

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, February 8, 1983, 7:30 a.m.

Place of Meeting: Legislative Fiscal Bureau Conference Room, State Capitol, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Chairman, Senator Berl E. Priebe, Vice Chairman; Senators Edgar Holden and Dale Tieden; Representatives Ned F. Chiodo and Betty J. Clark.  
Also present: Joseph Royce, Committee Counsel, Kathryn Graf, Governor's Administrative Coordinator; Phyllis Barry, Deputy Code Editor, and Vivian Haag, Administrative Assistant.

Convened

Chairman Schroeder convened the meeting at 7:36 a.m. The first order of business was consideration of the following agenda from Department of Transportation:

TRANSPORTATION. DEPARTMENT OF [S20]

Special permits for operation and movement of vehicles and loads of excess size and weight. [07.F], 2.1(13)"b", 2.1(15) to 2.1(17), 2.3(1), 2.3(2)"f", 2.3(2)"h", 2.3(2)"i", 2.4, 2.5 ARC 3475 .F.....1/5/83

DEPARTMENT OF  
TRANSPORTATION

Candace Bakke, Gordon A. Sweitzer, Donna Rhone, Ron Hughes represented the Department. Also present: Chris Baethke, Warren Transport; Former Senator Gary Baugher, Mel-Ray Mobile Home Park; Ed Barnes, Bantam Division of Koehring, Waverly; Don Madole, John Deere; L. W. Simpson, Mid Seven Transfer Company; Doug McQuade, McQuade Heavy Hauling, Inc.; JoAnn Hutchinson, Jan & Bill Berry, Marilyn Oleson, Denise Maas, Beverly Rombke, Bob Fullerton, Gale Rogers, Veda Marie Dutton, Donna M. Paarman, Eldora Seegers and Joyce Polton, Escorts; Scott H. Hughes, Attorney, representing a group of official escorts.

Hughes addressed the rules which would abolish the need for "official escorts" to assist in movement of vehicles and loads of excess size and weight over Iowa highways. Virginia would then be the only state with official escorts. He referred to "a near-miss," which had been reported in Ames, Iowa, involving movement of an oversize load. The escort, who was not from Iowa, and driver did not have adequate instructions on the permit.

Hughes continued that he was a plaintiff's attorney, with a responsibility to ensure protection of his client's rights and adequate compensation for injuries. He contended the permit did not provide proper escort instructions, leaving the state vulnerable to lawsuit. Hughes made the point that a highly proficient escort could prevent an accident. He spoke of the advantages

TRANSPORTATION  
Continued

of official escorts--knowledge of road conditions, safety, width, strength of shoulder, oncoming traffic, curvature of hills and proper "run around" areas. He reviewed the economics of the situation--the jobs of 900 official escorts in Iowa will be jeopardized. Hughes declared that the rule change would benefit out-of-state industry, a large proportion of which are mobile home movers in the state. He cited 75¢ as the official per mile escort charge and 60¢ for civilian escorts--about \$45.00 for 300 miles and infinitesimal compared to the safety factor.

Hughes reasoned that industry complaint about "deadhead" charges while waiting for official escorts was a problem of poor business management--not of the escort. He knew of no "deadhead" fees. Hughes stressed that the only studies available, primarily "Economic Evaluation of Mobile Home Studies" were furnished by Bakke. He contended the statistics were not broken down to the point of permit licensing or an actual allowance of study of statistics available for actual movement of oversize loads by permits in the surrounding states and that, further, Bakke's arguments were based on obfuscation.

Hughes referenced study information from the Library of Congress--derived from National Technical Information Service, Department of Transportation, including Bureau of Motor Safety, Federal Highway Administration and National Highway Traffic Safety Administration, including the fatal accident reporting system and statistics which were not available with regard to accidents involving permits. Hughes referred to the letter he had sent to the Administrative Rules Review Committee urging the state of Iowa not to abandon "official escorts." It was his opinion the qualifications should be more stringent. He also displayed the manual used by Virginia and stated that escorts favor reinstatement of the performance test which was required a few years ago. Fees should be substantial enough to cover costs to provide testors and testing equipment. Further, official escorts support a course in safety regulations governing movement of oversize loads and limited police power for purposes of traffic control--for safety at bridges and underpasses.

Hughes requested ARRC to, at the very least, delay implementation of the rules for 45 days into the General Assembly, so that a joint resolution could be considered to disapprove them, refer them to the Lt. Governor and the Speaker of the House with recommendation that the rules be overcome by statute or delay them for 70-days to allow for further study. Finally, he presented letters in support of the official escorts.

Baethke spoke for Warren Transport and the Iowa Motor Truck Association, in support of the proposed changes. In re safety performance, he opined there was no difference between civilian and official escorts. Tieden asked him if his company believed escorts were necessary and he replied in the affirmative.

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TRANSPOR-  
TATION  
Continued

Barnes, as a domestic manufacturer, supported the rule which would decrease their cost. They felt threatened by the Japanese competition. Simpson restated his hope that the oversize loads would be permitted on interstates and he supported the rule.

Chairman Schroeder had received several letters in support of the rules and made them available for perusal.

Bakke saw no need for delay since DOT had devoted approximately 1½ years developing the rules. She continued the two studies used by DOT, which support the rules, were the only studies available. Bakke emphasized they were not suggesting that use of escorts be eliminated. She called attention to the fact that the federal government has passed a gas tax law which prohibits states from setting overall length limits on trucks, so there would be less need for escorts on over-length vehicles. Bakke reiterated the advantages, in some instances, of flashing lights in lieu of escorts. Also, there are no studies supporting safety value of escorts. DOT had polled surrounding states. Bakke added, "The most dangerous maneuver is passing two or three slow moving vehicles, including the oversize load, on two-lane roads."

Bakke defended the language on the permit with respect to "run around" and she reviewed last week's incident at Ames. She pointed out the state does not have authority on city streets or the secondary road system. Escorts are to contact cities for directions to safe routes. DOT relies on personnel responsible for issuing the permit to know the "run around"--they are more familiar with their streets than truck drivers or escorts. However, departmental engineers are responsible for knowledge of the shoulder strength of roads. Bakke pointed out that many escorts are employees of mobile home companies and construction companies, and she had accompanied one of their escorts two months ago. Bakke wondered if escorts would be willing to fund a course on safety regulations. She concluded that DOT had apprised every city and county of the rules changes and only one city expressed opposition.

Shuling expressed his belief that the DOT study was comprehensive and a benefit to the state. There was further discussion on the federal change pertaining to movement of oversize loads.

Oleson had no knowledge of a DOT letter being sent to Waterloo and Cedar Falls. The city officials had checked all files and could find none. Bakke explained the letter would be received by the city engineer.

McQuade had had experience with escorts--good and bad--and he supported the rules.

Hughes was allowed time for rebuttal to Bakke's comments.



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TRANSPORTATION  
Continued

He reasoned that if the escort and the oversize load maintain proper distance, passing motorists should not be subjected to risk. Hughes disagreed with DOT about "hands-on testing"--and their belief that testing would not qualify escorts to move oversize loads.

Paarman spoke in support of escorts and related some of her experiences in escorting. Baugher viewed the discussion as somewhat reminiscent of the debate over movement of 14-foot wide mobile homes with regard to safety. He voiced support of the rules.

There was brief discussion of the earlier statutes and the usefulness of escorts. In response to Priebe as to whether the self-employed escorts would be eligible for unemployment compensation, Bill Berry replied in the negative. Clark suspected that when rules of this type are changed, there is usually pressure from some source. However, Bakke denied that. She added that the first inquiry was from former Representative Kenneth Miller.

Maas made the point that official escorts would seek other employment and would not be available for escort work. Hutchinson, whose husband was unemployed, spoke of their financial dilemma.

Schroeder was confident there would still be a need for escorts. There was discussion of the fact that the rule becomes effective at midnight tonight. Royce reviewed committee options with regard to the rules.

Motion -  
refer to  
Legislature

Priebe moved that the matter [ARC 3475] be referred to the appropriate standing committees in the senate and the house.

Clark suggested that escorts keep their legislators apprised of the impact made by rules.

Vote

Priebe's motion carried unanimously with 5 ayes. Chiodo not present.

Recess

Chairman Schroeder called for a 5-minute recess at 8:30 a.m.

HOUSING  
FINANCE  
AUTHORITY

Bill McNarney and George Cosson appeared on behalf of the Housing Finance Authority to review the following:

HOUSING FINANCE AUTHORITY[495]  
Low or moderate income family, 1.S(11) ARC 3483 .....F.....1/5/83  
Group home facilities loan program, ch 6 ARC 3484 .....F.....1/5/83  
Contested case proceedings, ch 7 ARC 3485 .....F.....1/5/83  
General revenue bond procedures and small business loan program, chs 4 and 5, filed emergency after notice ARC 3482 .....1/5/83

Cosson recalled ARRC concern that the definition of "low or moderate income family" did not contain income eligibility limit--that limit was added. In re contested case proceedings, some technical changes were made to comply with the APA. Minor changes were made in chapter 4 at ARRC request.

HOUSING  
FINANCE  
AUTHORITY  
Continued

Rule 5.3--urban revitalization--was changed to set aside 10 percent of the bonding authority for use on small business loans. McNarney indicated that before bonds could be utilized for single-family housing, a legislative change would be needed.

McNarney reviewed present interest rates. In re 1.8(11), Holden requested inclusion of date certain with reference to the 1954 Revenue Code.

FAMILY FARM  
DEVELOPMENT  
AUTHORITY

William Greiner represented Iowa Family Farm Development Authority for review of:

IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]  
Beginning farmer loan program, issuance of bond, 2.12, filed emergency ARC 3503 ..FE.....1/5/83  
Soil conservation loan program, issuance of bond, 4.4, filed emergency ARC 3504 .....FE.....1/5/83

Greiner said the rules were filed in response to the Tax Equity Fiscal Responsibility Act (TEFRA). Public hearings will be held prior to the bond issuance for beginning farmer and soil conservation loan programs. The bond issuance must also be approved by the Governor.

Clark and Greiner discussed their interpretation of "news-  
paper published and of general circulation in the county..." Greiner said the Bond Council had reviewed the rules and he cited problems with publication in general.

Tieden was advised that language in 2.12, 4th paragraph, "...another elected official of the state..." would be someone on the Executive Council. Holden pointed out need for inclusion of a date certain in 2.12 and 4.4. Tieden opined language in 4.4, second paragraph, could be clearer. No formal action taken.

HEALTH DEPT. Susan Brammer, Assistant Attorney General, Etta Chesterman, Bill Dietch, John Buckley, Ken Choquette, John Eure, Jim Krusor, Doug York and Mike Guely appeared for review of Health Department rules as follows:

HEALTH DEPARTMENT[470]  
Intermediate care and skilled nursing facilities, use of restraints, 58.43(7)"d", 59.48(7)"d", 64.49(7)"d", 58.43(7)"f",  
59.48(7)"f", 64.49(7)"f" ARC 3468 .....N.....1/5/83  
Licensing of mobile home parks, ch 71 ARC 3517 .....N.....1/19/83  
Advanced emergency medical care, pilot program, 132.12(4), filed emergency ARC 3474 ..FE.....1/5/83

Also present: Larry Breeding, Iowa Health Care Association; Elosie Manternach, Association of Retarded Citizens; Jim Kelly, Protection and Advocacy Division of Iowa Civil Rights.

Use of restraints in intermediate care and skilled nursing facilities were explained by Brammer. After some experience, two of the rules were found to be unworkable and the proposed amendments would eliminate the time-consuming requirement of documenting, every thirty minutes, that a resident is restrained. Kelly felt some type of documentation was needed and suggested time clocks or nightwatchman clocks.

Schroeder expressed support for the Department. Kelly contended the 30-minute check protects the patient and reduces liability of the facility. He took the position it was the

HEALTH  
DEPARTMENT

"bad people" who created need for laws, not those doing their job well. Chesterman argued "good people" will check the resident every 30 minutes regardless of whether documentation is required. She continued that the amount of time utilized by the staff person in paperwork was taking valuable time away from residents. Clark was hopeful a compromise could be made. Chesterman noted that many patients are restrained, but not necessarily in bed.

According to Brammer, the Iowa Veterans Home and Commissioner of DSS support the change. Clark pondered whether there would be more law suits with or without change. Tieden had visited several facilities last weekend and recognized that lack of staff was a problem. Priebe wondered if this issue was part of the patients bill of rights. He had received many letters on the matter. He requested that information where Iowa is more restrictive than the federal requirements be sent to Royce and Graf.

Chesterman assured Clark that nursing assessment is on-going--when there is any change in the patient, it is documented.

Chapter 71  
Deferred  
132.12(4)

Chapter 71 review was temporarily deferred. Discussion moved to ARC 3474, advanced emergency medical care pilot program, which was being extended to December 31, 1983.

In response to Priebe, Guely agreed to call the Bancroft Mayor to clarify some misunderstanding with respect to the program.

INSURANCE  
DEPARTMENT

Craig Goettsch, Securities Superintendent, Richard Hurst, Deputy Commissioner, Rita Garland, Examiner, Richard Baldwin, Chief Examiner, Denise Horner, Attorney, Fred Haskins, Assistant Attorney General, and Amy Beattie, Intern Lawyer, were present on behalf of Insurance Department for review of:

INSURANCE DEPARTMENT[510]  
Continuing education for insurance agents, 11.1(3) ARC 3465 .F.....1/5/83  
Commodity pool programs, 50.80 ARC 3507 ...F.....1/19/83  
Benevolent associations, reporting requirements on licensees, insurance holding company systems, 8.4(2), amendments to ch 9, 45.1 ARC 3513 ...X.....1/19/83  
Prearranged funeral plans, ch 19 ARC 3514. X.....1/19/83

Also present: Jamie A. Wade, Davis Law Firm, representing Shearson/Amex.

## 11.1(3)

Horner explained that filed subrule 11.1(3) would exempt only those insurance agents subject to and in compliance with Continuing Education requirements in their state of residence as directed by a recent AG opinion. Schroeder was informed that approximately five states have CE for their agents. Schroeder and Priebe questioned whether the rule stated the intent as expressed by the Department. Horner reiterated that all agents would be subject to CE in Iowa.

Commodity  
pool pro-  
grams  
50.80

Committee members praised Goettsch for his explanation of the rule when it was under Notice. Goettsch noted two changes in 50.80(4)e and 59.80(2). Wade had no real opposition to the concept of the rules except for sections prohibiting an af-



INSURANCE  
DEPARTMENT  
Continued

affiliated adviser to the pools and generation of commission to the sponsor. Shearson/American Express Pools have certain built-in safety factors to prevent the conflict of interest the rules are designed to prevent. He asked the agency's opinion as to whether these guidelines were now preempted by federal statute signed by the President, January 11, 1983. Specific language says that there will be no registration by the states and no jurisdiction over commodity pools.

Goettsch responded that the guidelines prohibit affiliated trading advisers. This creates an extreme conflict of interest when that person who dictates which trades are made is an affiliate. "Churning" becomes a real possibility. The Securities Division has continued to maintain that is the "heart" or one key provision of the guidelines. Goettsch admitted that the pre-emption issue was a "thorny one." Many industry people contend that states have been pre-empted since 1975. Since that time, almost all of the pools have become registered, although the area lacks case law. He referenced a Kansas case of December 1982. Goettsch suspected there would be a court decision on pre-emption. No formal action taken.

HEALTH  
DEPARTMENT  
resumed

Discussion returned to Health Department and ARC 3517, licensing of mobile home parks, chapter 71. Choquette commented the rules were reorganized for clarity. Schroeder asked for a comparison between the old and new rules.

Responding to Tieden, Choquette indicated the public hearings were scheduled for this afternoon and Wednesday. Information had been sent to organizations that represent Mobile Home Park Owners.

Clark posed question re definition in 71.3(10) and was informed it was taken from Code Chapter 135D. General discussion of mobile home parks located on a flood plain in Des Moines.

Tieden questioned what would happen if cities had local boards of health. Choquette said cities with population of 15,000 could be so designated. Choquette reviewed definition of "cesspool" for Tieden.

Holden viewed the rules as a "bureaucracy gone wild!" It seemed to him that two or three different agencies were looking at the same problem. Choquette emphasized they were trying to avoid duplication. Chapter 135D directs specifics re sanitary facilities. He added that extra effort was made to coordinate with DEQ and DAWM and they have made it clear to local boards of health that inspection responsibility will be theirs. Choquette asked that the Department be apprised of any duplication. Eure agreed to prepare the comparison between the old and new rules and to provide the minutes of the hearing.

Schroeder called attention to the fact that every department had been requested by memo in the IAB & IAC to avoid massive rulemaking while the legislature is in session.

INSURANCE  
DEPARTMENT  
Resumed

Discussion of Insurance rules was resumed. Haskins introduced Baldwin who explained briefly the amendment to the benevolent association system rule 45.1. There are about 20 to 25 associations in Iowa which write life insurance and are post-loss assessment companies. No recommendations.

ch 19

Hurst discussed forms for prearranged funeral plans. The forms are being revised and the final version will be published in filed emergency rules.

REVENUE  
DEPARTMENT

Carl Castelda, Deputy Director, was present on behalf of to review the following:

## REVENUE DEPARTMENT[730]

Interest, 10.2(2) ARC 3478	.....	1/5/83
Practice and procedure - protests, declaratory rulings, 7.8, 7.25	ARC 3476	N..... 1/5/83
Returns and payment of tax, 12.1, filed emergency	ARC 3479	FE..... 1/5/83
Bonding procedure, sales tax permits, interstate commerce exemption, construction activities, 11.10(1)"e", 11.10(3), 12.3,		
17.8, 19.10(2)"m" ARC 3477	FE.....	1/5/83

There was brief discussion but no questions were posed.

Recess

Chairman Schroeder recessed the Committee for 15 minutes at 10:06 a.m.

BEER &  
LIQUOR  
DEPARTMENT

Rolland Gallagher, Director, William Armstrong, Legal Counsel, and Lynn M. Walding, Attorney General's Office, were present for review of procurement leasing of state liquor stores, 9.11(4), 9.16, ARC 3473, Filed, IAB 1/5/83.

Schroeder asked what the Department hoped to achieve by changing bidding control from the Council to the Department. Department officials responded the change was made at the request of the Executive Council under the former governor to avoid hearings on real estate matters. Schroeder recalled there was an appeal in process with respect to an Algona store. He would be inclined to accept the rules after all pending action was completed--including all cases now before the Department. It was Gallagher's understanding that they would operate under the existing rules until the amendments were in effect. Clark wondered if the amendments could be reworded to exempt appeals which are in process on a date certain. Mention was made of a 70-day delay.

Gallagher pointed out that the rules were filed with the Coordinator October 7, 1982[published under Notice October 27, 1982] and there were no appeals to the Executive Council until after that time.

Gallagher explained under the revised rule the Department would make the first decision and an appeal would be made to the Beer and Liquor Control Council. Walding clarified that the Council is appointed by the governor and the Council then selects the Director of the Department.

Priebe reviewed the problems with location of the Algona liquor store and said he had received calls from the two bidders regularly. Gallagher indicated the hearing on that issue had been delayed until after today's ARRC meeting. Priebe expressed opposition to that approach. Gallagher



BEER & LIQUOR  
DEPARTMENT

referenced a letter from the Executive Council dated November 17, 1982. Tieden recalled an experience of constituents who had received misinformation on a contract.

9.16

Graf addressed 9.16 stating that the governor's office takes the position these appeals should not routinely come before the Executive Council. However, she encouraged the Committee to delay the rule 70 days so that the Algona appeal process could be completed. Walding asked if it would be possible to amend the rule and grandfather in that matter. Graf responded in the negative.

Schroeder announced that the Committee would take no formal action at this point. If the rules have not been vetoed by the Governor today, Schroeder alerted Gallagher to expect a 70-day delay which could be lifted when the Algona case is completed. Gallagher pointed out that leases expire every month and more appeals were possible. Clark suggested that, within that 70-day delay time, an amendment should be proposed to provide that the rules "shall apply only to cases hereafter entered into."

Armstrong was advised to contact Royce and Graf as soon as the Algona matter was resolved.

## PUBLIC SAFETY

Wilbur R. Johnson, State Fire Marshal, Connie White, Commissioner's Office, and John Schaffner, Legislative Liaison, were present for review of:

## PUBLIC SAFETY DEPARTMENT(680)

Fire marshal - exit and fire escapes, 5.50, 5.100 to 5.102, 5.150 to 5.153, 5.200, <u>filed emergency</u>	ARC 3486	1/5/83
Fire marshal - oil burning equipment, 5.350	ARC 3516	1/19/83
Crime victim reparation, ch 17, <u>filed emergency after notice</u>	ARC 3506	1/19/83

In ARC 3486, former rules on exits and fire escapes were reinstated in Chapter 5.

5.350

Many large trucking installations can benefit from rule 5.350. Problems have not been great.

ch 17

Schaffner noted that chapter 17 reflected changes requested by ARRC. However, much of the language is statutory. According to Schaffner, 20 victims have sought application forms and the Department is prepared to pay one claim to a nurse who was beaten by armed robbers.

17.11

Schroeder could foresee possible problem with the first sentence of 17.11 which seemed to give broad power to the Department. Schaffner supported the language which had been excerpted from Workers Compensation law. He added there had been some precedence in having a neutral doctor examine the victim. General discussion.

17.12(1)

Although it was statutory, Priebe questioned adequacy of \$500 in 17.12(1).

No formal action by the Committee.

REAL ESTATE Gene Johnson, Director, and Ken Smith, Administrative Officer,  
COMMISSION appeared on behalf of Real Estate Commission for the following:

## REAL ESTATE COMMISSION[700]

Brokers and salespersons, fees, 1.13 ARC 3487 ..N.....1/5/83  
Brokers and salespersons, trust account, 1.27(2), 1.27(6) ARC 3488 ..N.....1/5/83  
Licensees of other jurisdictions, 2.3 ARC 3489 .....N.....1/5/83

1.13

Discussion of fees in 1.13. Schroeder referred to the breakdown provided by Johnson and asked for explanation of the \$90,000 "misjudgment or deficit" from current fees. Johnson said the number of licensee renewals this year was down because of the economy. Primarily though, the Commission has ascertained its true cost to the state by having available information relative to "soft costs." Legal services provided by the AG's office and other indirect costs amount to \$58,000 of the \$93,900 shortfall.

General discussion of the fee increases and accounting procedure. Committee members stated preference that the process be reflected in budgets. Johnson announced their hearing would be February 18.

1.27(6)

In re 1.27(6), Holden asked the rationale for requiring funds to be deposited in the broker's trust account. In his opinion, that conflicted with the Code with respect to sale of your own property. Johnson responded it was important in situations where real estate companies or real estate brokers are dealing both in third party brokerage and in land development. This was an attempt to clarify a matter the Commission has wrestled with for a long time. Schroeder and Holden opposed the rule.

Johnson stressed that the industry wants to be protected and the rule is more in conformance with what is occurring in the industry. Johnson did not believe it could be optional. He quoted from Code section 117.29 and Smith pointed out that in varying amounts of ownership, it is sometimes difficult to determine the owner. "Effective control" was a strong consideration by the Commission--no way to determine where that ownership ceases and "you are acting as an agent for someone else." Holden contended they were protecting the competitive real estate broker. Johnson said they were trying to protect the buyer and seller.

Holden opined, "If I defraud a buyer and put the money in the trust fund or not, I have placed myself in a position to be called before the licensing board, and may lose my license." He insisted there was no reason to demand that money be placed in a trust fund. Graf wondered if the Commission was concerned about the millionaire broker. Holden noted only those with the broker's license would be affected. Johnson had knowledge of opposition which would be presented at the public hearing. He agreed to convey Holden's opposition to the Commission.

Holden said he would stick to that controlling interest philosophy and make it permissive to put the money through the trust account.

REAL ESTATE In re 2.3(117), Schroeder asked if 2.3 would have an impact  
COMMISSION on Nebraska residents and Johnson replied in the negative--  
Continued the rule is for the protection of the public.

NURSING Ann S. Mowery, Executive Director, and Cliff Readout, Director  
BOARD of Adm., Board of Nursing, were present for review of:

## NURSING, BOARD OF [590]

Licensure to practice - registered nurse, 3.1(2), 3.1(3), 3.2(1)\*a\*(3), 3.3(1) ARC 3471 .N.....1/5/83  
Licensure to practice - licensed practical nurse, 4.1(1), 4.1(2), 4.1(3), 4.2(1)\*a\*(3), 4.3 ARC 3472 .N.....1/5/83

Responding to Schroeder's question, Mowery said the rule would set out the procedures being utilized for examinations. Fee changes reflect a change from annual to triennial licensing. The Committee requested the Board to provide information to substantiate the increased fees.

4.2(1)a Schroeder thought it odd that hospital birth certificate in 4.2(1)a would be unacceptable. Mowery said they did not want the original certificate, only a copy, and many people send the original. Clark suggested inclusion of "original certificate will not be accepted."

3.3(1)a Schroeder called attention to 3.3(1)a, use of "shall" and he preferred "may." Holden reiterated his problems with continuing education reporting--he would like all licensing boards to require better documentation. Mowery said they are now auditing for actual proof. Holden reasoned that an easy resolution would be to require the provider to issue a diploma. Mowery called attention to an incorrect number in line 5 of 3.1(3)--0289 should read 0280.

AGRICULTURE James Meimann, Elizabeth Duncan, D. D. McCracken and Harold  
DEPARTMENT W. Behnke, Agriculture Department representatives, reviewed:

## AGRICULTURE DEPARTMENT [30]

Referendum, ch 2 ARC 3490 .....F.....1/5/83  
Agricultural seeds, ch 5 ARC 3515 .....F.....1/19/83  
Meat and poultry inspection, ch 43 ARC 3469 ....N.....1/5/83

ch 2 Chapter 2 rules were substantially the same as under Notice except for changes in 2.4(1)g and 2.4(2)g.

2.3(1)c In re 2.3(1)c, Priebe raised question with respect to voting. Meimann said if a question arises, the Department has decided, if the two individuals market 250 bushels or more separately, each is entitled to a vote.

ch 5 Agriculture had deleted "breeder seed" from 5.6(1) in response to ARRC opposition. Schroeder noted seed corn was not included in 5.13(3). Behnke pointed out that seed corn was not hermetically sealed.

Schroeder was assured that all rules pertaining to exemptions were on file in the Agriculture Department. Duncan agreed to check the federal list of noxious weeds to learn if Black Nightshade is included. Behnke said the list had been in effect for a number of years. Schroeder was told that the rules for testing seed were the result of years and years of testing



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AGRICULTURE by seed analysts and commercial seed technologists who meet  
DEPARTMENT yearly. Committee members asked for inclusion of a date  
Continued certain in 5.2--seed testing.

ch 43 In re discussion of chapter 43, meat and poultry inspection,  
Holden was informed that no one attended the hearing on the  
rules. Priebe learned that 27 states are using federal in-  
spectors. Schroeder was critical of the Department for sub-  
mitting substantive rules when the legislature was in session.

Recess Chairman Schroeder recessed the meeting at 12:01 p.m. until  
3:30 p.m. Meeting was reconvened at 3:32 p.m.

AUDITOR OF Auditor of state leasing of personal property, chapter 13,  
STATE ARC 3491, Notice, IAB 1/5/83, was before the Committee.  
John Pringle reminded ARRC that the Legislature had author-  
ized leasing of personal property by savings and loan assoc-  
iations. In part, the Code section reads "A lease made under  
authority of this section shall have prior approval of the  
supervisor or be made pursuant to personal property.....  
rule of general applicability for use by all associations."  
The rule is general guideline to be used by all associations.

Tieden was assured that the term "net lease" was a common  
one. Schroeder raised question re 13.2(6), "full payout  
lease"--the language with respect to the estimated residual  
value of the property as to advisability of the "twenty-five  
percent" limitation in c. Pringle admitted that language  
was taken from federal regulations and he agreed to review  
it. No comments had been received from the industry.

COMMERCE Ronald Polle and Alexis Wodtke were present for review of  
COMMISSION Commerce Commission rules as follows:

COMMERCE COMMISSION[250]

Program for the continuous review of operations of rate-regulated public utilities ARC 3508 ...N..... 1/19/83  
Gas and electric utilities, pilot projects, 19.9(4), 20.10(9) ARC 3509 ...N..... 1/19/83  
Electric utilities, annual meeting, report, 23.4 ARC 3505 ...N..... 1/19/83

Also present: Jack B. Clark, Iowa Utility Association, and  
Don Heidebrecht, United Telephone Company.

Polle reviewed the fact that the rulemaking in ARC 3508 will  
implement 1981 Acts, Chapter 156,\$1 pertaining to continuous  
operation of utilities. Affected companies and persons are  
asked to offer proposals or ideas and comments about the  
general nature of rules. After that time, the rules will be  
drafted and published. Polle informed Holden that this was  
relative to the newly created Operations Review Division.  
However, Polle could not speak to whether additional funds  
would be requested.

Schroeder asked Commerce Commission to forward information on  
the \$160,000 assessment for disaster services, including  
the one person who was hired. Polle would relay that message  
to Chairman Varley.

According to Wodtke, 20.10(9) describes or delineates the  
Commission plan to include customers in pilot projects and

COMMERCE  
COMMISSION  
Continued

explains conditions for exemptions. Wodtke explained that 23.4 is a sequel to the Commission's initially noticed rule establishing a penalty for excess capacity. Commission has "pulled back" on the penalty rule and is proposing that an annual meeting be held to examine utilities forecasting and capacity extension plans.

23.4(1)

In 23.4(1), Tieden raised question as to meaning of filing information with the Commission. He contended Interstate Power would not be able to provide for the whole state. Wodtke said the system is sometimes larger than that part of the state they serve so Commerce wants their total system figures and the figures for demand within Iowa.

Wodtke continued that the National Electric Reliability Council was a group of utilities that essentially plans the reserve requirements for the various utilities to ensure they have sufficient power to supply needs plus reserve in the Midamerica Liability Council.

Tieden recalled strong accusation of "over-supply" of power, but he was sure all of the present systems had been approved. Wodtke responded that the certification statute was not in place at the time the Ottumwa generating station opened. Their excess capacity was considered in the last rate case. Wodtke agreed to check records as to whether construction of the station was approved. She was aware that the one about to come "on line" in Louisa County was approved by the Commission in the certification process. One argument made by the utilities was that, once approved, the Commission cannot regulate the amount of money the utility can recover from ratepayers. She concluded that it would probably become an issue in the next rate case.

No other questions or comments.

AGING  
COMMISSION

Lois Haecker and Mary Olson appeared on behalf of the Aging Commission for the following:

AGING, COMMISSION ON THE[20]

Designation of planning and service areas, 4.25(2) to 4.25(5) ARC 3481...F.....1/5/83

Long-term care ombudsman program, 4.2(1), 4.2(4)"F", filed emergency ARC 3480 F.F.....1/5/83

No questions were posed re designation of planning and service areas, 4.25(2) to 4.25(5). In re long-term care ombudsman program, ARRC had asked that the care review portion of the Ombudsman rules be deleted. No other comments.

Recess

Chairman Schroeder recessed the Committee for 10 minutes.

CONSER-  
VATION  
COMMISSION

Committee was reconvened with Conservation Commission. Stanley Kuhn appeared and briefly reviewed the land and water conservation fund grants-in-aid-program, chapter 72. He also announced that Congress had appropriated \$977,000 for the programs--half of that will be used at state level and the remainder for cities and counties. The Committee requested Kuhn to provide them with any pertinent information on the program.

NO AGENCY  
REPRE-  
SENTATIVES

No agency representatives were requested to appear for the following: <sup>2-8-83</sup>

ARTS COUNCIL[100]

Policies and procedures - programs, forms, 2.3(2)"b", 2.3(3)"e", 2.3(12), 2.3(14), 2.3(15), 3.1(12), 3.2(7), 3.5, 3.10 ARC 3466 *N* 1/5/83

BLIND, COMMISSION FOR[160]

Organization, 1.3 ARC 3467 *F* 1/5/83

CREDIT UNION DEPARTMENT[295]

Department address change, 1.3(1), filed emergency ARC 3462 *FA* 1/5/83

Organizational, annual or special meetings - location, 2.1(5), filed emergency ARC 3463 *FA* 1/5/83

Merger voting procedure - mailed ballot, reporting results, 13.5(2), filed emergency ARC 3464 *FA* 1/5/83

EDUCATIONAL RADIO AND TELEVISION FACILITY BOARD[310]

Complete revision, chs 1 to 18, ARC 3088 terminated ARC 3470 *NT* 1/5/83

ENVIRONMENTAL QUALITY DEPARTMENT[400]

Water quality standards, water use designations, 16.3(5)"e" ARC 3492 *N* 1/5/83

Minutes

Chairman Schroeder called for disposition of minutes of the January meeting. Unanimous consent to approve as submitted.

Emergency  
Notes in  
IAC

Barry called attention to the Editors' practice of inserting 6-point notes with asterisks in the Iowa Administrative Code to identify rules adopted under emergency provisions. She indicated the cost is quite substantial and asked permission to discontinue use of the notes on emergency rules which do not expire.

Motion

Chair called for a motion from the floor to delete emergency notes from the rules except for those instances where rules terminate in 180 days or have sunset provisions. Tieden so

Vote

moved. Motion carried. Barry said the information would still be included in the history of the chapter involved.

BEER &  
LIQUOR  
DEPT.

Chairman Schroeder resumed consideration of Beer and Liquor rules. It was noted that Governor Branstad had not vetoed 9.11(4), 9.16, ARC 3473, Filed, IAB 1/5/83.

Motion to  
Delay

Tieden moved that a 70-day delay be placed on ARC 3473 for further study. Motion carried unanimously with 5 ayes.

SOCIAL  
SERVICES

Judith Welp, Dan Gilbert, Carol Fredrich, Kathe Kellen, Miriam Turnbull, Mary Louise Filk, Will Miller and Morris Gater represented Department of Social Services for review of:

SOCIAL SERVICES DEPARTMENT[770]

Alternative diagnostic facilities, ch 34 ARC 3494 *F* 1/5/83

Group living foster care facilities for children, 114.3(2)"b"(3) ARC 3495 *F* 1/5/83

ADC, application, 40.4(1) ARC 3496 *N* 1/5/83

ADC, source of recoupment, 46.5(3) ARC 3497 *N* 1/5/83

Supplementary assistance, residential care, 52.1(3)"a" ARC 3498 *N* 1/5/83

Food stamp program, administration, 65.3, filed emergency ARC 3493 *N* 1/5/83

Medical assistance, eyeglasses, 77.6, 77.7, 77.23, 78.6(12), 78.6(13), 78.7(4), 78.7(5), 78.7(10), 78.7(11), 79.1(2), 79.1(6), 79.1(8) ARC 3501 *N* 1/5/83

Medical assistance, 78.1(13), ARC 3254 terminated ARC 3502 *NT* 1/5/83

Medical assistance, hysterectomy, 78.1(16)"j" ARC 3499 *N* 1/5/83

Medical assistance, appeal by provider of care, 79.4 ARC 3500 *N* 1/5/83

Intermediate care facilities, limitation of expenses, 81.6(11)"m", 82.5(11)"j" ARC 3511 *N* 1/19/83

Subsidized adoptions, 138.2 to 138.3 ARC 3512 *N* 1/19/83

Also present: Larry L. Breeding, Iowa Health Care Association, Russell Musilek, David A. Williams, Dennis McCullough, CeCe Zenti and Trish Smallenberger, Opticians Association of Iowa; Lois Copple, Wylie Opticians.



SOCIAL  
SERVICES  
Continued

Chairman Schroeder announced that, to accommodate interested individuals, discussion of medical assistance, eyeglasses, would be delayed until all other rules were reviewed.

ch 34  
46.5(3)

No comments re chapter 34, 114.3(2) and 40.4(1). Responding to Schroeder, Welp said they try to recoup errors that are made. In Schroeder's opinion, if the errors are made by the Department, families should not be penalized. Welp agreed to call this to the attention of the Department. She explained that original rules on recoupment did not provide for administrative errors.

52.1(3)a

Re supplementary assistance for residential care, Clark called attention to disagreement between DSS and Veterans Administration as to whether funds from the VA had to be counted by DSS. Gilbert agreed to try to resolve the problem at their next meeting with VA representatives.

Recess

Quorum call from Senate so Committee was in a five-minute recess. Reconvened.

65.3

No questions re food stamp program--65.3. Welp explained revision of 78.1(16)j with respect to medical assistance for a hysterectomy. Welp emphasized that payment cannot be allowed for sterilization. Clark asked "What if that is medically necessary?" and Welp answered that sterilization could be performed without a hysterectomy. There were no recommendations for 79.4.

Welp introduced Mary Louise Filk who was in training to become the DSS representative for rules.

Filk reviewed amendments to 81.6(11)m and 82.5(11)j which were intended to place the current ICMFR policy in line with actual cost for long-term care. Current limitation of \$800 per bed per year had not been amended for years. Schroeder envisioned problems in situations where a facility is sold two or three times. Miller said leasing individuals, through valid appraisals, will have to justify to DSS their leased costs.

138.2-138.8 According to Filk, the amendments to 138.2 to 138.8 cover policies and procedures not previously included. Filk indicated that Turnbull would be attending some of the meetings on subsidized adoptions. Schroeder thought DSS should always be represented.

Eyeglasses

The matter of medical assistance for eyeglasses was before the Committee, being amendments to chapters 77, 78 and 79. According to Welp, eyeglasses would be purchased from one laboratory within the state, selected through a bidding procedure. Opticians or optometrists prescribing glasses to a recipient would get them from that source--which, hopefully, would result in a cost-savings to the Department.

Schroeder favored competition as long as the designated price could be met. He feared an out-of-state entity would obtain

2-8-83

SOCIAL  
SERVICES  
Continued

the bid, which in his opinion, would be unfortunate. Kellen said they would encourage providers to have samples of all eyeglass frames, but this would not be required. Committee members expressed opposition to that plan which would be unfair to poor people. Holden was doubtful the plan was workable. He favored a maximum amount that would provide a reasonable quality in lenses and frames. He referenced the wide disparity in cost of frames. It was noted that the current fixed fee for frames was \$13.50. General discussion.

According to Kellen, DSS worked with optometrists and opticians in preparing the standards. This recommendation came from optometrists on the Medical Advisory Council. Clark wondered if the optometrists serving on Advisory Council would be excluded from the bidding process. Kellen did not believe there were lab members serving on the council.

Musilek, speaking for the Iowa Optician Association, indicated the Association had reservations about the rules. He mentioned frame styles and inherent problems. He estimated a need for 20,000 pairs of lenses and 13,500 frames--with only 7 choices of frames. It would not always be possible to cut a lense to fit an existing frame so a whole new pair would be needed. In addition, delay in service would be one big problem created by central purchasing. Musilek had submitted a position paper and he would attend the public hearing on February 11.

Kellen said that problem with frames and glasses that already exist would be considered. Musilek suggested the rules contained too many incentives for opticians not to provide services.

Economic  
Impact  
Statement

Tieden inquired as to the success of central purchasing in Wisconsin. The response was it depends upon whom you ask. Clark interjected that more information was needed and she moved that ARRC request DSS to prepare an economic impact statement. Motion carried with 5 ayes. Priebe absent.

Lois Copple, Wylie Opticians, expressed opposition to having any specific laboratory manufacture eyeware for the state of Iowa. She had sent a letter stating her views on the issue. Copple spoke of the care required in servicing eyeware and suggested that several labs should be available.

In conclusion, Musilek suggesting setting flat rates for lenses, frames, repairs and services. This would save time for the dispenser and processing time for the state. Holden thought a providers' cost proposal for 10, 20 or 25 frames should be presented.

Tieden was advised that contact lenses were allowed after cataract surgery. Pricing was discussed briefly. Mention was made of retrieving information from the state data base on costs of past years. No formal action.



MERIT  
EMPLOYMENT

Schroeder recalled that the ARRC had requested an AG opinion concerning Merit Employment rules. The opinion had been received holding that the Merit Department was on course with their rules. He stated that, at this time, it would be appropriate to lift the 70-day delay on the rules.

Ed Moses reiterated his interpretation of the statute and his disagreement with the AG opinion. Priebe interjected that ARRC has to abide by that opinion.

Motion to  
remove  
delay

Holden moved that the 70-day delay on Merit Employment Department rules as published 12/22/82 be lifted. Motion carried.

Committee  
Business

Schroeder announced that the Committee would be recessed until the fall of the gavel in case Revenue Department rules re the 1¢ sales tax increase would be available for review. No opposition expressed.

Royce brought up the matter that Judith Welp was being replaced as Department of Social Services liaison for rules. After general discussion, the Committee directed Royce to prepare a letter of commendation to Commissioner Michael Reagen. The Committee requests that DSS action be reconsidered inasmuch as Welp understands the rulemaking process, is trustworthy and has excellent rapport with this Committee.

## Recess

Chairman Schroeder recessed the meeting at 5:30 p.m. to be reconvened at the call of the Chair.

Reconvened  
February 24

Committee was reconvened February 24 at 12:45 p.m. with Schroeder, Priebe, Holden and Tieden present. Also present: Royce, Barry and Haag. Carl Castelda and Cindy Eisenhower appeared for Revenue for brief review of filed emergency amendments to sales and use tax rules, ARC 3580. [To be published in March 2, 1983 IAB]. No formal action taken.

## ARC 3580

Next meeting rescheduled for Monday, March 7, 1983, 7:30 a.m.

Respectfully submitted,

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

APPROVED:

*Lawrence Schroeder*

CHAIRMAN