

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Monday and Tuesday, March 11 and 12, 1985, and  
Wednesday, March 20, 1985.

Place of Meeting: Senate Committee Room 24, State Capitol, Des  
Moines, Iowa.

Members Present: Senator Berl E. Priebe, Chair; Representative  
James D. O'Kane (not present March 11), Vice Chair;  
Senator Donald V. Doyle; Senator Dale L. Tieden;  
Representatives Edward G. Parker and Betty Jean  
Clark. Also present: Joseph Royce, Committee  
Counsel; Kathryn Hove, Governor's Coordinator;  
Phyllis Barry, Deputy Code Editor, and Vivian  
Haag, Executive Administrator.

Meeting Convened Chairman Priebe convened the meeting at 7:30 a.m.  
in room 24.

HUMAN SERVICES The following rules of Human Services Department  
DEPARTMENT were before the ARRC:

ADC. granting assistance, 41.7(7)"x" ARC 5285	2/13/85
Supplementary and medical assistance, eligibility, 75.1(3), 75.1(14), 75.7, 51.8, filed without notice ARC 5296 (see also	2/13/85
Div. I, notice ARC 5297) F.W.N.	2/13/85
Food stamp program, 65.26 ARC 5287	2/13/85
Amount, duration and scope of medical and remedial services, 78.1(13) ARC 5288	2/13/85
Medically needy, ch 86 ARC 5289	2/13/85
Child care centers, 109.1(12), 109.3(7), 109.3(8), 109.6(3)"b" ARC 5290	2/13/85
Payments for foster care, 156.10(1), 156.10(3) ARC 5291	2/13/85
ADC. application, need standards, recoupment, 40.2(4), 41.8(4), 46.1 ARC 5284, also filed emergency ARC 5283 N.F.F.	2/13/85
ADC. granting assistance, recoupment, 41.7(2)"e", 41.7(7)"y", 41.7(9)"c"(2), 46.7(6) ARC 5310	2/13/85
ADC. payments, 45.4(2)"c", filed emergency after notice ARC 5286	2/13/85
Unemployed parent workfare program, 69.6(13) ARC 5344	2/27/85
Food stamp program, job search, 65.28 ARC 5311	2/13/85
Medical assistance, persons covered, 75.1(13), filed emergency ARC 5282	2/13/85
Medical and health services, genetic consultation clinics, 77.25, 78.27, 79.1(2) ARC 5345	2/27/85
Foster parent training, 113.8, 156.18, ch 117 ARC 5346	2/27/85
Social services block grant, 153.2(1), 153.2(4), 153.3(3), 153.5(3), 153.5(6), 153.6 ARC 5347	2/27/85

Department representatives in attendance were:  
Mary Ann Walker, Vivian Thompson, Dan Gilbert,  
Kathi Kellen, Jim Krogman, Stephen Gies, C. S.  
Ballinger, Don Herman, Harold Poore, Don Kearney,  
Cynthia Tracy and Don Kassar.

41.1(7) Discussion of 41.7(7). Clark inquired re gifts  
to ADC recipients and Walker said that gifts were  
not counted as income. Clark was advised that  
memorial money would be considered as money avail-  
able. Thompson explained that both loans and gifts  
were exempt. Clark wondered about exempting mem-  
orial funds if they were designated for education.  
Thompson advised that this practice would not be  
allowed under federal law.

chs 75, 65, 78  
86

No questions were forthcoming re amendments to  
chapter 75, 65.26 and 78.1(13). Walker stated  
chapter 86 implements a medically needy program  
for pregnant women and children under the age of  
twenty-one. A change from the emergency rules  
included removal of reference to legal guardian  
and clarification of how medical transportation  
expenses are verified.

HUMAN SERVICES  
DEPARTMENT  
Continued  
ch 109

In reviewing amendments to chapter 109, Walker reported that the Department contacted WIC officials per Tieden's request and learned that the restriction to use of milk with 2 per cent or less fat was no longer imposed.

156.10

Amendments to 156.10 address payment for reserve bed days in foster group care facilities. Modification was made following the Notice to allow reserve bed payment in shelter care when the child requires hospitalization. The Department maintains its position that payment should not be allowed when a child is sent home for trial visits.

No questions re amendments to 40.2(4) and 41.8(4). Priebe raised question on the definition of "procedural error" in 46.1(239). He wondered about a situation that produced an underpayment instead of overpayment. Kearney referred to chapter 43 of their rules which specifies that the Department makes up the corrective payment in those cases.

Responding to Parker, Gilbert said that agency error recoupment is 1 per cent, client error is 10 per cent. Priebe reasoned that was quite a discrepancy. Kearney stressed they wanted to avoid unduly penalizing a client for departmental error. The 10 per cent is intended to discourage nonreporting of overpayments. No other questions.

41.7(2) et al

No recommendations for 41.7(2) et al, 45.4(2)c and 59.6(13). Walker discussed the confusion at federal level surrounding job search requirements. Iowa has taken the position that federal regulations mandate job search to remain eligible for food stamps. In answer to Priebe, Walker said the Department has no staff involved. Recipients are listed on computer printouts and the matter is handled by Job Service--\$400,000 is available this year.

Tieden was informed that 65.28(1) b and c were federal requirements. No questions re 75.1(13) and 77. 25 et al.

113.8 et al

In review of rules pertaining to foster parent training, Tieden wondered if the changes would be detrimental to the Foster Care Program. Walker suspected there would always be opposition to training, but added that the legislation had the support of the Foster Parents Association. There was brief discussion as to whether or not law changes might be needed.

ch 153  
Block grants

Walker recalled controversy over block grant distribution to counties and she distributed information on the subject. Previously, allocation was based on 50 per cent past usage and 50 per cent share of the

HUMAN SERVICES  
DEPARTMENT  
Concluded

poverty population. The Council on Human Services asked that the rule be promulgated to make a change to one-third past usage, one-third poverty population and one-third population. Parker pointed out that the Advisory Committee which advises the Council on allocation of Social Services Block Grants did not recommend the change. Walker noted that 66 counties will lose money and 33 will gain--funding was \$1.2 million per year. Scheduled hearings had not been held as yet.

Hove wondered why anything other than the poverty population was considered. Walker said that Johnson County, because of University of Iowa students, is one of the larger recipients of funds. Hove questioned whether the students should qualify for the funds. Kassir cited graduate students in Johnson County as the only problem area. All students not living in dorms were included in the last census. The Department could not exclude students but used a weighting formula to divert funds from Johnson to Linn County.

Kassar advised Parker that the poverty population is evaluated yearly. Walker stated that a majority of local-purchase money funds programs for the retarded. She added that many counties have taken a much greater interest in those groups and the elimination of past usage would really penalize ongoing programs. Walker pointed out that county boards of supervisors have already certified their budgets.

Motion to  
Refer to GA

Even though Department officials said the Legislature was well aware of the situation, Priebe thought the appropriate legislative committees should be notified. Parker moved that the matter be referred to the standing Human Services Committees. Motion carried.

BEER & LIQUOR  
CONTROL DEPT

William Armstrong appeared for review of:

Procurement leasing of state liquor stores, 9.10, 9.13(1)	ARC 5305	/	2/13/85
Central offices, 1.6	ARC 5299	/	2/13/85
Liquor licenses - beer permits, 4.4(3), 4.7(6), 4.13, 4.18, 4.20(1), 4.20(4), 4.21, 4.27, 4.32 to 4.37	ARC 5300	/	2/13/85
License and permit division, 5.1(2), 5.1(7), 5.7(1)	ARC 5301	/	2/13/85
Complaint procedure, 10.2, 10.14	ARC 5302	/	2/13/85
Forms, 12.2(7)	ARC 5303	/	2/13/85
Operation of liquor stores, liquor mailgrams, nepotism, 13.2, 13.3	ARC 5304	/	2/13/85

9.10  
9.13

Priebe challenged language in the preamble re public hearing in 9.10, 9.13(1) and recommended that it be worded in a clearer manner in subsequent filings. Priebe inquired as to the reason for new language in 9.10. Armstrong recalled that the ARRC had opposed only 9.13(1)e and he had apprised the Council. Tieden was of the opinion that the Department was within their authority but asked why the Department chose this "route." Armstrong replied that the Council saw no need for open bidding in this particular case. He added that negotiating for renewal of the lease works well for the Department and open bidding does not really save money.

BEER & LIQUOR  
CONTROL DEPT.  
Continued

Priebe expressed preference for open bidding contending a current lessee has a definite advantage. Parker was interested in knowing the duration of most leases and asked what percentage of new facilities were built explicitly for that purpose. Armstrong agreed to provide that information on Tuesday.

Motion to  
Object

Doyle moved to object to 9.13(1)e. Motion carried. O'Kane absent. The following objection was prepared by Royce:

At it's March 11th meeting the committee objected to paragraph 150 IAC 9.13(1)'e', on the grounds that it is unreasonable. This paragraph appears in VII IAB 17 (2-13-85) as part of ARC 5305.

The paragraph empowers the department to negotiate rather than bid out the renewal of liquor store leases for up to two additional terms. It is the opinion of the committee that open bidding is the preferred method to obtain leases, except in those rare circumstances where a property is so desirable that an appropriate substitute does not exist. The other provisions of subrule 9.13(1) already allow the negotiation of bids in several specific circumstances. Paragraph 'e' is more general, allowing negotiations for lease renewals under almost any circumstance. The committee believes that this is an unnecessary 'blank check' which could well remove all lease renewals from the bidding process.

4.7(6)

Doyle questioned reference to miniatures in 4.7(6). Armstrong said miniatures are sold from time to time, generally around Christmas. In response to Tieden, Armstrong said time for appeal was shortened to 15 days to avoid unwarranted slowing of the proces--10.14.

10.14

Parker asked Royce if a uniform administrative appeal process existed in all departments. Royce cited basic guidelines in chapter 17A. He continued that there are varying levels from agency to agency.

No questions re chapter 5 or 12 amendments. Armstrong described liquor mailgrams which will be prohibited by 13.2. In considering 13.3, which sets out the Council's policy on nepotism, Clark could foresee problems for small communities. Armstrong emphasized that the rule was not an absolute ban but would require approval of certain appointments.

Clark suggested deletion of language in 13.3, last sentence: "and absent such approval shall not be made." Priebe expressed his opposition to the nepotism rule and recommended striking all but the first sentence of 13.3. Armstrong agreed to provide details when he returns on Tuesday.

CONSERVATION  
COMMISSION

The following rules were before ARRC:

Falconry regulations, 18.1, 18.5(1), 18.5(3)	ARC 5354	✓	2/27/85
Cost assistance program to promote wildlife habitat on private lands, ch 22	ARC 5355	✓	2/27/85
Forest and fruit-tree reservations, ch 53	ARC 5356	✓	2/27/85
Falconry regulations for hunting game, ch 100	ARC 5357	✓	2/27/85
Rabbit and squirrel hunting season, 102.1 to 102.3	ARC 5358	✓	2/27/85
Pheasant, quail, and gray (Hungarian) partridge hunting seasons, 103.1 to 103.3	ARC 5359	✓	2/27/85
Mink, muskrat, raccoon, badgers, opossum, striped skunk, red and gray fox, beaver seasons, 104.1 to 104.4	ARC 5349	✓	2/27/85
Deer hunting regulations, ch 106	ARC 5350	✓	2/27/85
Waterfowl and coot hunting seasons, 107.1 to 107.3, 107.4(1), 107.4(2)	ARC 5351	✓	2/27/85
Common snipe, Virginia rail, sora, woodcock and ruffed grouse hunting seasons, 109.1 to 109.4	ARC 5352	✓	2/27/85
Wild turkey fall hunting regulations, 112.1, 112.2, 112.4	ARC 5353	✓	2/27/85

CONSERVATION  
COMMISSION  
Continued  
ch 100

Al Farris discussed chapter 18 amendments and told the Committee that there were 18 to 24 falconry licenses in the state. Several changes were made following the Notice. Farris also presented proposed chapter 100 which would regulate hunting game by falconers. A possible area of controversy is in 100.3 where falconers could take pheasant (both sexes).

ch 22

Bishop gave brief explanation of chapter 22 and noted that no one attended public hearing and no official comments were received. Tieden had raised concern about "atrazine" and "herbicide" was substituted for clarification.

ch 53

Hertel gave brief explanation of the new chapter 53 written to implement 1984 Acts, ch 1222. There was discussion of 53.2. Tieden reiterated concern as to reporting by county assessors when they lack staff to inspect the large number of plats in his area. Hertel referred to pending legislation and said aerial photos may be allowed.

chs 102-104

No recommendations were offered for chapters 102 to 104. Bishop pointed out a change in 103.1--"No person shall transport a pheasant within the state without a leg attached."

ch 106

Bishop reported that changes in the deer season rules [ch 106] include provision for hunting of antlerless deer on the Iowa Army Ammunition Plant grounds. Tieden discussed "any sex license" and the fact that hunters had bagged quite a few buck. He did not view that approach as controlling population. He preferred hunting of antlerless deer for control purposes.

Bishop took the position that control was possible with any sex license. He referenced a file of complaints from farmers who contend there are not too many deer and others complain that the season is too long.

106.5(5)

Re 106.5(5), hunting adjacent to or through Union Slough Refuge, Priebe mentioned that pending legislation would permit hunting from any roads. Bishop recalled some problems in the Slough. Priebe reasoned there were plenty of deer in the Slough and hunting should be permitted from the road.

Bishop said that free "any sex licenses" will be given to landowners who apply in the second season. Conservation officials maintain the landowner should be given some incentive for feeding the deer. Priebe opined something should be included for those landowners who purchase licenses. In response to Parker, Bishop replied that the number of deer killed per billion miles driven had been one of the best indicators of deer population--35,000 deer were killed two years ago.

CONSERVATION  
COMMISSION  
Continued

Aerial surveys are also used. Priebe inquired about the number of barren does. Although there was no documentation, Bishop doubted this was a problem. He opined that Iowa has one of the most productive herds in the country. When checking for brucellosis in southern Iowa deer, 173 blood samples were taken with one possible case--the second test did not show. It was Priebe's understanding that brucellosis would not show in blood tests--only in reproduction. He asked Bishop to pursue the matter.

ch 107 Bishop informed the Committee that waterfowl populations were down but recommendations from the Flyway Council were not yet available. Tieden was advised that the season was opened in September since northern Iowa hunters were missing the teal flight. No questions re 109.1 to 109.4.

ch 112 Tieden observed there were many more wild turkey open seasons for bow and arrow than for shotgun. Bishop stated that the success rate is 3 per cent or less and, in his opinion, the zones for turkey were unnecessary. Bow hunting has no impact, no benefit. Tieden had received complaints on the fact that fall bow hunting was allowed before shotgun hunting.

Bishop concurred with Clark's idea that verbiage describing the zones was unnecessary.

CORRECTIONS  
DEPARTMENT

John Mathes, Paul Muller, and Broxann Keigley appeared for the Department of Corrections to review:

CORRECTIONS, DEPARTMENT OF [291]

Furloughs, home work release, jail facilities, 20.12, 44.8, 50.2(2), 50.9(2) ARC 5313 ..N..... 2/13/85

Also present: William Angrick, Citizens' Aide, and Doneen Willard, Assistant.

ch 20 Keigley explained amendments to furlough rules which will be more restrictive following concerns raised by the general public. She called attention to the major changes.

Clark and Doyle pointed out possible grammar change in 20.12a--add a comma after "rape". Tieden questioned change of time--11:00 p.m to 10:00 p.m.--for return from furlough. According to Keigley, the Department wanted to ensure more safety without undermining the overall program. Emergency furlough was added at level 1, primarily for deathbed visits or funerals.

20.12(6)a(4) Tieden asked for explanation of time scheduled away from phone--20.12(6)a(4). Keigley responded that the plan was specifically laid out and the individual could be away from a telephone for as long as four hours. The minimum live-out status describes the different release living situations.

CORRECTIONS  
DEPARTMENT  
Continued

Angrick expressed support for the rules but offered suggestions for improvement. He was hopeful that the term "history of same" in 20.12(1)a would be further defined. The term should include prior charges as have been defined here. Angrick thought it was important for the Department and Board to consider whether original charge/plea bargains would be included in the "history of same." He had discussed this with the assistant attorney general--some histories may not be appropriate in determining whether or not the individual is furlough eligible. Angrick wanted clarification re notification of Board of Parole and the Department. He favored a written rather than verbal communication. Keigley had no problem with including Department policy in the rules if the Director and Board concur.

Doyle was curious about the AG's position re constitutionality with respect to a case that has been dismissed. Angrick was hopeful a dismissal for reasons other than a plea bargain would not work against the inmate. He saw the problem as being whether that distinction could be made. Doyle advised caution against including provisions which could overturn the entire rule. He recommended seeking an AG's opinion on the matter.

Angrick was concerned that the generality of "history of same" could lead to a variation in application from institution to institution.

Re written communication, Keigley stressed that the Department could not commit to what action the Parole Board would take. She reiterated that the Corrections Department wants to tie this to the release process and be aware that a parolee with a violent history is "on their way out." Keigley was willing to convey Angrick's suggestion to the Board.

50.9(2)

Discussion of 50.9(2) which, according to Keigley, was intended to allow the chief jail inspector flexibility for continued operation of a facility if corrective action were forthcoming. Keigley was willing to clarify the rule.

Angrick recalled a recent case of a fire in a jail which was in noncompliance. Doyle brought up the question of liability if waiver is granted. Priebe asked Keigley and Angrick to meet with the fire marshal for resolution of the problem.

Muller informed Parker that four jails were currently out of compliance. Brief discussion. Differences of opinion were expressed between Angrick and Muller re closing of facilities.

44.8(1)e

In 44.8(1)e, Doyle called attention to use of "honor time" and indicated that it is called "work time." Keigley would correct the paragraph.

3-11-85

INSURANCE DEPARTMENT Denise Horner, Deputy, Insurance Department, and J. N. Buckley, Health Department, were present for the following:

INSURANCE DEPARTMENT[510]  
HMO. quality of care. 40.5(11)b" ARC 5298 ..F..... 2/13/85  
Implementation of health data commission directives. 5.90 ARC 5329 ..N..... 2/27/85  
Unfair trade practices. 15.83 ARC 5330 .....N..... 2/27/85  
HMO. quality of care. 40.5(3). (Joint rules with Health Department) ARC 5321 ..N..... 2/13/85

40.5(11)b Amendments to 40.5(11)b were acceptable as published  
5.90 Horner gave brief review of Health Data Commission di-  
15.83 rectives in rule 5.90. Horner told the Committee that  
rule 15.83 resulted from action taken by the National  
Federation of the Blind, which has lobbied for federal  
legislation prohibiting discrimination against the blind  
relative to insurance. Royce and Horner discussed the  
fact that blindness in and of itself does not present  
a health or life risk--life expectancy is not shorter.  
The actuarial principle is not affected.

40.5(3) According to Horner, a public hearing was held re 40.5(3)  
but no one attended. However, positive comments had been  
received.

PLANNING & PROGRAMMING Lane Palmer was present for review of:

PLANNING AND PROGRAMMING[630]  
Community development block grant nonentitlement program. funding allocation. 23.9(7). filed emergency ARC 5238 ..F.. 2/27/85

23.9 According to Palmer, addition was made in 23.9 to fund  
worthwhile projects that were submitted during the first  
quarter. Palmer explained that, without quarterly allo-  
cation, funds would be depleted very early in the year.  
No action taken.

HEALTH DEPARTMENT Etta Christiansen, Health Facilities, appeared to review:

Hospitals and health care facilities. 61.4(3)e." "f" and "k." 57.11(3). 58.10(3). 59.12(3). 63.9(3). 57.11(5). 58.10(5).  
59.12(5). 63.9(5). 57.15. 63.15 57.15(2). 63.15(2). 58.15(2)c." 59.19(2)c." 64.13(15). 64.13(16) ARC 5324 ..N..... 2/13/85

Also present: Blaine Donaldson, Lyle Krewson, Iowa  
Association of Homes for Aging.  
The series of amendments require periodic physical exam-  
ination and TB testing for care facility personnel and  
residents.

51.4(3) Donaldson admitted the concept was good but impractical.  
Clark questioned need for physician's approval in Item  
3 amendments. Tieden suggested definition of "high risk  
area" in 51.4(3).

Donaldson cited increased costs to employees if they are  
required to obtain physician's written approval in order  
to return to work. He discussed possible reaction from  
a tuberculosis test for some of the elderly patients and  
if X ray is used, some would need to be transported to  
the hospital by ambulance.

Economic Impact Tieden took the Chair. He was interested in reason for  
the change and Chesterman cited a change in the philos-  
ophy of the Center for Disease Control and physicians.  
Parker moved that ARRC request an economic impact state-  
ment re hospitals and health care facilities rules found  
in ARC 5324. [Amendments to chapters 51, 57-59, 63 and 64.]  
Motion carried. - 3083 -



3-11-85

REVENUE  
DEPARTMENT  
Concluded

Carl Castelda, Gene Eich, Clair R. Cramer appeared on behalf of the Department of Revenue. The following was before the ARRC:

Games of skill, change, bingo and raffles, 7.24(1), 91.4, 91.5, 91.5(13), 91.6(1)(1), 92.3, 94.1, 94.5 ARC 5315 ..F..... 2/13/85  
Determination of net income, social security and railroad retirement benefits, 40.23 ARC 5316 ..F..... 2/13/85  
Penalty and interest, 44.3(5), example (j) ARC 5337 ..F..... 2/27/85  
Examination and certification of assessors and deputy assessors, 72.1(1), 72.1(3), 72.2(3), 72.2(6), 72.2(7), 72.2(8), 72.10, 72.18(1) ARC 5338 ..F..... 2/27/85  
Organization, public inspection, regulatory flexibility analysis procedures, 6.5 ARC 5339 ..N..... 2/27/85  
Tax on enumerated services, 19.13, notice ARC 5165 terminated ARC 5314 ..N..... 2/13/85  
Research activities credit, method of computing, 42.2(6), 52.4(5) ARC 5317 ..N..... 2/13/85  
Regulatory flexibility analysis - relating to 71.12(1)"a" ARC 5341 ..N..... 2/27/85  
Special review  
Social security number requirement, 94.3.....IAC

No questions re amendments to chapters 7, 91, 92, 94, 40.23, 44.3(5), 6.5 and chapter 72.

Castelda advised that 42.2(6) and 52.4(5) would be held in abeyance until the Department learns what action will be taken on the Internal Revenue Code update. Priebe resumed the Chair.

71.12(1)a According to Castelda, the Department has been requested to issue a regulatory flexibility analysis. Based on the Department's interpretation of the statute, determination was made that the requester organization was not entitled to the analysis. The request was denied but a summary of the Department's position was published. A public hearing on the denial was scheduled for March 20.

Special review of 94.3 was deferred.[See page 3089]

WATER, AIR  
& WASTE  
MANAGEMENT  
DEPT.

81.9(8) Chairman Priebe called on Allan Stokes, Deputy Director, of DWAWM to discuss subrule 81.9(8), IAC. Stokes said that in December 1984, the WAWM Commission added the new subrule pertaining to the method and procedures for certifying operators of water supply distribution systems serving populations of less than 250, wherein no treatment was required. The subrule was intended to implement a 1984 legislative change.

Stokes recalled that the ARRC formally objected to the subrule in February 1985 and referred the matter to the appropriate legislative committees. House Joint Resolution 4 which passed out of the Natural Resources Committee last week would serve to overturn the subrule. At an electronic meeting held March 8, DWAWM took emergency action to rescind subrule 81.9(8) and to strike references to it in 81.9(1) and 81.10(6).

Motion to Refer Document Royce suggested a formal motion to refer the rescission document to the Natural Resources Committee to give evidence that the issue was closed. Doyle so moved. Motion carried.

Minutes Doyle moved approval of the February minutes of the ARRC. Motion carried.

REAL ESTATE Ken Smith was present for discussion of:  
COMMISSION

Brokers and salespersons, offering of prizes, 1.20 ARC 5308 ..N..... 2/13/85

REAL ESTATE Also present: Bud Ewell and Ray Osthus, Iowa Association  
 COMMISSION of Realtors.  
 Continued

Royce commented there were realtors who believe the proposed rescission of rule 1.20 is unreasonable and wish to keep it intact. Smith stated that pressure to rescind originated with the Federal Trade Commission and brokers Coldwell Bankers and First Realty. He continued that the FTC alleges the rule violates antitrust and anti-competition laws and they are threatening suit.

Smith said the licensing law does not support the rule, and the Commission has been charged with exceeding its authority. Priebe wondered if the Legislative Committees should be notified for possible law change. Smith pointed out that the Illinois Supreme Court had overturned a law very similar to Iowa rule 1.20.

Motion to Parker moved that the Commerce Committees be notified of  
 Refer the problem. Motion carried.

Osthus spoke for the Association which was concerned for fraud and misrepresentation. They distributed a handout which set out ideas for regulation of "offers of inducements." Preferably, inducements would be eliminated except in the form of negotiation between the licensee and client. Osthus then reviewed a proposed amendment to Code section 117.34(9) which would accomplish this. In conclusion, Osthus could foresee increased costs being passed on to consumers.

Priebe suggested that the Association work with the legislative Chairs to whom the matter was referred.

Recess Chairman Priebe recessed the meeting at 11:00 a.m.

Reconvened Chairman Priebe reconvened the meeting Wednesday, March  
 Tuesday 12, 1985, 8:15 a.m. in Committee Room 24. All members  
 March 12 and staff were present.

BEER & William Armstrong returned to explain that Beer and  
 LIQUOR Liquor Department rule 13.3 was basically a restate-  
 CONTROL ment of Code section 71.1 relative to nepotism. The  
 DEPT rule was modified to incorporate the AG's interpreta-  
 tion of its applicability. Armstrong sought input on  
 the rule.

Hove pointed out it would not prohibit hiring of cousins, but would require Council approval. Priebe questioned the need for the rule. Doyle noted the law read "elected or appointed" not "hired." Clark saw no problem in providing knowledge about the hiring, but had reservations about the "third degree" consanguinity restriction. O'Kane recalled possible legislation on the subject and wanted to investigate.

3-12-85

TRANSPORTATION  
DEPARTMENT

Don Anderson, Bob Samuelson, Al Chrystal, Nancy Richardson and Norris Davis appeared on behalf of the Transportation Department for review of:

Highway division, primary road extensions, (06.J) ch 1: (06.L) chs 1 and 2: (06.P) ch 1 ARC 5309 .N..... 2/13/85  
Drivers licenses, (07.C) 13.5(2), 13.7(8), 13.7(9), 13.11(8)"c," "d" and "h," 13.13(11), 13.16, 13.20 ARC 5331 .N..... 2/27/85  
Financial responsibility, (07.C) 14.2, 14.3, 14.4(3)"a" and "b"(2), 14.4(5)"a" and "b," 14.5(2)"a"(1) ARC 5332 .N..... 2/27/85  
Financial assistance, (09.B) 1.3(2)"a" ARC 5333 ....N..... 2/27/85

Samuelson gave brief overview of the amendments affecting primary road extension rules. The Office of Maintenance coordinated the revision with other DOT officials. Their goal was to implement legislation, better define responsibility between the Department and cities, and be in a position to reduce exposure to unnecessary tort liability. Samuelson continued that the staff and AG interpreted Code §304.6 to authorize cost-sharing of construction, improvement and maintenance. The Department and city *exercise* concurrent jurisdiction over municipal extensions, the primary roads and all municipalities.

Code §313.36 states that the Department may maintain primary roads in cities. They have assumed that a 50-50 division would be appropriate but have exceeded that split in several areas of the rules. The Department funds virtually all of the new construction or reconstruction projects within a city. In some cases, the city shares in cost of storm sewers and relocating utilities. The Department pays 55 per cent and the city pays 45 per cent in improvements.

Samuelson reminded that the Code limits the Department to 35 per cent of their total fund to any municipal or to the total municipal extension costs in any one year.

Tieden asked for inclusion of dates certain in 1.2(3)g and 1.4(1)b. Clark asked for explanation of a "dedicated street." According to Samuelson, it is one that is, by the municipal or city code, reserved for street purposes whether or not it is a street. Joint responsibility covers the whole area--the rule identifies which parts of that area are city and which are DOT. O'Kane recalled a problem several years ago when certain things in the right-of-way were ineligible for shared payments. He thought it would be appropriate to define this in the rule. Department officials said that, in most construction, relocation of utilities within the right-of-way is paid by the city. In freeway construction, the Code provides for DOT to reimburse cities and municipalities for relocation of utilities. There was discussion of responsibility for lighting in residential areas.

[07,C]  
ch 13

Chrystal reviewed "cleanup" amendments to [07,C], chapter 13. Discussion of minor's school licenses and it was noted that students 14 to 16 years of age must live at least one mile from school to be issued

TRANSPORTATION  
DEPARTMENT  
Continued

a permit to drive to school. Tieden asked about length of suspension for one or more violations. Chrystal referenced Code §321.194 and responded that it would not be less than 30 days. Tieden saw no mention of this in the Code cite. Chrystal agreed to include actual time in the adopted rule. He informed Doyle that there is a 20-day advance notice of suspension--13.5(2)e(2).

13.7(8)

Re 13.7(8), Priebe asked if there were something on the driver's license to inform the individual that there is another "supplement." Chrystal pointed out that code 9 signifies a supplemental restriction. Royce raised question re driving privileges being restricted to certain diameter or radius of miles. Chrystal cited §321.186 as the Department's authority to examine incompetent operators--many times it is the elderly. Chrystal added that, almost without exception, the medical profession will direct the judgment. Chapter 14 amendments were merely "cleanup."

[09,B]  
1.3(2)a

Richardson explained that [09,B]1.3(2)a was revised in response to petition to prevent exclusion of the University of Iowa transit system from the state transit assistance program. O'Kane wondered if this conflicted with the definition of transit systems in Code chapter 601J. Richardson was unaware of a conflict but would pursue the question. Royce raised constitutional question in naming a specific entity. Richardson remembered that, initially, the submission was "generic" but the Commission preferred specifics to avoid opening up other possibilities.

Priebe suggested language "...to exclude any transit system eligible for state transit assistance funding." No other comments.

COMMERCE  
COMMISSION

Dennis Downing, Cindy Dilley and Ray Vawter, Jr. were present for advertisement, 16.8, delayed 1/8/85.

Downing summarized the opinion from the AG regarding the ARRC delay of rule 16.8--cost of advertising by utilities. The Commission had determined that the legislation called for all public utilities to be covered under Iowa Code §476.18(3). The opinion essentially agrees with the Commerce Commission that all public utilities were covered under that legislation. It was noted that the 70-day delay would expire next week.

RACING  
COMMISSION

Racing Commission rules were moved from the "No Rep" category for review on Monday, March 18 [later, date was changed to Wednesday, March 20, 1985].

Recess

Committee was recessed at 9:05 a.m.

Reconvened Chairman Priebe reconvened the recessed meeting, Wednesday, March 20, 1985, 8:15 a.m. in Committee Room 116, State Capitol. Members present: Priebe, O'Kane, Doyle, Tieden and Clark. Not present: Parker. All staff was present.

# RACING COMMISSION

Mick Lura appeared on behalf of Racing Commission to review:

Practice and procedure before racing commission and the board of stewards, ch 4	ARC 5363	N	2/27/85
Applications for track licenses and racing dates, 5.7(4)	ARC 5364	N	2/27/85
Greyhound racing, ch 7	ARC 5365	N	2/27/85
Mutuel departments, ch 8	ARC 5366	N	2/27/85

After a brief explanation of chapter 4, the Committee questioned reason for inclusion of "messenger bettors" in the definitions when it was not referenced in the rules. After general discussion, Lura agreed to confer with the assistant AG who drafted the rules and delete the definition, if necessary.

4.9 Lura, responding to question by Royce, said a racing steward is appointed under their general authority and he referred to Code chapter 99B. Clark questioned use of "or both" in rule 4.4 and Lura agreed to check it. Clark thought the language in 4.9 to be confusing and preferred uniformity of ideas. Priebe suggested "and" be substituted for "or" in line 12 of 4.9. Doyle was interested in how broad the statute was on 4.11--subpoenas. Lura and Royce would confer about the rule. Royce thought it was an appeal, not a contempt provision, in this case.

4.18 Clark contended that 4.18, last sentence, contained redundant language and suggested, "Therefore, this kind of evidence may be admitted and given probative effect." Lura was amenable. Doyle wondered if more specifics were needed in 4.15, paragraph 7. There were differing views on the interpretation of the paragraph and it was decided the matter should be reviewed with the Attorney General.

4.23 Doyle questioned derivation of the language in 4.32, subrules 2 and 3, and learned that it was plagiarized from Public Safety rules. He requested the Department to examine the subrules. The Committee recommended that "upon which it is based" be substituted for "upon which the same are based" in 4.23. Lura was willing to eliminate "it" in last sentence of 4.23(1). Priebe suggested that when the adopted rules are reviewed by the ARRC, the Department's legal counsel appear with them. Clark suggested that "attach" be substituted for "annex thereto such" in 4.23(3).

5.7(4) Lura pointed out that the existing rule--5.7(4)--makes it necessary to learn if anyone purchasing a membership is a felon. Priebe was told there had been no requests to appear at the hearing regarding this subrule. Royce reasoned that "substantial evidence" in line 3 of 5.7(4) was vague. He preferred use of "preponderance."

RACING  
COMMISSION  
Continued  
7.1

Lura said the Commission is very concerned that the integrity of license applicant be above reproach. Clark questioned wording in definitions of "age," "kennel name," "weighing in" and "weighing out" in 7.1. Lura explained that a maiden race is that in which a dog wins its first race, regardless of the number run. Clark suggested that 7.2(9), first paragraph, be revised to read: "A licensee, solely of its own volition and without any reason or excuse given, may eject or exclude any persons from the grounds or a part thereof provided such action is not founded on race, creed, color or national origin." She questioned whether "should" should be "shall" in 7.2(15).

7.2(9)

7.2(15)

7.3(9)

In 7.3(9), Clark wondered why Iowa was referenced in only paragraphs c and d. Discussion of "overt act of omission" in 7.3(10). Lura referred Doyle to chapter 3 for rules on declaratory ruling. There was discussion of 7.6(17) and 7.6(16)d. Lura clarified that it is understood by owners there is no choice of race on the part of the dog owner once dogs are brought to the track--that is a prerogative of track operators.

7.3(16)

In 7.3(16), Clark was of the opinion that use of "may" was not appropriate for all of the paragraphs--some should have "shall" which might necessitate two divisions. Doyle, in re 7.3(16)k(1), use of hypodermic syringe, thought that diabetics who carry needles would be precluded from working at a track. He suggested additional language: "unless otherwise approved by the Commissioner." Lura would consult the AG.

ch 8

No recommendations for chapter 8 which was standard industry language for pari-mutuel systems to be followed for dog and horse racing. No further comments.

REVENUE  
94.3

Carl Castelda, Deputy Director, was present for Department of Revenue special review of social security number requirement in rule 94.3 as published in the IAC.

O'Kane, who had requested the review, contended that the Code requires "names and addresses" only. He declared that, clearly, the Department has no statutory authority to add the social security number requirement. O'Kane and Doyle recalled that the social security requirement was amended out of the legislation.

Castelda was unsure as to original language, but cited Code sections 99B.2(2) and 99B.13 which gives the Director authority to adopt rules to carry out provisions of the chapter. The statute specifically addresses rules relating to books, records and accounts.

Castelda told of a similar issue in 1983 concerning Real Estate transfer tax--\$428A.1--where the Department required additional information including social security

REVENUE  
DEPARTMENT  
Continued

3-20-85

and telephone numbers. They relied on §428A.7 which gives the Director general rulemaking authority. The Iowa Association of Realtors filed suit against the Department arguing that social security number could not be required. The court ruled the two sections must be construed together. Based on that ruling, the Department relied on statutory authority under 99B to require social security numbers. Castelda emphasized the necessity of the rule to ensure proper enforcement of the bingo statute. O'Kane questioned the analogy since the Legislature had amended out the social security number requirement. Tieden read from the statute and interpreted it as permitting the Department to require social security numbers. O'Kane insisted that the Department should request that authority. Priebe left the matter open for possible review at the next meeting. Castelda agreed to provide copies of the court decision with respect to the Real Estate transfer tax matter and said the Attorney General would be contacted.

No Agency  
Reps

No agency representatives were requested to appear for the following:

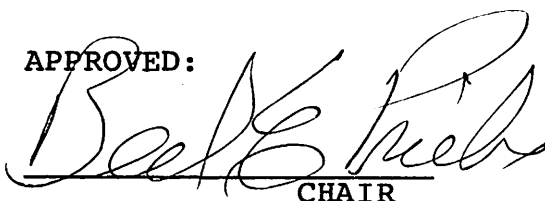
AGRICULTURE DEPARTMENT(30)  
Registration of Iowa foaled horses and Iowa-whelped dogs. 14.1, 14.2(1) ARC 5334 .F..... 2/27/85  
Food establishments. 38.9(2), 38.9(3) ARC 5319 .F..... 2/13/85  
Hotels, toilet and lavatory facilities. 39.4 ARC 5335 .F..... 2/27/85  
ATHLETICS COMMISSIONER(110)  
Amateur boxing, ch 4 ARC 5306 .....F..... 2/13/85  
ARTS COUNCIL(100)  
Folk arts apprenticeship program. 2.3(20)F through "g." filed emergency ARC 5348 .F.F..... 2/27/85  
COMMERCE COMMISSION(250)  
Rulemaking, regulatory flexibility analysis. 3.3(3), 3.8(3), 3.9 ARC 5336 .N..... 2/27/85  
Unclaimed deposits. 19.4(7), 20.4(8), 22.4(2)F, 22.4(2)F ARC 5322 .F..... 2/13/85  
ENERGY POLICY COUNCIL(380)  
Technical analysis and energy conservation -- grant programs for schools and hospitals. 8.6(2)F(7) and "a" 7(4), 8.6(4)F(7) and (2) ARC 5318 .....F..... 2/13/85  
IOWA FAMILY FARM DEVELOPMENT AUTHORITY(523)  
Beginning farmer loan program. 2.3(1) ARC 5307 .....F..... 2/13/85  
NURSING, BOARD OF(590)  
Nursing practice for RN/LPN. 6.4(1), 6.4(1)F, 6.5(2) ARC 5294 .F..... 2/13/85  
PAROLE, BOARD OF(615)  
Progress reports and inmate interviews, records review. 3.10 ARC 5367 .....F..... 2/27/85  
Progress reports and inmate interviews, conduct at parole proceedings. 3.21 to 3.24 ARC 5368 .F..... 2/27/85  
PUBLIC INSTRUCTION DEPARTMENT(670)  
Coaching authorization, ch 65 ARC 5326 .....F..... 2/13/85  
LABOR BUREAU OF(530)  
Discrimination against employees, ch 58 ARC 5360 .....N..... 2/27/85  
MERIT EMPLOYMENT DEPARTMENT(570)  
Grievances, appeals. 12.1, 12.1(1)F(4), 12.2(6), 12.2(7), notice ARC 5253 terminated ARC 5361 .NT..... 2/27/85  
Political activity. 16.1(8) ARC 5320 .....N..... 2/13/85  
PUBLIC INSTRUCTION DEPARTMENT(670)  
Schools, programs and support services for dropouts and dropout prevention, ch 58, notice ARC 4913 terminated ARC 5362 .....NT..... 2/27/85  
SECRETARY OF STATE(750)  
Election forms and instructions. 11.3 ARC 5295 .F..... 2/13/85  
FAIR BOARD(430)  
Race horse races. 7.22 ARC 5293 .....F..... 2/13/85  
HEALTH DEPARTMENT(470)  
Speech pathology and audiology examiners, board of (155,3)2 ARC 5292 .F..... 2/13/85  
Social work examiners, board of, ch 161 ARC 5325 .F..... 2/13/85  
Special supplemental food program for women, infants and children. 73.5 ARC 5323 ..... 2/13/85  
Mercury science examiners, board of. 147.5(9)3, 147.5(9)5, 147.5(10), 147.109 ARC 5348 ..... 2/27/85  
Cosmetology examiners, board of. 149.7(1) ARC 5345 ..... 2/27/85  
See Insurance Department (ARC 5321) for joint rules  
Radiation emitting equipment, chs 38 to 41 ARC 5327 .N..... 2/27/85

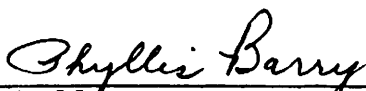
Adjourned

O'Kane moved adjournment at 9:20 a.m. Motion carried.  
Next regular meeting was scheduled for Monday, April 8, 1985, 7:30 a.m., one day ahead of the statutory date.

Respectfully submitted,

APPROVED:

  
CHAIR

  
Phyllis Barry, Secretary  
Assisted by Vivian Haag