

MINUTES OF THE SPECIAL MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Monday, July 8, 1985, and Wednesday, July 10, 1985.

Place of Meeting: Monday, Senate Committee Room 24; Wednesday, Julien Motor Inn, Flora Room, Dubuque, Iowa.

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

Convened Chairman Priebe convened the meeting in Room 24, State Capitol, 9:00 a.m. Monday.

BUREAU OF LABOR Walter Johnson, Deputy, and Teresa McKenna, Intern, appeared for the Bureau of Labor to review:

Occupational safety and health standards for general industry, 10.20, filed emergency ARC 5547 ~~FE~~.....6/5/85  
Asbestos control procedure, licensing of business entities, licensing of training courses, and worker certification, chs 81  
and 82 ARC 5435 [Delay - published IAB 6/5/85] ...~~E~~..... 4/10/85

Also present: James Seaman, Master Builders of Iowa; Lucille Leopold, Mid Iowa Insurance Corporation; Bob Brown, asbestos worker.

O'Kane in the chair. Johnson explained that rule 10.20 was filed emergency to meet a federal requirement. Public hearing was held and rules will be published under Notice also. He did not recall input on the ethelyene oxide issue. The substance is used in hospitals for disinfectant and by wholesale grocers as a preservative on fresh fruits.

ch 81, 82

Discussion of chapters 81 and 82 which were delayed 70 days by the ARRC on May 14. The delay would expire July 22. Royce described the real issue as being virtual cancellation of all insurance for asbestos work with the situation worsening. Insurance companies are not renewing policies as they expire.

Seaman had expressed his opinion in a letter to the ARRC that it was improper to issue licenses for "uninsurable acts." Johnson referenced 82.3(1)a(11) which requires "...name of liability insurance company providing coverage for asbestos removal. This provision is required by law and was placed in the rules. Johnson did not believe there was statutory authority to require a set

BUREAU OF  
LABOR  
Continued

amount of insurance and reasoned that should be addressed by the legislature. No licenses have been issued although the Department was prepared to do so.

In response to Tieden, Johnson stated there was a Supreme Court case placing a cloud on school contracts. Johnson said that, as far as the Department was concerned, the school district contract was not in trouble with their office under the asbestos licensing law. If the work is not done properly, contractors are subject to OSHA requirements. O'Kane had no problem with allowing the rules to go into effect.

Doyle asked about prior contracts and Johnson indicated that licensing would be required after the effective date of rules but work in progress at that time would be covered. Johnson continued that chapter 81 is a recitation of EPA and OSHA requirements--safety and health are being maintained through their regulations. Training in the proper method for asbestos removal is required. Seaman reiterated problems faced by school districts with no insured contractors bidding the work.

Priebe had been contacted by several superintendents and he had real problems with the rules. He suggested possible delay into the next General Assembly.

Leopold reported that her insurance coverage was being rewritten to eliminate asbestos coverage. Doyle was advised by Seaman that schools have owners' protected policies which will protect the school boards.

Johnson pointed out that delay would preclude implementation of the workers' certification aspect and training is needed. Brown viewed the law as an attempt to ensure that work is being done properly, not only for the worker, but for the school as well. Johnson indicated that he could refile 82.10 under emergency provisions. The insurance aspect of the rules would be delayed. There was general discussion of the proper procedure to follow. Mention was made of possible withdrawal of 82.3(1)a.

Doyle asked if a school could be closed if nothing is done. Johnson indicated that the Department of Public Instruction was preparing a book on contracting for asbestos removal to be available in October. Doyle was advised that the rules would apply to home removal. Johnson emphasized that the Department approves the asbestos removal training courses but will not be conducting them.

Motion to Delay 82.3(1)a(11) Priebe moved to delay 82.3(1)a(11) forty-five days into the 1986 session of the General Assembly and that the appropriate committees be notified. Priebe would be willing to remove the delay if the problem is resolved. He pointed out that if the General Assembly takes no action in the 45-day limit, the rules would become effective. The delay was adopted viva voce. Parker absent, not voting. Priebe resumed the chair.

*See also  
p. 317b*

COMMERCE  
COMMISSION

Dennis Downing and Dan Hanson, Commerce, presented the following for review:

Rulemaking -- regulatory flexibility analysis, 3.9(2), 3.9(3)d," 3.9(6) ARC 5604 ..... 6/19/85

Also present: Dennis Hogan and Bev Venturini, Sheet Metal Association; David Brasher, National Federation of Independent Business.

## 3.9(2)

Hanson briefed the Committee with respect to the history of amendments re regulatory flexibility analysis. Royce raised question as to the new language "substantial adverse" before "impact" in 3.9(2). He also observed that although requiring "...personal and legal interest" in 3.9(5)b would discourage frivolous requests, it may violate Code §17A.31(3). Royce contended that "substantial" and "adverse" required conclusions and some analyses to be made.

Priebe concurred that the language was very limiting-- intent is to keep "government open for everyone."

Hanson spoke of the unique nature of the Commerce Commission. Although the Commission does not regulate small business, they have a statewide impact on almost everyone when regulating public utilities. Hanson saw the idea behind the Regulatory Flexibility Act as allowing agencies to select which rules will be sent specifically to small businesses. The intent of the Commission was to alert in advance that Notice of a rulemaking will not be provided if the impact is not substantial.

Hogan had exercised his rights under the statute several times in the last year which resulted in changes. Brasher spoke in opposition to the use of "substantial adverse" impact, contending that it was contrary to legislative intent.

3.9(5)b

Commerce officials stated that language in 3.9(5)b was from a Supreme Court case--Iowa-Illinois Gas and Electric v Iowa State Commerce Commission. Discussion of the federal Act which has standing requirement for flexibility analysis if a rule may impact small business. General discussion. Hanson concluded that the Commission is doing "explicitly" what other departments are doing "implicitly." Parker commented that it should be no problem for the Department to make a change in the rules. For the record, O'Kane said he had no major problems with the rule. No action taken.

HEALTH  
DEPARTMENT

John A. Eure, J. R. Kelly, Donald Kerns, Mike Guely, Health Department; Peter Fox and Irene G. Howard, Professional Licensure; Dennis Bach, Director, and Laura Sands, Nutrition Section, WIC; David J. Fries, Director, Chronic Disease, and Barbara Thiede, Coordinator, Hypertension, appeared to review the following:

HEALTH  
DEPARTMENT

Radiation emitting equipment, chs 38 to 41	ARC 5578	.....	6/5/85
Special supplemental food program for women, infants and children, 73.5(1) to 73.5(7)	ARC 5572	.....	6/5/85
Psychology examiners, 140.6(10) to 140.6(12), 140.10(11)	ARC 5558	.....	6/5/85
Psychology examiners, license renewal, fees, 140.9(4), 140.10(4), 140.10(9)	ARC 5628	.....	7/3/85
Special supplemental program for women, infants and children, 73.7(9) <sup>c</sup> (6), 73.7(9) <sup>c</sup> (10), 73.8(1), 73.11(1), 73.11(8), 73.11(4), 73.18(2) <sup>f</sup> (4), 73.21(4), filed emergency	ARC 5582	.....	6/19/85
Financial assistance to eligible end-stage renal disease patients, 111.6(2), filed emergency	ARC 5551	.....	6/5/85
Advanced emergency medical care, 132.1, 132.2, 132.7 to 132.10, 132.6(9) <sup>a</sup> , 132.6(10) <sup>a</sup> , 132.13(6), filed emergency		.....	
after notice	ARC 5552	.....	6/5/85
Optometry examiners, disciplinary actions, 144.104	ARC 5591	.....	6/19/85
Cosmetology examiners, students, 149.3(2)	ARC 5554	.....	6/5/85
Outpatient diabetes education programs, ch 9	ARC 5571	.....	6/5/85

Also present: Hattie M. Middleton and Darlene Duke, Schoitz Medical Center, Waterloo; Holly Secor, R.N., St. Francis Hospital, Waterloo; George Hegstrom, M. D., Ames; Lynn Deiter, R.N., Ames; Edward J. Hertko, M.D., Des Moines; Brice Oakley, Blue Cross & Blue Shield; Bob Hughes, Diabetic Consultant; Jeanine Freeman, Iowa Hospital Association; Allan F. Zaenger, IA Pharmacist Assn.

- chs 38-41 No questions on radiation emitting equipment rules, chs 38 to 41.
- ch 140 Rules 73.5(1) to 73.5(7) were deferred temporarily. No questions re amendments to chapter 140.
- 111.6(2) In reviewing 111.6(2), Guely explained the reason for emergency adoption was to provide the greatest financial assistance possible to eligible renal disease patients and stay within budgetary guidelines. The Department reimbursed patients at 100 percent between May 8 and June 30 this year. Guely admitted there had been a few problems with fluctuation in assistance and the Department hopes to determine a percentage that will be adequate through the fiscal year. Retroactive payment could be made with excess funds. Priebe supported the concept. According to Guely, approximately 420 patients are assisted annually.
- ch 132 In discussion of chapter 132, Guely highlighted substantive changes which included discontinuing use of fixed wing aircraft for ambulance service. Tieden was told that the medical director could be an M.D. or D.O. who would be in charge of the medical aspect of the advanced care ambulance or rescue squad service. Guely pointed out that 132.2(3)e had been modified at Committee request. Discussion of "shall" as opposed to "may" in the paragraph.
- 144.104,  
149.3(2) No recommendations were offered for 144.104 or 149.3(2).
- ch 73 Discussion of chapter 73 by Bach and Sands. Tieden wondered whether or not "physician" included "chiropractor" in 73.5(1). O'Kane referred to correspondence which he and Senator Doyle had received from one of the "CAP" agencies wherein objection was made to use of "competent professional authority" in the singular context. Sands said there was no intent to limit that authority to one person. Tieden suggested clarification.

HEALTH  
DEPARTMENT  
Continued

In response to O'Kane's question re 73.8(1), Department officials said that the competent professional authority in the clinic determines the person's eligibility based on the three criteria--a separate step from determining the contents of the individual food package.

ch 9  
Diabetes

According to Kelly, the Department and the Hospital Association had essentially concurred. Kelly noted that a major area of contention of the Hospital Association had been exclusion of pharmacist on the program staff--9.6. At the request of the Pharmacist Association, the Department asked the Attorney General for an opinion and the AG advised that a pharmacist was not mandated.

Priebe observed the lack of representation from Western Iowa on the Ad Hoc Committee. Kelly said the law directed them to utilize the Iowa affiliate of the American Diabetes Association Educational Committee. Doyle referred to 9.11(2) and asked the Department to check as to use of "registered mail."

In a presentation by Freeman, she denied allegations that the goal of the Iowa Hospital Association was to have all hospitals offer the diabetes program as "new income source." She continued that many hospitals have been offering the programs at a loss. Freeman viewed the law as addressing the need for outpatient diabetes education. It was her opinion that stringent certification criteria would preclude hospitals in small communities from operating a program. Primary objections were to 9.4(2)e. Freeman maintained that not every diabetic would need every component of the educational program.

Priebe asked for Department's response and called on Hertko who had operated a program for three and one-half years. Hertko was of the opinion that every patient could benefit from an entire structured program, even if only a refresher of certain aspects. Insurers should be given the benefit that that patient is getting the total value. Hertko noted that the program required by rules was only 14 to 15 hours of contact time. His program of 32 to 35 hours was the only outpatient diabetic program of its kind. Priebe wondered how many clinics would qualify over the state--particularly, in Western Iowa. An immediate answer was not available. Hegstrom, who cares for several hundred diabetics, thought the qualifications were easy to meet. Hertko envisioned anywhere from 15 to 25 major outpatient programs throughout the state in the larger cities. Several of Priebe's constituents who have diabetes had expressed concern for the distance they must travel to obtain assistance. Emergency situations presented the greatest problem.

Hertko responded that the concept of the program was to teach patients how to self-administer medication. Kelly stated that the Department has requests for information

HEALTH  
DEPARTMENT  
Diabetes  
continued

to file for certification from nearly every hospital in the state. He did not believe the hospitals saw this as a big problem. Freeman interjected that she was present because hospitals had called the Association. She readily concurred that special training was needed for diabetics. However, it was her understanding that the Board of Health had foreseen problems but was willing to have the Association return with suggestions. Freeman indicated that the Association would continue to monitor the process. She suspected that smaller hospitals could not meet qualifications for program staff--9.6(2).

Hertko reasoned that the "patient deserves minimum amount of qualifications which he thought could be met. Priebe was interested in allowing the program director to take diabetes education. Hertko supported the rule as submitted. In his judgment, 30 hours training was not unrealistic for the staff. The cost of his program is \$250.00, but there are other programs in the state.

Zaenger took the position that legislative intent was to include pharmacists on professional staff of the diabetic education training program. There was discussion of the statute and legislative intent--\$514.7. The Committee decided to request the author of the opinion to be present at 2:00 p.m. today. [See page 3146]

Kelly emphasized that the rules were minimum standards and the Department, Ad Hoc Committee, as well as the IHA were concerned about mandating pharmacists. Priebe stressed that the function of the ARRCCommittee was to ensure that rules follow intent of the Code. Copies of the AG opinion were distributed to Committee members. Kelly said the Department had an obligation to follow their attorney's advice, which they did in good faith. Priebe saw a greater obligation to follow the law. Tieden noted that although dietitians are not mandated in the Code, they are included by rule. Hertko had tried to get that changed but had been reassured that criteria for the program would be developed later.

Kelly defended inclusion of the dietitians as an attempt to develop a successful program and to provide cost containment. Anyone familiar with the "state of the art would not exclude nutritionists or dietitians from diabetic education." Priebe declared dietitians could not be included if they were not statutory. General discussion. The matter was deferred.

Defer

PUBLIC  
INSTRUCTION  
ch 12  
Special  
Education

Joseph Freilinger, Tom Burgett, and Jim Reese, Consultants, and John Lanham, Chief, represented Public Instruction. Discussion of special education rules, chapter 12, which had been delayed 70 days from the June 1 effective date. O'Kane took the position the issue needed more study.

Motion to  
lift delay

Clark moved to lift the 70-day delay. Motion carried with voice vote--Parker out of the room and not voting.

PUBLIC  
INSTRUCTION  
Concluded

O'Kane moved to refer the rules to the Education Com-  
mittees in the House and Senate. Motion carried.  
No further action.

AGRICULTURE  
DEPARTMENT

Elizabeth Duncan, Director, Regulatory Division, and  
Merle H. Lang, State Veterinarian, appeared for review of:  
Livestock movement, meat and poultry, 18.12, 48.12 ARC 5576, also filed emergency ARC 5576 . F.F. N.Y. 6/19/85

Duncan explained rule 18.12 which will comply with  
federal regulation on prohibition of chloramphenicol  
in animals that are raised for food production. The  
Department, by reference, has adopted federal regulations  
in 30--6.11(198). The FDA has, in the past, investigated  
various Iowa producers and has enforced this rule.  
Duncan quoted from Governor Branstad's letter wherein he  
requested that the Department adopt an emergency rule to  
prohibit the importation of livestock from countries  
which allow the use of chloramphenicol. He also requested  
that animals be certified as being free of the drug and  
that the Department conduct inspections.

Priebe indicated support of the rule since he had recom-  
mended this action. O'Kane viewed the procedure "as a  
sham" and as a way to reduce Canadian imports. Brief  
discussion. Tieden noted that the action is statutory.

PUBLIC  
SAFETY

Marda Howard and Mike Rayburn represented the Department  
of Public Safety to review the following:

Private investigation and private security business, 2.2, 2.4(3), 2.4(5), 2.4(6), 2.6, 2.11(1), 2.12, filed emergency  
ARC 5608 ..... F.F. .... 6/19/85  
Disposition of ammunition and firearms, 18.6"3," filed emergency ARC 5556 . F.F. .... 6/5/85

Also present: Ruth Mosher, Deputy, Citizens' Aide/Om-  
budsman.

After brief explanation of the rules by Howard, Chairman  
Priebe recognized Mosher who said she had been contacted  
by an employer who complained that his two employees  
could not be certified to work in an armored car busi-  
ness because they were police officers. She cited  
statutory conflict as the problem--these officers were  
prohibited from the work in one Code section and exempt  
in another section. The Department has interpreted the  
exemption to mean that a peace officer can work individ-  
ually with permission of a superior but cannot work for  
a security company at the same time.

Royce pointed out that the "private detective law" [80A]  
does not apply to peace officers "engaged in private  
detecting or security." The Department interprets  
"engaged" to mean the exemption does not apply if they  
are independent contractors. Royce discussed his inter-  
pretation of "engaged."

Doyle wondered if the matter could be resolved by rule.  
Howard stated that the one individual had relinquished

PUBLIC SAFETY

the peace officer capacity. She agreed to work with Bidler and to contact Mosher.

18.5

Rayburn indicated that amendment to 18.6 was in response to ARRC request. He added that the Department learned after the filing that SF 455, §21, repealed Code §691.9 thus leaving no provision for sale of firearms. Rayburn was directed to utilize emergency provisions to rescind chapter 18 of the Department's rules.

SECRETARY OF STATE

Louise Whitcome was present for review of:

Constitutional amendments and public measures, 11.2(3) ARC 5560 ..F.....6/5/85  
Form of ballot for propositions to impose local option taxes, 11.4 ARC 5561 .N.....6/5/85

No problems surfaced and no comments had been received. Tieden was informed that 11.4 had been terminated and would be rewritten. No action.

Minutes

Chairman Priebe called for disposition of minutes of the June ARRC meeting. Doyle called attention to page 3132 wherein he was shown in the Chair and notation was not made when Chairman Priebe returned. Doyle moved approval of the minutes as corrected. Carried.

Recess

The Committee recessed for lunch at 11:50 a.m.

IOWA LOTTERY

Nichola K. Schissel, Assistant Commissioner, and Kenneth Paulsen, Purchasing Agent, were present for Iowa Lottery to review purchasing procedure, chapter 5, filed emergency, ARC 5568, IAB 6/5/85.

5.2

Schissel said the rules were written to coincide with purchasing rules of General Services. Priebe questioned 526--5.2(1), last sentence, as to whether the following language would preclude some vendors: "The agency shall select vendors...any other accepted source..." Schissel said they would consider removal of the language although it was excerpted from General Services rules.

Schissel informed Tieden that language on formal and informal bids in 5.1(1) and 5.1(3) was taken from the statute--HF 225. She was willing to repeat the statute re lowest and best bids. On the two bids taken thus far, evaluation committees have been set up to make determinations.

In a matter not before the Committee, Tieden asked if a minimum of \$500 per month for ticket sales would be mandatory. Schissel answered that it was not and she faulted the media for creating a misunderstanding. Tieden also asked if a retailer needed a sales tax permit. Schissel said some organizations could sell lottery tickets and not necessarily have a sales tax permit--it is not a requirement for license. Tieden was hopeful clarification would be made for the public.

IOWA  
 LOTTERY  
 Continued

Doyle had been asked by a county auditor if government offices would be precluded from selling tickets. Schissel indicated this type of request would be considered on an individual basis.

5.3(3) Priebe saw no need for 5.3(3)--new merchandise--and asked that it be removed when the rules are adopted under the normal process. He suggested that other provisions of that nature also be eliminated. He concluded that reference to General Services rules could be made to avoid duplication. He urged the Department to work with Barry and Royce.

5.7(2) In re 5.7(2), original invoice, Tieden wondered why an original could not be submitted by the vendor. According to Paulsen, that is not uncommon in small businesses which do not have standardized invoices. No formal action.

REVENUE  
 DEPARTMENT

Clair Cramer, Gene Eich and James Hamilton represented the Department of Revenue. The following agenda was considered:

Individual income tax, 38.1(1), 38.1(8), 38.1(9), 38.2(1)*b" and "f.", 38.3(1), 38.8, 39.2(1), 39.3(1), 39.3(3), 39.4(2), 39.5(6), 40.1, 40.4, 40.15-2" and "Example 1.", 40.15(2), 40.15(3), 40.16, 40.16(2), 40.16(4)*d, 40.16(8)*2, 40.18(2), 40.18(6), 42.2(1)*c, 42.4(2), 42.5, 42.6, 43.1(2), 43.1(3), 43.2, 43.3(5), 46.3(8)*a(1), 46.4(2)*8, "10" and "11.", 46.4(4), 47.2(1)*c(1), 47.3(3), 47.4(2) ARC 5598	6/19/85
Penalty and interest, 44.3(3), 44.3(5) ARC 5599	6/19/85
Assessment practices and equalization, 71.1(3), 71.10(2), 71.10(3), 71.11, 71.12(7), 71.13, 71.14(1), 71.15, 71.16, 71.17(1), 71.17(4), 71.19, 71.20(1)*a" to "c.", 71.20(2) to 71.20(4); 71.20(4)*c, 71.21 ARC 5600	6/19/85
Real estate transfer tax and declarations of value, 79.1(8)*e, 79.1(4), 79.2(2), 79.2(4), 79.2(5), 79.2(9), 79.2(12), 79.3, 79.5 ARC 5601	6/19/85
Taxable sales, taxable and exempt sales determined by method of transaction and usage, printing supply items, 16.6, 18.33 ARC 5569	6/5/85

38.1(1)  
 et al  
 44.3  
 chs 71,79

Cramer gave brief review of the rules which were identical to those published under Notice of Intended Action. No questions. No questiones re 44.3(3), 44.3(5), chapters 71 and 79.

Tieden was told there had been communication re sales to commercial printers. Because of opposition, time will be allowed for both written comment and public hearing. According to Cramer, the Department has drafted as many rules as possible in a timely manner. Given the magnitude of legislative changes in the sales tax law, Revenue Department has not completed all necessary rule-making. As far as interpretive rules, they file as soon as possible.

Clark was amazed at the interpretation of legislation by the Department--sometimes one that was never envisioned. There was discussion of preliminary drafting of rules prior to the effective date of the legislation. Department officials pointed out the difficulty of implementing laws soon after July 1 when they are not signed until late in the session. Clark thought it would be helpful if retailers had a preview of what to expect. Priebe reminded ARRC that this was brought up once before and it was not permitted.

O'Kane recalled that Bair, Castelda and Cramer attended the Conference Committee on S.F. 395 nearly every day

7-8-85

REVENUE  
DEPARTMENT

and he expected and assumed the rules would mirror legislative intent. Parker asked if the rules would be filed emergency and was told the Department would follow Notice process. Priebe had problems with rules being adopted and published prior to the effective date of the law. Discussion of imposition of tax on bakery goods. Jim West, Iowa Retail Food Dealers Association, indicated he was working closely with the Department in an attempt to resolve problems.

LAW  
ENFORCEMENT  
ACADEMY

Ben Yarrington and William Callaghan appeared for review of mandatory psychological testing, 1.1, 2.1(13), 2.2, ARC 5622, filed, IAB 7/3/85.

Yarrington gave brief overview of the mandatory psychological testing rules. Tieden inquired as to how the decision was made to use the Wollack and Associates test and if it had nationwide acceptance. Yarrington said the test had been developed prior to the law requiring mandatory testing. Yarrington's predecessor and Wollack adopted the test which is now required for municipalities and the only one validated for law enforcement in the state.

Discussion as to whether a date certain was necessary. Royce advised that it would not be necessary for the test. Yarrington said any changes would be brought before the ARRC. Parker was told that tests are given in local jurisdictions.

HUMAN  
SERVICES

O'Kane in the chair. Mary Ann Walker and Don Bice were present to review:

Food stamps, 65.1, 65.3, 65.29	ARC 5578	.....	6/19/85
Amount, duration, and scope of medical and remedial services, dentists, 78.4(1)*b*(12)	ARC 5579	.....	6/19/85
Purchase of service, 150.3(3)*p., 150.6(3)*j	ARC 5581	.....	6/19/85

No comments had been received on any of the rules on the agenda, according to Walker. No Committee action. Brief recess.

HEALTH  
DEPARTMENT  
CH 9

Priebe resumed the Chair. Earl Willits, Deputy Attorney General, and Maureen McGuire, Assistant AG, who had authored the opinion re Health Department rules on the outpatient diabetes program, chapter 9, were present.

Willits defended the position taken in the opinion which states that the Department of Health has discretion as to which Health Care professionals are required to be on the staff team aside from the separate Code section which requires a physician to be director of the program. McGuire commented that the statute was open to different interpretation. The AG determination was based on the fact that, elsewhere in the statute, insurance eligibility was contingent upon the diabetes program directed and supervised by a physician. Clearly, elsewhere in the statute, the legislature required particular health care professionals. McGuire continued that if the legislature had wanted to require "physician, registered nurse and licensed pharmacist," they could have used "shall."

HEALTH  
DEPARTMENT  
Diabetes  
Continued

The opinion was also based on the fact that the words "...health care professionals, including but not limited to,..." were "examples" of a general class. Willits repeated the question addressed to the AG was: "Did the statute absolutely require that physicians, nurses, pharmacists be included on the staff?" and answer was in the negative.

Priebe raised question as to whom would be required and Willits reiterated that Code §509.3(6) required a physician to be the director. Willits indicated that a formal opinion would take the same position as the "letter" opinion. He emphasized that although the opinion was drafted by McGuire, "no opinion leaves the office without approval of the AG or Beth Osenbaugh." Willits viewed the words "including but not limited to" as creating the problems, not use of "shall." General discussion.

MOTION TO  
REFER

Tieden moved to refer chapter 9, outpatient diabetes education programs, 45 days into the next General Assembly. Parker was concerned about lack of insurance coverage and he offered a substitute motion to refer rule 470--9.6, program staff, to the next GA and that the rule would be acceptable if pharmacists are included in subrule 9.6(2).

Kelly received permission to comment. He said that with due respect to the ARRC, it was not within his prerogative to change something that the policymaking Board of Health has passed. He cautioned that without the rules, the Department could not authorize or certify any programs-- insurance carriers will not reimburse them. Royce could see the problem with a 45-day delay and suggested objection as an alternative. The pending motions were withdrawn.

Motion  
Withdrawn  
Motion to  
Object  
9.6(2)

Doyle moved to object to subrule 9.6(2) on the grounds that it exceeds the statutory authority of the agency by not including pharmacists as required under Code sections [509.3(6) and 513.7] and that the President of the Senate and the Speaker of the House be notified of the problems. The objection can be overcome by adding "pharmacist." O'Kane took the position that the motion was "inviting the process of litigation." He was unsure that it was a good idea but concluded, "We obviously are not getting satisfaction elsewhere." Motion carried viva voce. O'Kane voted "no."

Vote

FOSTER CARE  
REVIEW  
BOARD

Joan Vagts, Director, Foster Care Review Board, appeared for discussion of:

Purpose, operation for the board, local boards, chs 1 to 8 ARC 5587, also filed emergency ARC 5588 *N.T.F.E.*..... 6/19/85

O'Kane asked if the rules would have an impact on local groups such as one he chairs in Sioux City. Brief discussion. Vagts said there would be no problem.

FOSTER  
CARE  
REVIEW  
BOARD

In 2.2(237), paragraph 5, Doyle called attention to the fact that juvenile court referees had been authorized in the legislature. Clark suggested that they be included when the rules are adopted following Notice. Vagts said the public hearing would be held on Tuesday. Doyle recommended that Vagts review the court reorganization legislation to ensure correct terminology for the amendment. No formal action.

Committee  
Business

It was agreed that the August meeting would be held on the 15th and 16th.

Gender  
Changes

Chairman Priebe recognized Barry who had been informed by a state agency of a directive from the Administrative Rules Coordinator that all gender changes be implemented by rule no later than September 30, 1985. Hove confirmed that this directive had gone to agencies, which had been asked to comply eighteen months earlier. Hove said many were in noncompliance.

Barry spoke of the workload that would be created for the Code Editor's office at a time when regular rulemaking is extremely heavy. In addition, the cost will be substantial. Priebe interjected that it was his understanding that the legislative intent was for gender changes to be made in conjunction with substantive rulemaking. Barry noted that one agency had 18 pages of rules with gender only changes. Discussion. Consensus of the Committee was that the expense was important and gradual revision would be preferable. Hove could see a "ten-year" span before some of the rules would be changed. Tieden moved that the matter be delayed until the August meeting. Carried.

Motion to  
defer

Recess

The Committee was recessed at 2:30 p.m. to be reconvened in Dubuque, Wednesday, July 10, 1985.

Wednesday  
July 10

Chairman Priebe convened the meeting in the Flora Room, Julien Motor Inn, Dubuque, Iowa, Wednesday, July 10, 1985, 9:00 a.m. All members and staff present except Representative James D. O'Kane, who was excused.

CONSERVA-  
TION COM-  
MISSION

Bob Fagerland, Deputy Director, and Michael Carrier, Chief, Lands and Waters, represented the Conservation Commission for the following:

State parks, recreation areas -- rock climbing or rappelling, 45.5(1)	ARC 5549	.....	6/5/85
Falconry regulations for hunting game, ch 100	ARC 5595	.....	6/19/85
Deer hunting regulations, ch 108	ARC 5596	.....	6/19/85
Wild turkey fall hunting regulations, 112.1, 112.2, 112.4	ARC 5550	.....	6/5/85
Hunting license requirements, ch 17	ARC 5548	.....	6/5/85
State parks and recreation areas, camping fees, 45.5(1), filed emergency	ARC 5594	.....	6/19/85

45.5(1)

Discussion of 45.5(1). Carrier said the Commission took steps to provide for this type of dangerous activity while ensuring certain safety processes would be followed. Considerable comment was generated by the Notice. Tieden was informed that the registration form includes a liability waiver. It would be the standard penalty for violation of park rules and regulations and could be subject to a simple misdemeanor citation.

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In response to question by Doyle, Carrier said intent was to post the areas. According to Fagerland, most activity had occurred in the Ledges and Palasaides Keppler Parks. Doyle was concerned that rappellers might not see a sign and harassment would result. It was noted that Palasaides has only one entrance. Fagerland explained to Parker that rappelling was prohibited at Ledges because the sandstone there is erosive and subject to destruction by climbing.

ch 100

No recommendation for chapter 100, falconry. In re chapter 106, deer hunting, Fagerland pointed out that three petitions for rulemaking had been received, but after considering them, the Commission decided against implementation. He continued that the number of any-sex licenses had been doubled in an attempt to alleviate overpopulation of deer at the Burlington Ordnance Plant. Fagerland pointed out that all bow and arrow and all shotgun hunters will be required to take antlerless deer--not any-sex. All landowner tenants, who apply for free licenses during the second season, will receive any-sex licenses.

Priebe asked if weapons such as rifles were ever considered. Fagerland said new and different weapons are always a consideration but safety is a big factor. It was consensus that type of weapon to be used was prerogative of the Conservation Commission. Fagerland said that those holding both bow and arrow and shotgun licenses are allowed to take only one deer.

Doyle called attention to the lack of direction in the legal descriptions of the deer hunting zones.

ch 112

With respect to wild turkey hunting, chapter 112, Fagerland said that since all available licenses from the previous year were not sold, the number of licenses would not be increased this year. The 2500 hunters harvested just short of 1200 birds. Doyle pointed out that directions were included in the turkey zones.

ch 17

Discussion of chapter 17. Tieden asked for clarification with respect to hunter safety certificates and he referenced 17.1(2)b and 112.4. Tieden asked, "Can a child 15 or under get a hunting license for turkey or deer without hunter education?" Fagerland responded in the affirmative, if the child hunts with a licensed adult. After age 12, the child can take the hunter safety course, buy a license, and hunt alone.

45.3(1)

In re 45.3(2), Carrier said the July 1 law added several new items to which state sales tax would apply, including camping in state areas. A 25-cent fee will be added to each category of camping. Even numbers were used for convenience.

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Priebe wondered how much money would be generated for the Commission and questioned whether or not a fiscal note was needed. Carrier estimated \$26,000 a year would be the net increase from a collection of just under \$1,000,000.

Parker noted that an amount in 45.3(1)g had been lowered [from \$5.00 to \$4.09] but Carrier replied that it was a typo--the "\$5.00" should have been "\$4.00". The figure was published correctly in the Iowa Administrative Code.

WATER, AIR &  
WASTE MANAGE-  
MENT DEPT

Mike Murphy, Director, Legal Services, and Morris Preston, Chief, Water Resources, represented the Water, Air and Waste Department for the following:

Economic impact statement -- Definitions, water quality standards, 60.2, 61.2(1), 61.2(2), 61.2(6), 61.3(1)h, 61.3(2)a, 61.3(3), published IAB 3/18/85. Notice ARC 5387.....	N.....	6/19/85
Wastewater construction and operation permits, 64.2(9)b.....	N.....	6/19/85
Flood plain development, 70.2, 71.2(4), 71.11(1)a and "d" ARC 5689.....	N.....	6/19/85

Also present: Cindy Hildebrand, Iowa Audubon Council.

Discussion of the Economic Impact Statement. Murphy said the rules on water quality standards were adopted on July 8. In answer to Tieden, Murphy said a comprehensive study on ground water protection would be conducted over the next eighteen months. A report will be presented to the legislature in January 1987.

Priebe referenced the problem at Charles City and asked if a longer retaining wall would be needed there, adding to the cost. Murphy replied that this was handled by EPA in the past. It was referred to as a "short retaining wall" but WAWM originally felt a longer wall should be considered. The state now concurs and a shorter wall will be installed.

Tieden asked about time limit on federal funding for any of the projects. Murphy needed specifics but indicated there would be a limit on certain ones. Preston indicated that a few construction grants were still available to cities for upgrading wastewater treatment plants and, in some cases, sewer systems as well. There is currently a 1988 deadline for installation of these facilities and some are proceeding without federal grants. The city of Des Moines project was discussed.

Parker suspected that withholding of funds tended to beef up enforcement. Murphy concurred that was EPA practice. Priebe learned that Red Oak had received a grant. He expressed displeasure at the rapidity with which that city reached the "top of the list" from position 19 or 20.

No recommendations were offered for 64.2(9)b. The flood plain development rules, according to Murphy,

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pertain to drainage districts. He reminded ARRC that a committee had been formed to discuss a compromise between drainage districts and the Department relative to repairs and the proposal is a result of an agreement. A hearing was held Tuesday in Dubuque, others will be held in Des Moines and Humboldt.

Doyle was interested in knowing when the filed rules would be before the ARRC. Murphy anticipated that adopted rules would be before the ARRC in October.

Priebe recognized Hildebrand, who informed ARRC that many conservation organizations around the state have serious problems with the proposed rules. As Chair of the Iowa Audubon Council, she would be writing to the Committee. Criticisms included lack of definitions of "improvement" and "drainage facility"; lack of details on the ten percent determination; information re permit for channel change should be added. She continued that some large streams and small rivers which became drainage ditches years ago have since redeveloped meanders. Allowing return to original grade line would have tremendous impact on the habitat developed along those streams and rivers. There are not that many involved and a permit should be required. In conclusion, Hildebrand reiterated that many groups have problems with the proposal.

Priebe had served as Chairman of a committee last summer and it was his understanding that an agreement existed where meandered streams would not be straightened; another agreement would preclude excavation lower than the original depth of the stream. He recalled that the ten-percent issue had been resolved.

In response to Clark, Priebe was unsure as to documentation of the committee action to which he referred. Clark favored written agreements.

RACING  
COMMISSION

Racing Commission was represented by Lawrence F. Scalise, Gary Hayward, and Jack Ketterer for discussion of harness racing, chapter 9, ARC 5567, Notice, also filed emergency, ARC 5566, IAB 6/5/85 and for special review of greyhound racing.

Also present: Gene Kennedy, Dubuque Racing Association; Gary Zummack; Arthur and Bel Yates, Sioux City; Daniel A. Lucioni, Bruce Wentworth and Roy Berger, Dubuque Greyhound Park; Ronald R. Barr, kennel operator; Alan Ertl, U.P.I.G.A., and Gloria Sanders, Iowa Greyhound Association, Secretary.

Priebe commented on the importance of rapport and understanding among the various factions of Iowa's

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pari-mutuel system. He was hopeful that adverse publicity from the newspaper could be avoided. Priebe added that he had spent last evening at the Dubuque Greyhound Racing Facility and found it to be "an operation anyone could be proud of." It was his understanding that an agreement had been reached on the breakage distribution and he asked Berger to brief the Committee. Priebe emphasized that the ARRC is "mandated to uphold the law and interpret the Code as such."

Berger thanked Priebe for his kind words and expressed pleasure at having the legislative group at the track. Berger stated that the Iowa Greyhound Association had named a Committee to work with them--Ron Barr and Alan Ertl. An acceptable plan had been agreed to by the Iowa Greyhound Association, Racing Association and Jack Ketterer. Berger added that, under the plan, they will match the purses on payments to race winners of all grades for Iowa bred greyhounds. In addition, any greyhound winning a grade D race will receive matching purse plus \$500 bonus; winners of a grade A race will receive matching purse plus a \$1000 bonus; bonus to be paid--50 percent before the race is won and the balance to be paid at the end of the meet, as long as money is available; after that, it is to be paid on a pro rata basis. Berger concluded that the plan was simple and there was tremendous cooperation.

Lucioni advised Yates that money will be paid to the kennel since the contract is with the kennel, not the individual owner. Each owner will have a separate lease agreement with the kennel from which dogs are leased. Hayward asked for clarification as to whether an owner or breeder gets the bonus money. Ketterer said the law specifically says it is to supplement purses and purses are paid to owners. It was his judgment that a law change would be needed before more could go to the breeder. An advantage to the breeder is that this method makes the breeders' greyhounds more attractive to outside purchasers. Ketterer reiterated that for "direct money to go from the purse supplements to the owner, to the breeder, the statute would need change. Priebe concurred.

Tieden asked Royce if the proposal for breakage met with the law. Royce replied that the law provides "breakage shall be distributed..." There was no statutory language as to specific time for distribution so it is assumed it will be handled in a reasonable and equitable fashion. The system developed appears to allow rewards to owners and breeders this year with money to be distributed next year. Lucioni said there were 16 Iowa bred dogs registered in Dubuque--approximately 71 in the state.

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Continued

Ertl interjected that not all eligible dogs had been listed with the state. In discussing "purse", it was noted that the statute provides for it to go to the "winning dog." Figures were not available.

Zummack pointed out that procedure mentioned by Berger must be voted upon by the general membership of the IGA. Discussion of Code sections 99D.12 and 99D.22 re breakage distribution. Priebe stressed importance of consistency for Dubuque and Council Bluffs. Wentworth offered projections as to amount of breakage to be carried over. Berger emphasized that intent was to reward competence and to promote the industry as well.

Priebe was confident that, in years to come, Iowa's greyhounds and horses would be as good as any in the world--Iowa has been second to none in the purebred livestock industry. He was of the opinion that all of the breakage could not be distributed this year.

Lucioni saw a "carryover" as helping to bring kennels and greyhounds to Dubuque next year and providing an incentive for smaller tracks which should help the entire industry. He assured Priebe that the "Dubuque Track" was encouraging use of Iowa bred. Barr commented that one to two years is necessary to get dogs qualified.

Sanders was concerned about public image for breeders. General consensus was that if breeders are in agreement, the business will benefit.

Tieden asked if anyone knew of major problems with the law. Mention was made of possible checkoff. Priebe recommended that the President of the Greyhound Association appoint a small group to work with Ketterer, kennel owners and track personnel to develop a bill.

Barr took the position that lack of trifecta had generated complaints. However, Scalise stressed the importance of exercising caution to keep the industry "clean." "Walk-over" was explained. Doyle raised question as to the Commission's authority for 9.14(1)c relative to medicating the animals.

Parker asked for derivation of the harness rules and was informed that Illinois, Ohio, Delaware and the U.S. Trotting Association were followed.

No Agency Representatives  
No agency representatives were requested for the following:

ARCHITECTURAL EXAMINERS, BOARD OF[80]  
Registration, admittance to examination, 2.2(1), 2.2(2) ARC 5583 ..... 6/19/85

ATTORNEY GENERAL[120]  
Consumer credit code, chs 10, 11 and 12 ARC 5664 ..... 7/3/85

No Agency  
Reps  
Continued

<b>COMMERCE COMMISSION[250]</b>	
Findings of fact and conclusions of law, 7.7(14) ARC 5608 .. F.....	6/19/85
Authority to delay disconnection, 6.3(4), notice ARC 5226 terminated, ARC 5605 .. N.....	6/19/85
Practice and procedure, 7.2(10), 7.4(2), 7.4(4), 7.4(10)c" and "d," 7.6(1), 7.6(2) ARC 5606 .. N.....	6/19/85
Gas and electric utilities, requests for confidentiality of documents filed, 19.11(1), 19.11(2)f," 20.18(1)c," 20.18(1)e" ARC 5607 .. N.....	6/19/85
Severability of rules, 3.1 ARC 5559 .. N.....	6/5/85
<b>COMMERCE COMMISSION[250]</b>	
Procedure for determining the competitiveness of a communications service or facility, ch 5 ARC 5666 .. F.....	7/3/85
Metering requirements, 19.3(1), 20.3(1) ARC 5667 .. F.....	7/3/85
<b>EMPLOYMENT SECURITY[370]</b>	
Claims and benefits, 4.1(48), 4.1(107), 4.2(1)e," 4.7(1)b," notice ARC 5125 terminated ARC 5598 .. NY.....	6/19/85
<b>HEALTH DATA COMMISSION[465]</b>	
Posting and submission of hospital price information, 8.2(3), 8.3(1)b," 8.4 ARC 5585 .. N.....	6/19/85
<b>HUMAN SERVICES DEPARTMENT[498]</b>	
Fair hearings and appeals, application for aid, 7.7, 7.9(1), 40.2(5)a" and "b" ARC 5562 .. N.....	6/5/85
ADC, granting assistance, alternate payees, 41.1(5)d," 41.7(4)a," 41.7(6)f," 41.7(7)c"(6), 41.7(7)g" and "x," 41.7(8)a," 41.7(9)c"(2), 43.1(1) to 43.1(3), 43.2 to 43.5 ARC 5563 .. N.....	6/5/85
ADC, granting assistance, food programs, 41.5(5)c"(2), 65.17 ARC 5564 .. N.....	6/5/85
Aid to dependent children foster care, ch 44 ARC 5584 .. N.....	6/19/85
Nonassistance child support recovery program, 96.1, 96.3(2)b," 96.4, 96.10, 96.11, filed emergency after notice ARC 5580 .. F.E.N.....	6/19/85
Child care center financial assistance, 154.1, 154.2(2), 154.4(1), 154.5, 154.6 ARC 5565 .. N.....	6/5/85
Abuse of children, 175.1, 175.8(3) to 175.8(5), 175.8(7) ARC 5577 .. N.....	6/19/85
<b>INDUSTRIAL COMMISSIONER[500]</b>	
Substantive and interpretive rules — payroll tax tables, 8.8, filed emergency ARC 5597 .. F.E.....	6/19/85
<b>INSURANCE DEPARTMENT[510]</b>	
Continuing education for insurance agents, 11.2(5), 11.5(1), 11.5(2), 11.5(4) to 11.5(9), 11.6(1)a," 11.6(4), 11.10, 11.7(1)c," 11.9, 11.11 ARC 5555 .. N.....	6/5/85
Deposits by a domestic life insurance company in a custodian bank or clearing corporation, HMOs, 32.5, 40.12(1) ARC 5613, also filed emergency ARC 5612 .. N.* F.E.....	6/19/85
HMOs, quality of care, 40.5(3), filed emergency after notice ARC 5574 .. F.E.N.....	6/5/85
HMOs, external review group, 40.5(11)b" to "d" ARC 5602 .. N.....	6/19/85
<b>LIVESTOCK HEALTH ADVISORY COUNCIL[565]</b>	
Recommendations — appropriation, ch 1 ARC 5570 .. N.....	6/5/85
<b>NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS[600]</b>	
Disciplinary actions — settlement, continuing education waiver, 2.4(3), 2.4(4), 3.8 ARC 5558 .. N.....	6/5/85
<b>PUBLIC SAFETY DEPARTMENT[680]</b>	
Flammable and combustible liquids, 5.300, 5.304(5), 5.309 ARC 5557 .. F.....	6/5/85
<b>REGENTS, BOARD OF[720]</b>	
UNI, temporary suspension of parietal rule, 2.36(5) ARC 5590 .. F.....	6/19/85
<b>PHARMACY EXAMINERS, BOARD OF[620]</b>	
Hearing procedure, 9.2(5)a" ARC 5634 .. F.....	7/3/85
<b>SOIL CONSERVATION DEPARTMENT[780]</b>	
Blaster training examination and certification for coal mines, ch 26 ARC 5680 .. F.....	7/3/85
<b>REAL ESTATE COMMISSION[700]</b>	
Petitions for rulemaking and declaratory rulings, 2.6, 2.7 ARC 5593 .. N.....	6/19/85
<b>SUBSTANCE ABUSE, DEPARTMENT OF[805]</b>	
Licensure standards for substance abuse treatment programs, 3.1, 3.2(1), 3.5(1), 3.6, 3.7(1)a," 3.7(2)and"a," 3.12(1), 3.17, 3.17(5), 3.17(6), 3.22(8)f" to "w," 3.22(4), 3.22(5)k," 3.22(6), 3.22(9), 3.22(10)e" to "g," 3.22(11)b," "f" and "g," 3.22(12)b" and "c," 3.22(14)b," 3.22(15)b," 3.22(17)g" and "h," 3.23, 3.23(1)c," 3.23(2), 3.23(4), 3.23(5)d," 3.24, 3.24(1), 3.24(2)a," 3.24(3) to 3.24(14), 3.25, 3.25(1) to 3.25(3), 3.25(8), 3.25(9) ARC 5592 .. N.....	6/19/85

Adjourned Tieden moved to adjourn. Carried.

Next meeting, August 15. [Later rescheduled to begin on August 14, 10:00 a.m.]

Respectfully submitted,

*Phyllis Barry*  
Phyllis Barry, Secretary  
Assisted by Vivian Haag

APPROVED:

*Bob Friebe*  
CHAIRMAN