

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of
Meeting

Monday, April 7, 1986, 7:45 a.m., and Tuesday, April 8, 1986, 8:40 a.m., Committee Room 116, State Capitol, Des Moines, Iowa.

Members
Present

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

CODE OFFICE
BILL

The Committee considered a redraft of the proposed bill relative to restructuring of the Code Editor's office. Discussion centered on page 9, line 21, where Burnett had recommended addition of the word "nonsubstantive." It was Committee consensus that it would be confusing. Burnett contended that "It is the job of the Executive Branch to write the rules, and there is distribution or separation of powers by the Constitution." In her opinion, "nonsubstantive" would clarify meaning of style and format. Clark said that style and form were not rules. According to Priebe, the other side of that would be the ARRC would have no input.

After further discussion, Royce understood the Coordinator's position but pointed out that the phrase "style and format" was not new.

Motion

Doyle moved that the draft be recommended to the Legislature for passage as an Administrative Rules Review Committee bill. Priebe called for the question and Senator Tieden expressed his dissatisfaction with the bill, indicating he could not support it. The matter was temporarily deferred.

O'Kane arrived and was apprised of the pending vote on the motion. Roll call was requested and the vote was 4 ayes by Priebe, O'Kane, Doyle, and Clark; 1 nay by Tieden; Parker, absent and not voting. The motion to report the bill on Code Editor reorganization as an ARRC bill carried with recommendation that it be placed on the Legislative Calendar.

COLLEGE AID
COMMISSION

James Shay, Executive Director, presented the following:

COLLEGE AID COMMISSION[245]

Iowa guaranteed student loan program, ch 10 ARC 6417, also filed emergency ARC 6416 N. r. F.F. 3/12/86

No action taken.

COMMERCE
COMMISSION

The following agenda was before the Committee:

Practice and procedure, written appearances, 7.2(1) ARC 6439 3/26/86
 Telephone utility cable within or between two or more buildings on the same premises,
 16.5(5), 16.5(31), 16.5(33), 22.1(3), 22.3(2)"g"(3), 22.11(4), 22.11(5) ARC 6444 3/26/86
 Peak alert annual notice, 20.11(1) ARC 6440 3/26/86
 Resale of local communications services, 22.17 ARC 6441 3/26/86
 I-SAVE program, cost recovery, auditor qualification, 27.3(1), 27.6(2)"b" ARC 6442 3/26/86
 Findings of fact and conclusions of law, 7.7(15)"a" ARC 6443 3/26/86
 Discontinuance of utility service, 7.12 (also notice ARC 6024 terminated) ARC 6438 3/26/86

David Lynch, Ray Vawter, Allan Kniep, Gordon Dunn, Dan Hanson, and Cindy Dilley represented the Commission. Also present: John Lewis, Iowa Utility Association, and Don Heidbrecht, United Telephone.

7.2(1)

Dan Hanson gave brief explanation of amendments concerning telephone utility cable within or between two or more buildings on the same premises. Tieden was interested in consumer cost and Hanson advised that it would be amortized resulting in increase to customers. In re 20.11(1), Kneip said it would permit electric utilities, which have usage peaks in winter months, to give this peak alert annual notice at the time closer to their peak since some peaks occur in winter and others in summer.

Priebe questioned need for the notices but Vawter indicated the Commission plans to review the effectiveness of the alert system. Kneip reminded that notices are sent to the customers. An editorial error in 20.11(1), new language at end, was noted. The words "is likely to occur" should read "usually occurs." The correct language appeared in the IAC.

22.17

No recommendations were offered for 22.17. Responding to Tieden's question re deletion of 7.7(15)a, Commerce officials said it would coincide with earlier amendment to 7.7(14).

7.12

Hanson told the Committee that revised rule 7.12 would address concerns of interested persons. No questions.

HUMAN
SERVICES

The following representatives were present for the Department of Human Services: Mary Ann Walker, Kathi Kellen, Barb Momberg, Cynthia Tracy, Mary Ann Oren, Harold Poore, Miriam Turnbull, Joe Mahrenholz, Bob Miller, and Bill Turner. The agenda follows:

Medical assistance, eligibility, 75.5(4)"a" ARC 6412 3/12/86
 Medical assistance, overuse of services, 76.9, 76.9(7), 76.9(8) ARC 6418 3/12/86
 Medical and remedial services, amount, duration and scope of, providers, 78.1(2)"a"(2), 78.1(2)"e",
 78.1(11), 78.1(18), 78.1(19), 78.3, 78.3(18), 78.4(1)"b"(12), 78.4(1)"c"(2), 78.4(1)"d"(1) to (3),
 78.4(1)"e"(1), 78.4(1)"f"(3), (4), (6) and (7), 78.4(1)"g", 78.4(1)"h"(1), 78.6(2), 78.11(3), 78.12(11),
 78.14(6), 78.14(7)"f", 78.26(3), 78.28, 79.1(2), 79.8(1), 79.8(6) to 79.8(10), 79.9 to 79.11 ARC 6414 3/12/86
 Location of oral presentations, 3.2 ARC 6406 3/12/86
 Medical and supplementary assistance, recovery, 51.9, 76.12 ARC 6407 3/12/86
 Food stamp program, administration, ch 65 ARC 6408 3/12/86
 Collections, nonassistance child support recovery program, 95.3, 95.3(1), 95.3(2), 95.7(8), 96.3(1)"j", 96.9(4), 96.10,
 96.10(2), 96.10(3), 96.11 ARC 6430 3/26/86
 Residential facilities for mentally retarded children, 116.1, 116.2, emergency after notice ARC 6415 3/12/86
 Purchase of service, 150.1, 150.2(1) and "a", 150.10 ARC 6409 3/12/86
 Gamblers assistance program, ch 162 ARC 6431 3/26/86
 Community supervised apartment living arrangements services program, ch 206 ARC 6410 3/12/86
 Residential services for adults, ch 207 ARC 6411 3/12/86

HUMAN SERVICES Cont'd 75.5
ch 76

Brief discussion of whether or not eligibility in 75.5 (4)a could be manipulated. Walker did not believe so. Doyle recalled that, several years ago, certain prohibitions were imposed on living arrangements in a medical facility. He viewed this rule as reviving that same issue. Department officials knew of no such rule. No recommendations for chapter 76.

chs 78 & 79

Walker noted that amendments to chapters 78 and 79 had been contained in three Notices of Intended Action. Walker reported that O'Kane had been provided information as to the number of care facilities restricted to skilled nursing beds.

Tieden called attention to possible conflict between 78.1(2)a and 78.28(1) with respect to payment for obesity control medication. Walker agreed to research the matter. Priebe failed to see the justification for two percentiles and voiced opposition to a higher ceiling rate--60th percentile--with a state rate considerably below 50. Momberg explained that the actual reimbursement methodology for the two differed greatly. Clark requested the Department to provide figures for the Appropriations Subcommittee. Priebe asked that information also be provided to the ARRC. Without researching, Miller did not know whether lowering skilled nursing care reimbursement to 50 per cent could provide increase of ICF percentages. Momberg emphasized that the Department was careful not to jeopardize federal approval. She recalled that the 50th and 60th percentiles did not result in differences. The point was made that ICF providers outnumber those with skilled care. Walker agreed that the minimum was 50th percentile and she would provide figures. No formal action.

3.2 et al

No questions on 3.2, 51.9, 76.12, chapter 65, 95.3 et al, 116.1, and 116.2.

ch 150

Walker advised that many comments were received at the hearings and revision of chapter 150 may be necessary. The rules would allow district administrators the option of awarding contracts on the basis of requests for proposal (RFP) when there are two or more providers with the same services in a district.

Responding to Tieden, Walker indicated different districts could have different needs for services. The Department will develop guidelines for insertion in their manual.

ch 162

Walker summarized proposed chapter 162. Clark questioned definition of "compulsive gambler" in 162.1. She contended that paragraph "c" of the definition did not fit the positive lead-in statement. Walker was willing to pursue the matter. Department officials noted that the Advisory Committee now includes a Sioux City resident. No questions re chapters 206 and 207.

CONSERVATION
COMMISSION

Berniece Hostetter represented Conservation Commission for the following:

Land and water conservation fund grants-in-aid program for local entities. 72.5(1), 72.5(2), 72.5(5), 72.5(6), 72.6, 72.7, 72.10 ARC 6435, also filed emergency ARC 6434 ...N.Y.F.A. 3/26/86

Hostetter explained that emergency rules were necessary since funds are distributed equitably between the local entity and the state. Previously, a scoring system existed only for local entities. The National Park Service now requires criteria for the state projects. Hostetter added that minority population weighting is a federal requirement.

Priebe questioned the fact that the "local need" weight factor was not included in the state factor--72.6(4). Hostetter responded that any state project would benefit a larger number of people--local communities have more competition. Priebe preferred that "local need" be included in the state scoring system. No other comments.

IOWA LOTTERY

Nichola K. Schissel appeared on behalf of Lottery and the following agenda was considered:

Lottery, chs 1 to 8, notices ARC 5785 and ARC 6206 terminated ARC 6403N.Y.F.A. 3/12/86
Licensing, operation, purchasing, instant game, on-line game, amendments to chs 2 to 5, 8 and 9.
notice ARC 6295 terminated ARC 6404N.Y.F.A. 3/12/86
Licensing, purchasing procedures, instant game, on-line game, 3.2(1), 3.3(1), 3.8, 5.8, 8.2, 9.11 ARC 6402.
also filed emergency ARC 6401N.Y.F.A. 3/12/86

Schissel reminded ARRC that chapters 1 to 8, along with miscellaneous amendments to chapters 2 to 5, 8 and 9, had been terminated. No questions.

9.11

Doyle asked for meaning of 526--9.11(99E) and Schissel said that the Lottery Department pays for terminal installation and the retailer will help recoup expense to the Department. Service fees for terminal installation will be \$20 per month or \$5 per week. There was discussion of commission and fees. Doyle took the position that the amount of fees should be included in the rules and he wondered about insurance. Schissel pointed out that the vendor owns the terminal. The company that signs for the games insures the terminals they own. She continued that most large retail operations have a policy to cover cash registers and equipment. The contract is open ended and will be reviewed annually as opposed to a relicensing procedure. The Department has weekly contact with retailers.

At Doyle's suggestions, Schissel was willing to include the fee amount in 9.11. Lotto will be included for those who hold instant ticket type licenses. Top sales of instant tickets will be a prerequisite for recipients of that license. Because of new instant games, Schissel said Iowa did not want to be locked into latex covering if a break-open ticket could be utilized. No action.

PUBLIC
INSTRUCTION

4-7-86

Kathy Collins, Orrin Nearhoof, and Bob Roush appeared on behalf of the Department for the following:

Certificates and endorsements, renewal of certificates, conversion information, advisory committees, standards for teacher and graduate teacher education programs, chs 70 to 72 and 75 to 77	ARC 6437	3/26/86
School personnel, educational aides, 3.4(5)	ARC 6389	3/12/86
Motorcycle education, 6.13, filed emergency after notice	ARC 6438	3/26/86

Nearhoof briefed the Committee with respect to numerous changes made since Notice. He highlighted a major change as implementation date moved to October 1, 1988, to allow time for compliance. Other changes: Master teacher/educator recognition system was removed from the certification framework; school districts can continue to appoint elementary teachers in grades 7 and 8; DPI administrative endorsements were separated to more clearly deal with legislation--SF 254--which mandated 5-year administrative certificates and staff development every 5 years for administrators; renewal requirements were modified to retain current structure of permitting renewal requirements to be earned through approved staff development and broadened to allow community colleges to be involved; chapter 72 was unchanged except for the date; structure of advisory committee was changed and will reduce costs; chapters 76 and 77 had few changes.

In re 70.17(257), re substitute teacher's certificate, Priebe inquired if Iowa had reciprocal agreement with other states. According to Nearhoof, a person who presents an out-of-state certificate is given the substitute certificate and there have been few complaints. One possible problem, nationwide, is in certificates for special education.

Clark expressed disappointment that DPI had not made changes in response to her suggestions for chapters 76 and 77. She contended it would have resulted in two-thirds less material--a considerable savings. Nearhoof referenced a letter to Clark stating DPI reasons for the inaction. He continued that the chapters would be revised within the next two years and structured along lines suggested by Clark. Nearhoof again asked that the record reflect the cooperation of the Iowa Code Office.

Harry Burt Wagoner, Jr., Des Moines, commented on 670--76.14(5)i, pertaining to human relations programs leading to teacher certification, and he distributed a printed statement. He contended that libraries at the three state universities had no information on Creationists. Wagoner reasoned this deficiency should be corrected. He referenced an AG opinion which ruled that the Creationist resources could be stocked in school libraries and he continued that the U. S. Civil Rights Commission had identified the American Indians as those believing in the Creator.

PUBLIC
INSTRUCTION
Continued

Wagoner referenced two U.S. Supreme Court rulings and was of the opinion that all state agencies were currently violating the Constitutional right of all Creationist students and teachers.

Nearhoof responded that the Human Relations requirement referenced values, beliefs, and lifestyles. However, within the guidelines of the program, no overt effort is made to promote any belief. He said intent, in part, was to provide background for prospective teachers on minorities which have made up our population, value, lifestyles, and contributions made to our society. Nearhoof stressed that the Department could not, in these rules, address Wagoner's concern re library materials.

Clark asked and received further explanation from Wagoner re his complaint that Creationist materials are unavailable in the school libraries. Clark saw this as a separate issue from this rule.

3.4(5) Collins described a minor clarifying change in 3.4(5) relative to whether or not an educational aide could supervise a class in lunchroom, study hall, or playground situations without a certified teacher being present. No questions.

6.13 Roush gave brief overview of amendment to 6.13 pertaining to motorcycle education. He told Priebe that DPI had delayed starting programs in January because some instructors will not have training until this summer. Tieden wanted assurance that emphasis would be to encourage wearing of helmets. Roush assured him that standards for program approval require students and instructors to wear helmets.

WATER, AIR & WASTE MGMT. Mark Landa, Diana L. Hansen, and Wayne A. Reed were present for the following agenda:

Wastewater construction and operation permits, 64.2(9)"b"	ARC 6396	3/12/86
Wastewater construction and operation permits, 64.2(9)"c" to "(f," 64.3(6), 64.5(4)"d," 64.6(5)"j," 64.9, 64.10, 64.12		3/12/86
ARC 6395	3/12/86
Hazardous waste, 141.2	ARC 6405	3/12/86

Hansen gave brief overview of changes made to chapters 15 and 20, adopted by reference in subrule 64.2(9), paragraph b.

141.2 Landa said that 141.2, identification, listing, and exclusions of hazardous waste, was a small part of a very complex program. No questions.

Discussion of Maytag petition to delist their hazardous waste and subsequent action taken by DWAWM.

RACING
COMMISSION

Jack Ketterer was present on behalf of the Racing Commission for review of:

RACING
COMMISSION
Continued

Greyhound racing, trifecta, 7.6(16), 8.1, 8.2(4)"i," 8.6, notice ARC 5961 terminated ARC 6419 .. NT 3/26/86
Pari-mutuel wagering, 8.2(4)"h"(7), filed emergency ARC 6418 FF 3/26/86
Application for tax credit by horse racing licensees, ch 10, notice ARC 6136 terminated ARC 6420 .. NT 3/26/86

No questions re 7.6(16) et al, or chapter 10.

In a matter not officially before ARRC, there was brief discussion of disposition of unclaimed winnings which is set out by statute.

SOIL
CONSERVATION

Kenneth Tow, Department of Soil Conservation, presented brief overview of the following:

Abandoned mined land program forms, 27.190, notice ARC 6348 terminated ARC 6447 NT 3/26/86
Oil, gas, and metallic minerals, drilling, 29.6(7) ARC 6448 N 3/26/86

No questions were forthcoming.

NO AGENCY
REPRESENTA-
TIVES

No agency representatives were requested to appear for the following:

AGING, COMMISSION ON THE[20]
Priority service requirement, 9.4(1) and 9.4(2) ARC 6400 N 3/12/86
ATTORNEY GENERAL[120]
Lines of credit and home equity lines of credit, notice ARC 5837 terminated ARC 6391 NT 3/12/86
General definitions, line of credit, ch 18 ARC 6392 N 3/12/86
Regulation of agreements and practices, notice to cosignors, ch 15 ARC 6424 F 3/26/86
BEER AND LIQUOR CONTROL DEPARTMENT[150]
Representatives of distillers, rectifiers, manufacturers, brewers, and vintners,
sale or brand information, 7.2(6) ARC 6422 F 3/26/86
Wine co-ordinating amendments to chs 1, 3 to 5, 7 to 12, 15 and 16, notice ARC 6093
with the exception of Item 53 terminated — see ARC 6422 under filed rules N 3/26/86
CAMPAIGN FINANCE DISCLOSURE COMMISSION[190]
Reporting requirements, cost of copies, 4.19, 4.21 to 4.24, 5.10 ARC 6399 N 3/12/86
DENTAL EXAMINERS, BOARD OF[320]
General anesthesia, parenteral sedation, and nitrous oxide inhalation analgesia, ch 29 ARC 6421 N 3/26/86
FAIR BOARD[430]
Records, 1.6 ARC 6387 F 3/12/86
HEALTH DEPARTMENT[470]
Barber examiners, continuing education, 152.105, 152.106 ARC 6394 F 3/12/86
INSURANCE DEPARTMENT[510]
Administrative hearings of contested cases, agent's licensing rules, 3.3, 10.4(1)"d," 10.11(7) ARC 6429 N 3/26/86
IOWA FINANCE AUTHORITY[524]
Title guaranty division, ch 9 ARC 6423 F 3/26/86
LABOR, BUREAU OF[630]
Occupational exposure to ethylene oxide and cotton dust, and hazard communications, 10.20
ARC 6433, also filed emergency ARC 6432 N, F, FE 3/26/86
PLANNING AND PROGRAMMING[630]
Youth affairs, 14.3 to 14.5 (also notice ARC 4684 terminated) ARC 6426 NT 3/26/86
Child care grants program, ch 27 ARC 6425 F 3/26/86
REVENUE DEPARTMENT[730]
Withholding from lottery winnings, 46.1(1)"d" ARC 6428 F 3/26/86
Allocation and apportionment, corporate tax, 54.1(4) ARC 6393 N 3/12/86
SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805]
Licensure standards for substance abuse treatment programs, 3.1, 3.3, 3.9 ARC 6398, also
filed emergency ARC 6397 N, F, FE 3/12/86
TRANSPORTATION, DEPARTMENT OF[820]
Public transit, financial assistance, (09.B) 1.1 to 1.3 1.4(2)"c," 1.5(1), 1.5(2)"d," 1.5(4), 1.5(6), 2.1, 2.2, 2.3(3),
2.3(4), 2.5, 2.6, 2.9(1), new chapter 3, (09.A) chs 1 and 2, (09.A) 2.2, (09.B) 2.3(1) ARC 6390 F 3/12/86

Recess

Chairman Priebe recessed the meeting at 10:15 a.m. to be reconvened 8:30 a.m., Tuesday.

Reconvened Chairman Priebe reconvened the meeting, 8:40 a.m. Tuesday, April 8, 1986, Committee Room 116. Parker and O'Kane not present. All staff present.

HEALTH
DEPARTMENT

Department of Health was represented by Robert Minkler, Donald E. Kerns, Mary Johnson, and Mark Wheeler. Also present: Jim Krusor, Board of Medical Examiners; Kay Myers, Iowa Nurses' Association; Lyle Krewson, Iowa Association of Homes for the Aging; Josephine Ham, Patient Care Committee; June Wilson and Beulah M. Lane, Care Center Residents Support Council, Cedar Rapids; Blaine Donaldson, Storm Lake; and Judy Lucas.

Agenda follows:

Intermediate care facilities, skilled nursing facilities, personnel, 58.11(1)"f," 59.13(1)"h" ARC 6427 ..N..... 3/26/86
Advanced emergency medical care, 132.1, 132.3(1), 132.3(1)"c" and "d," 132.4, 132.4(1), 132.4(3)"b,"
132.4(5)"b," 132.4(7), 132.4(8), 132.4(9)"b," 132.5(1), 132.5(8), 132.6(2)"a"(1), 132.8(2)"a" to "c"
132.8(4)"c," 132.13 ARC 6445N..... 3/26/86
Medical examiners, postgraduate training, 135.101(2) ARC 6446N..... 3/26/86
Hearing aid dealers, unethical business practices, 145.212(8)"f" ARC 6388 ..N..... 3/12/86
TB testing in care facilities--70-day delay VII IAB 16, ARC 6314 1-29-86

ch 58

Wheeler reported that the Department, in chapter 58, was proposing to include a 20-hour on-the-job training course with a six-month completion date for nurses aides, orderlies and attendants in intermediate care facilities and skilled facilities. A public hearing will be held April 15 in Des Moines and, as a result of numerous requests, an additional hearing has been scheduled in Cedar Rapids.

Tieden was interested in whether or not costs would increase. Wheeler said a number of industry representatives had indicated they could "live with" the training which should not significantly increase the cost. The sixty-hour training would still be required. Essentially, the industry wants well-trained personnel to avoid potential liability. Priebe and Tieden were interested in knowing more about the Cedar Rapids situation. Priebe asked Wheeler to appear at the May ARRC meeting to report on the results of the hearing.

132.4(7)

Krusor informed Doyle that fees referenced in 132.4(7) b(1) would be those set out in 132.4(9)b. Doyle recommended insertion of "as required in 132.4(9)" after "board" at the end of 132.4(7)b(1).

Krusor was doubtful that a person should become an EMT-D if they fail the examination. However, one repeat is allowed. The succinct course is directed at one area. Krusor stressed the importance of spontaneous reaction by EMT's.

Clark referred to 132.4(7) and observed that the classification system was confusing. In addition, she considered the change of "or" to "and" to be major. Krusor indicated that "or" was incorrect from the beginning--Iowa is liberal on accepting certification from other states.

HEALTH
DEPARTMENT
Concluded

No questions re 135.101(2). Howard explained that hearing aid dealers proposal required advertising related to hearing aids to include the name, office, address, and telephone number. The Department is not concerned about trade names.

TB testing Amendments to chapters 57, 58, 59, and 63 relative to TB testing in care facilities were before the Committee. The amendments appeared in ARC 6314, 1/19/86 IAB and had been delayed 70 days by the ARRC.

According to Minkler, the only comment received was from the Iowa Health Care Association who voiced support of the rules. In addition, TB testing was approved by the Board of Health. Dr. Laverne Wintermeyer of the Department was present to answer questions.

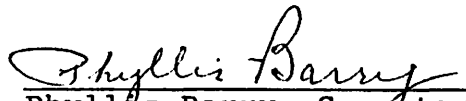
Donaldson reiterated his continuing opposition to the three-year TB testing for all residents in facilities. Wintermeyer cautioned against complacency in our responsibility to control and eradicate TB. In 1985, he knew of 60 cases of TB in Iowa.

Minkler noted that the last 10 years, the average length of stay in a care facility has been 20 months. The Committee agreed to review the rules again at the May 13 meeting.

Chairman Priebe recognized Judy Lucas, who spoke in support of the training requirements for care facility personnel. [ARC 6427] Lucas cited problem areas in care facilities which included: Improper diet, sanitary conditions, communication problems, and injuries to residents. Wilson concurred that many changes were needed in care facilities. She took the position that on-the-job training was important. Priebe saw lack of funding as a major problem. He referenced Title XIX costs and asked, "How long can private pay patients be asked to pick up costs for Title XIX people?" General discussion, no action.

Adjourned The meeting was adjourned at 9:20 a.m. Next meeting was scheduled for Tuesday and Wednesday, May 23 and 14, 1986.

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Vivian Haag

APPROVED:



CHAIRMAN