board had harassed this physician. Martino was prohibited from revealing specific information about the case, but the investigator who was involved in this case was present. Priebe's account of what occurred was not consistent with her understanding of the matter.

In response to Doderer, Martino said that the physician had two relapses in the past but there was no indication of a problem in this incident. Martino was willing to share available documents with the Committee. Priebe requested a list of times the Board had examined the person in question and another list of how many times the other physicians had been examined. Martino emphasized that it would vary based on severity of the problem but she agreed to send the information. Martino advised Schrader that the physician on probation does sign something giving authority for examinations.

Royce asked about the procedure for urine testing and Martino indicated that often it was witnessed. If there were only an opposite-sex probation officer they would take blood instead. No further questions.

Christmas Party

There was unanimous agreement that the Committee and staff have a Christmas party on December 13. Noah's Ark was selected for the dinner and a $5 gift exchange was planned. Previous Committee members would be invited.

Meeting Dates

The next meeting was scheduled for October 11 and 12.

Priebe moved that the November meeting be moved to the 15th and 16th since election day falls on the statutory date. December's meeting was scheduled for the 13th and 14th.

Adjournment

The meeting was adjourned at 12:10 p.m.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assisted by Kimberly McKnight

APPROVED:

Janet S. Metcalf

Representative Janet Metcalf, Co-chair