

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting The regular meeting of the Administrative Rules Review Committee was held Tuesday and Wednesday, May 10 and 11, 1988, State Capitol, Des Moines, Iowa.

Members Present Senator Berl E. Priebe, Chairman; Representative Edward G. Parker, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives David M. Tabor and Betty Jean Clark. Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Vivian Haag, Executive Secretary. Also present: Barbara Booker Burnett, Governor's Administrative Rules Coordinator.

Convened Senator Doyle convened the meeting at 10:05 a.m., Room 24, State Capitol, Des Moines, Iowa.

HUMAN SERVICES DEPARTMENT The following Human Services Department representatives presented their agenda:

Granting assistance, medically needy, 41.7(2)"l"(1),(2), 41.8(2), 86.12(1) ARC 8701	N.	5/4/88
ADC eligibility under the SEID project, work and training programs, 48.3(3), 55.2(1)"a" ARC 8676	N.	5/4/88
Administration, 65.4(1), 65.19(6)"c"(5) ARC 8640	N.	4/20/88
Conditions of eligibility, application and investigation, 75.1(11)"b" to "g," 75.1(14)"a" to "f," 75.1(15), 75.1(15)"a,"		
75.1(15)"a"(3),(6), 75.1(15)"e," 75.1(20), 75.3(1) to 75.3(4), 75.13, 75.25, 76.1, 76.1(2), 76.1(4) to 76.1(6), 76.2(1),		
76.2(2), 76.4, 76.6, 76.7, 76.10(1), 76.10(1)"j," 76.10(2), 76.11 ARC 8639	N.	4/20/88
Intermediate care facilities, intermediate care facilities for the mentally retarded, 81.6(11)"o," 82.5(11)"m"		
ARC 8641	N.	4/20/88
Medically needy, 86.10(6) ARC 8642	N.	4/20/88
Health maintenance organizations, 88.3(2) ARC 8665	N.	4/20/88
State payment program for services to adults, ch 132 ARC 8638	N.	4/20/88
Gamblers assistance program, 162.1, 162.3(1), 162.4(3) ARC 8677	N.	5/4/88

Mary Ann Walker, Anita Smith, Nancy Haigh, Vivian Thompson, Michelle Clark, Cynthia Tracy, Jan Walters, Ruth Schlesinger, Don Kearny, Don Herman, Dan Gilbert, Cindy Dobson and William Turner.

No recommendations for amendments to 41.7(2) et al, 48.3 or 55.2(1).

65.4 Walker agreed to remove repetitious language from 65.4(1). It was pointed out that under federal requirements, if food stamps are lost in the mail, the client must pick up replacements at the local office. The client may authorize someone to do this.

No recommendations re amendments to Chapters 75 and 76.

86.10 In review of new language in 81.6(11) and 82.5(11), Walker said the Department looked at policies of other states before decision was made to modify the procedure for payment of legal fees. According to Walker, amendment to 86.10(6) clarifies eligibility for the medically needy program when resources are jointly owned by SSI- and ADC-related persons.

HUMAN
SERVICES
DEPARTMENT
(Cont.)
Ch 162

The ARRC members were advised that the definition of "compulsive gambler" was taken from the Department's Diagnostic and Statistical Manual (DSM). In 162.1, Clark wondered if the definition were acceptable to gamblers anonymous and Walker agreed to follow up on her question. Clark suspected more problems for those new to gambling.

88.3(2) Brief discussion of amendment to 88.3(2).

Ch 132 According to Walker, new Chapter 132 proposes rules for a program which provides services from state funds for persons who have not established legal settlement in a county. Walker also agreed to provide Tieden with budget information re the program.

Recess Committee was in recess for ten minutes.

NURSING BOARD Priebe took the Chair and called up the following rules for the Nursing Board:

PUBLIC HEALTH DEPARTMENT[641] "umbrella"		
Nursing education, 2.1, 2.3(2)"d," 2.6(1)"a," 2.6(2)"c" ARC 8696	F.....	5/4/88
Licensure to practice -- RN/LPN, 3.1. filed emergency after notice ARC 8695	FEAN..	5/4/88
Nursing practice for RN/LPN, 6.5(1)"c"(4) ARC 8652	F.....	4/20/88
Examination of public records, ch 11 ARC 8617	F.....	4/20/88
Licensure to practice RN/LPN, 3.2(2)"c" ARC 8616	N.....	4/20/88
Disciplinary proceedings, ch 4 ARC 8653	N.....	4/20/88

Ann Mowery, Executive Director, Edna Eaton, Chairman, and Lorinda Inman were present for the Board. Also present: Anita M. Stineman and Phyllis Harrell, Southeastern Community College; Gloria Stewart, Nursing Department Head, and Karen Sojka, Iowa Western Community College; Catherine Vance and Melinda Hanson, Northeast Iowa Technical Institute; John Bergman and Bill Ryan, Sure Care; Pamela Jeffries, Director, Iowa Methodist School of Nursing; Robert Kreamer, Attorney; Drew W. Allbritten, Executive Director, Association of Community College Trustees; Barbara Steen, Hawkeye Institute of Technology; Mel Schneider and Morris Hunt, Iowa Valley Community College; Norm Neilsen, Kirkwood Community College; Chet Rzonka, Director, and Dr. Jane Hzubl, Consultant, Program in Health Occupation Education; University of Iowa; Burgess Shriver, DMACC, Lois Heskett, Iowa Lakes Community College, and other interested individuals.

Ch 2 Eaton provided brief history of the rule making on Chapter 2 which had been delayed into the 1988 General Assembly. No legislative action was taken and the rules became effective [April 18, 1988.] Allbritten distributed copies of a position paper prepared by Rzonka. Amendments before the Committee today are a result of compromise.

Allbritten lauded programs at the community colleges where administrators have recognized the need and accepted the responsibility for advanced preparation for nursing education faculty. He asked that the

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BOARD
(Cont.)

effective date of the amendments to Chapter 2 be postponed one year citing the urgent need for greater numbers in the nursing profession to prevent a crisis. Mowery emphasized that the Board was aiming at more qualified professionals not the nursing shortage. She had no previous knowledge of a request for a year's delay. She pointed out that a Masters Degree in Nursing would not be mandatory for faculty until 1997.

Stineman spoke on behalf of Southeastern Community College and for health care consumers who ultimately may be the losers. She was not against the concept but contended that the rules were not practical in view of a shortage of personnel with masters in nursing. Stineman provided statistics and displayed a map of counties within the state where there were no masters prepared nurses in December 1986.

In summary, Stineman suspected that they would be unable to fill faculty positions and mandatory consultants would drain their funds. She contended that Community Colleges are making effort to upgrade the faculty and positions but it is a slow process. Summers-only programs take four summers and create scheduling problems.

2.6(2) "c"

Priebe referred to 2.6(2) "c" (2) and (3) and wondered if deletion of "rehired" would provide compromise for older faculty nearing retirement age. He also suggested extending September 1, 1988, to September 1, 1989, for the baccalaureate degree--2.6(2) "c" (1).

Clark reasoned that an extension of one year would serve no useful purpose. She thought the programs would develop as soon as the rules were effective.

Discussion continued and one issue of disagreement was the requirement to restrict the masters degree to nursing only. Several contended there was rationale to allow other fields, e.g. teaching.

Tabor commented that the issue had been studied at great length and it was his opinion the rules should go into effect.

Tieden expressed great faith in the area college system and wanted assurance that their programs would not be jeopardized. He declared that the shortage of nurses in rural areas was significant.

Sojka expressed concern about the September 1, 1988 deadline since they have no bachelors degree programs in Southwestern Iowa. She spoke of the impact on families--mostly single-parent women. Sojka continued that Iowa ranks 45th in the nation for salaries of community college faculty. Beginning salary for an

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(Cont.)

inexperienced RN at Glenwood is \$21,000. At Iowa Western, a teacher with three years' experience would earn \$16,359 for a nine and one-half month contract. She was interested in how the waiver provision in 2.6(2)"c"(6) would be implemented. Clark observed that sacrifices in earning college degrees were not unique to the nursing profession.

Although Eaton had been in rural areas for 26 years, she recognized the need to supply appropriately trained nurses for "the biggest business in the country"--health care. She noted that an agronomy instructor is required to have a doctoral degree. Vance cited difficulties in filling 11 openings. Only three applicants had masters degrees in nursing; one individual worked one quarter before leaving the state. Vance knew of no supporting evidence that the Community College System has failed. She alluded to student success on state boards, employer satisfaction, projected need, and current shortage of nurses.

Heskett read a statement from rural Northwestern Iowa Tech College in support of position by Chet Rzonka in opposing the revised nursing faculty education qualifications. As a representative of Iowa Lakes Community College, also, Heskett considered the amendments as a threat to the nursing program which she supervises. She predicted that quality of care would disintegrate.

Jeffries spoke in support of the Board recommendation and urged the ARRC to allow implementation of the rules. Stewart took the position that timing was poor for western Iowa.

Priebe questioned Mowery as to the circumstances under which the Board could or would grant a waiver--2.6(2)"c"(6). Mowery responded that the Board would have to determine that unusual or unforeseen circumstances existed. She cited an example of documented advertising done in a reasonable fashion with no response. Mowery emphasized that a concerted effort must be made to meet the standards. She pointed out that Board rules, for the last 12 years have "recommended" a bachelors degree in nursing but there was no movement by the schools to make that a requirement. Priebe suggested that legislative change could be pursued if waivers are not granted. He reiterated his concern with interpretation of "rehired" in 2.6(2)"c"(2) and (3). Priebe expressed concern for the individual who leaves teaching for a time to start a family, for example. He wondered, "Would she need a masters degree before she could return to work?" Discussion of "rehire."

Mowery commented on the high percentage of part-time faculty in community colleges. She could foresee an attempt to get these people acceptable and having to deal with issues such as pregnancy or legitimate illness.

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BOARD
(Cont.)

She agreed to review the use of "rehired." Priebe thought the issue of rehiring should be referred to the General Assembly.

Motion
Referred
to G.A.

Tieden moved that subrule 2.6(2)"c"(2) and (3) addressing the issue of faculty members who are "rehired" be referred to the Speaker of the House and President of the Senate for review by the appropriate standing committee. Vance was concerned about a faculty member who was earning a baccalaureate degree on a part-time basis but under the rules would not meet the criteria. Mowery reminded that the individual would be "grandfathered." Vance contended that the person would fall into the group where direction of an outside consultant would be required every three years.

Carried

Clark declared that it was absolutely impossible to draft rules or legislation to address every individual case and she preferred to consider the problems as they develop. The Tieden motion carried. Tieden reiterated his concern for availability of nurses and their training in rural areas.

Doyle clarified that the ARRC does not approve rules. However, since the Committee took no action to delay amendments to Chapter 2 of the Nursing Board, they will be effective 6/8/88.

Clark attributed the nurse shortage to the historically low salaries. No formal action taken on amendments to Chapters 3, 6 or 11.

Ch 4

Discussion of Chapter 4.

In response to questions raised by Royce with respect to fines, Mowery said that the maximum of \$1000 is imposed in most instances. She added that LPNs have trouble paying a fine and many do not renew their licenses because of lack of continuing education--4.17(6). Tieden was told that there was no Peer Review Committee even though procedures were outlined in 4.4. The Board makes a decision, depending upon the type of case. Mowery said the rule in question dealt with discipline of a "license." She was willing to clarify language. Doyle questioned provision in 4.17(5) which stated, "Failure of licensee to return the license shall be cause for the board to send the final decision to the press." Mowery stated that they prepare press releases on a regular basis. Doyle suggested substituting "news media" for "press".

Recess

Chairman Priebe recessed the Committee for lunch at 11:55 a.m. and reconvened them at 1:05 p.m.

REVENUE &
FINANCE
DEPARTMENT

Carl Castelda and Richard Stradley were present for the following agenda:

Procedure for nonlocal business entity bond forfeitures, 7.27 ARC 8663	F.....	4/20/88
Filing returns, payment of tax, penalty and interest; administration; assessments and refund; allocation and apportionment; assessments, refunds, appeals, 12.9, 30.11, 38.2(1)"a" and "f," 43.3(8)"b," 51.2(1)"a" and "f," 52.1(1), 52.4(6)"c," 52.6(10), 54.2(1), 54.7(5), 54.9, 55.3(5)"b," 57.2(1)"a" and "f," 60.3(5)"b" ARC 8675	F.....	5/4/88
Forms -- substitution of official Iowa tax returns, 8.25 to 8.35 ARC 8673	N.....	5/4/88
Assessment practices and equalization, 71.12(2)"c," 71.12(3)"c" ARC 8674	N.....	5/4/88
Administration, cigarette tax, tobacco tax, 81.10, 82.4(1), 83.3(1)"3," 83.3(2) ARC 8664	N.....	4/20/88
Video tapes purchased for resale -- Special review		

REVENUE AND
FINANCE
DEPARTMENT
(Cont.)

Also present: Ruth Mosher, Ombudsman's office, Peter Frederick, Associated Theater and Home View; Lynn Sparks, Road Show Video, Terry Dotson, Fridley Video and Robert Fridley, Fridley Theatres; Robert T. Maddison, Showtime Video; Carl Schwanbeck, Video Mart; James Emerson, Central States Theatres; Tim Denning, Tim's TV & Video; Vernon C. Mich, Video Village; Jim G. Finnegan, Richard Arnold, Floyd Schodt, Commtron Corp; Glen W. Kruse, Cartridge City; Andy Burton and Rich Eychaner, Movies to Go.

- 7.27 Castelda stated that rule 7.27 establishes procedure for forfeiture of bond. No questions.
- 12.9 et al. No questions re 12.9 et al. which were essentially "clean up" amendments.
- 8.25 -
8.35 Castelda described new rules 8.25 to 8.35 as providing guidance to taxpayers in use of reproduced, replacement, or computer-generated facsimiles of official Iowa tax forms. He explained that each color has significance but practitioners are not required to use colored forms. No action.
- 71.12 Castelda said that amendments to rule 71.12 would clarify procedures, in effect since 1983, for selecting equalization appraisals for residential and commercial real estate.
- 81.16 No questions re 81.16 et al.
- Video
Tapes Chairman Priebe announced a special review regarding imposition of sales tax on video tapes purchased for resale. The Department has been conducting spot check audits of video stores--approximately 18 in several areas, including Sioux City, Davenport, Burlington, and Ottumwa. Only one audit has been completed and sent to Des Moines for review. Castelda addressed the question of whether or not tax is due on the purchase of video tape by the dealer. He was not aware of controversy over the issue of collecting sales tax on basic tape rental. He then based his comments on those assumptions.
- Castelda recalled the history of tax imposed on rental situations. Equipment rental was changed to the rental of tangible personal property by the GA in 1985. At that point, Revenue took the position that the purchase of videos and movie and radio programs was subject to tax. An exemption for this material now appears in Code section 422.45(24). Items purchased for purposes of transmission where a fee was charged, or for general broadcasting to the public were exempt from the tax, retroactive to July 1, 1984.

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(Cont.)

Castelda mentioned the Department's involvement in a court case with Cedar Valley Leasing. C.V. Leasing contended that to pay tax on the item purchased to rent and collected tax on rental receipts was "double taxation." The Iowa Court ruled in favor of the Department, holding that sales tax is a "transaction tax." The GA responded with the exemption in 422.45(18). If rental on leased equipment is longer than a year, no sales tax is collected--it is collected on the rental.

Castelda continued that in 1986, the statute changed as it related to rental of tangible personal property--specifically vehicles. If rental is less than 60 days, sales tax is due on the purchase of the vehicle and on the rental receipts. If longer than 60 days, there would be no sales tax on the purchase. Statutory exceptions have been made over the years.

It was Castelda's understanding that stores purchase videos for rental, and when the movie loses its popularity, it is available for sale to the customer. The question is that sales tax was not collected when that movie was purchased for purposes of rental. He discussed the case law in Herman and Brown and Company which determined that something purchased for sale and available for sale, can be rented. The resale exemption would apply. In the Cedar Valley Leasing Case, the Court said that a rental is not a purchase for resale. Iowa statutes distinguish between those two terms.

After research, the Department determined that the factual situation was not the same as for Brown. Cedar Valley Leasing, in some instances, never took possession of property--most rentals were continuous and did not result in actual sale. Castelda was doubtful that legislative intent was to grant an indirect exemption to the rental industry. The Department has decided that when a video store purchases tapes which will be rented even though they will be resold eventually, the tax is due on the tape at time of purchase. The tax is due on rental receipts when the movie is rented.

Chairman Priebe recognized Senator Gene Fraise who voiced concern that five years retroactive application of the Department's decision would "put some out of business." He preferred that the Department do nothing further until the next GA could respond.

Castelda indicated the Department could not avoid auditing video stores while auditing all others in the rental or leasing business.

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(Cont.)

Parker recalled similar situations when the Department had no latitude in its administrative positions. Castelda called attention to the appeal process which takes about 13 months for an informal procedure.

Royce was advised that tax would not be due while the protest goes through informal procedures. However, it would be owed on the date set for the contested case hearing. The burden of proof rests with the person seeking exemption.

Frederick was informed that when the exemption for movie theaters and films purchased by them for viewing was passed, it did not include video stores.

In response to Kruse, Castelda said there always has been a tax on rental of equipment and on amusements. Kruse maintained that small businesses should have been alerted about the tax. He was critical of the five-year penalty, plus interest. Castelda stated that determination would be made on the principal business activity since it is impossible to write rules for each transaction in every industry.

The Department has conducted special studies for industries but to his knowledge, no one had requested assistance on the issue of videos. Schwanbeck reasoned that the state collects tax three times on one tape. Priebe equated the situation with that of used car sales.

Eychaner expressed interest in working with the Department to establish standards. Castelda asked that the factual situation be put in writing so the Department could research the matter before a meeting could be held. Doyle was told that the statute does not allow waiver of penalty in this area.

Motion
Referred
to G.A.
Carried

Parker moved that the issue of tax on video taxes be referred to the Speaker, and President of the Senate with recommendation that it be reviewed by the Ways and Means Committees. Motion carried.

Parker in the chair.

PHARMACY
EXAMINERS

Lloyd Jessen appeared for review of the following:

Minimum standards for the practice of pharmacy, rescind 8.7 and renumber ARC 8623	F.....	4/20/88
Biohazard vertical flow hood for preparation of parenteral antineoplastic products, 8.12(2)"a"(5), (6) ARC 8622	F.....	4/20/88
Controlled substances, rescind 10.10(6), 10.13(7), 10.13(11) and renumber ARC 8621	F.....	4/20/88
Public information and inspection of records, ch 14, rescind 1.1(9) ARC 8669	F.....	5/4/88

He gave brief overview and there were no substantive questions. Priebe in chair.

AGRICULTURE
AND LAND
STEWARDSHIP
DEPARTMENT

John Whipple, Walter A. Felker, and David Werning represented the Department for the following:

Fertilizers and agricultural lime — sample fee, 30—8.20(2) ARC 8647	F.....	4/20/88
Infectious and contagious diseases (Anjezky's disease segment), 30—16.147 to 16.163 ARC 8648	NV.....	4/20/88

Also present: David Meeker, Director of National Pork Producers Council, Randy Tooker, Craig Olson, Jon Caspers, Calvin Coohy, Jeff Schnell, Mike Telford, Staff, Iowa Pork Producers Assn.; James D. McKean, DVM, Iowa Veterinary Medical Association; George W. Beran, DVM, Iowa State University; Rick Robinson, Glee Mulder, Ted Yanecek, Iowa Farm Bureau, and Velle McGraw.

8.20(2)

Discussion of 8.20(2) which increased the sample testing fee to \$25. Question was raised as to notification by letter of any adjustment in the fee by the secretary of agriculture. Royce advised that \$25 was the maximum and the notice by letter was allowed under Code chapter 200.

Ch 16

Felker explained amendments to Chapter 16 which provide measures for control of transmission and incidence of pseudorabies among swine, cattle, sheep and horses. He continued that swine are primary hosts for pseudorabies, are natural carriers and a source of virus spreading through other species. Obviously, greater emphasis for control must be with the disease as it exists in swine population. Felker stated that the swine industry has voted to support the National PRV control/eradication program. The Department recognizes the importance of the swine industry to Iowa's economy. The rules will coordinate Iowa's program with other states. Felker pointed out that dates for compliance were compromised items and could be altered by rule. Tieden was informed that the... "monitor test of any herds located within one mile from a herd qualified to sell breeding swine or from any infected herd..." would be a program expense--16.150(1).

Discussion of use of "may...request a monitor test." Committee members were doubtful the test could be mandatory with "may." Royce and Burnett were directed to work with the Department on a resolution of the matter.

It was noted the Committee on Agriculture had requested public hearings. Priebe favored hearing in each Iowa Congressional District.

16.153(3)

Tieden and Priebe referred to 16.153(3) which provided that cost of the program "may be provided by federal or state funds." Felker stated that payment could be

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DEPARTMENT
(Cont.)

quarterly or 10 percent monthly. The federal government is committed to a 10-year program with 26% of the funds allocated to Iowa because of the percentage of breeding animals. Illinois, Minnesota, South Dakota and Nebraska will be participating in the program. Eight Iowa counties are in a controlled area at this time.

Meeker read from a prepared statement that the National Pork Producers Council voted unanimously in 1988 to support the national PRV program. Since pseudorabies does not present any threat to the general public, funding may be difficult. Meeker continued that the majority of pork producers feel strongly about ridding the industry of this disease and its efficiency-robbing side effects. A survey revealed that 36 states representing 95% of the swine population have committees working. The Council was hopeful that the total industry would be represented. Meeker was of the opinion that without a state PRV plan, Iowa seedstock producers would be hard hit since their trade would probably be restricted to Iowa.

Tooker presented a written policy statement of the Iowa Pork Producers Association outlining past history of PRV, current state of affairs regarding the disease and their position on the proposed rules. Tooker said that the Association understands the controversial aspects of the proposal and has no problem supporting the request for an interim study on the issue. He felt that support for the program would increase as people learn more about the intricacies of the disease. Tooker contended that movement of all swine to Iowa should conform to the rules except for those moved to slaughter.

Priebe cited an example of an individual who could realize quick profit by buying feeder pigs for less money from another state and vaccinating them for 50 cents per head. It was pointed out that vaccine does not stop the spreading of the virus.

Felker advised that both killed and modified live vaccines were available. The person using vaccine is expected to keep records so that the laboratory can monitor the results. Priebe disagreed with Felker's statement that feeder pigs maintain market value.

Coohey emphasized the importance of eradicating the disease. Costs will be reduced and profits will be realized. Coohey was concerned that Iowa could become a "dumping ground for diseased pigs which cannot be sold in other states."

Tieden and Royce discussed the fact that the amendments would not be effective until July 20. Felker mentioned the possibility of emergency implementation July 1.

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DEPARTMENT
(Cont.)

McKean spoke in support of the amendments which, in his opinion, were necessary to protect Iowa as the largest pork producing state.

16.150(1)

Priebe asked if "dirty pigs" brought into the state could be vaccinated and Dr. Felker responded that there was no control over that practice. Discussion of the fact that the rules did not address a retesting fee. Felker referred to the last sentence of 16.150(1) which provides a free monitor test to any feeder pig producer in the state, pending availability of funds. A veterinarian may charge \$15.00 a stop, less \$2.50 for the first 10 head and \$2.00 per head afterward.

Wendel was supportive of the rules but favored flexibility in the dates. He maintained that one segment of the industry should not bear the burden since the virus affects all herds. Felker preferred to leave the dates as proposed.

Public
Hearing

It was noted that a public hearing on the rules was scheduled for May 13.

NATURAL
RESOURCE
COMMISSION

Mark Landa, Wayne Reed and Judith Powell were present for the following:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"
Manufacturer's certificate of origin, ch 20 ARC 8693 F..... 5/4/88

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"
Rules of practice in contested cases, ch 7, rescind 900—ch 7 ARC 8657 N. 4/20/88
Requirements for properly plugging abandoned wells, ch 39 ARC 8658 N. 4/20/88
Permits, 102.14(3)"a" notice ARC 8210, ~~terminated~~ ARC 8656 N.T. 4/20/88

NATURAL RESOURCES DEPARTMENT[561]

Groundwater protection program evaluation, ch 15 ARC 8694 N. 5/4/88

Chs 7, 20 No formal action re 571--Chapter 20 or 567--Chapter 7.

ENVIRON-
MENTAL
PROTECTION
COMMISSION
Ch 39

New Chapter 39 was reviewed by Reed who cited Code \$455B.190 as statutory authority for the rules. Royce wondered why the landowner would be precluded from plugging sandpoint wells. Reed responded that a committee representing well drillers and the geological survey bureau reached a consensus that registered well drillers would have expertise to handle any unforeseen problems. He admitted that heavy equipment would not be required in every instance but Priebe expressed opposition to the mandate for registered well drillers as this would generate unnecessary cost for removal of most sandpoint wells. He took the position that neat cement could be used to fill the wells. Priebe cited the Committee's preference for "shall" over "must" in 39.7(2)"c".

In response to Priebe's concern that hearings had not been scheduled in problem areas such as Humboldt and Pocahontas counties. Landa said the sites were reflective of the population centers. Further discussion of pros and cons relative to use of concrete to close sandpoint wells. Department officials explained that concrete and grout

E P C
(Cont.) can be used above water level but the level will usually be high in sandpoint wells. No action taken.

102.14(3) Brief discussion of 102.14(3).

NATURAL
RESOURCES
DEPARTMENT Landa described new 561--Chapter 15 as general requirements for groundwater evaluation programs. Tieden expressed his frustration with trying to obtain data for his area. No Committee action.

Minutes
Carried Doyle moved approval of the April minutes. Motion carried.

Recess Committee in recess at 3:55 p.m.

Reconvened Chairman Priebe reconvened the meeting at 9:10 a.m. Capitol Building, Senate Committee Room 24. All members and staff present.

ECONOMIC
DEVELOPMENT
DEPARTMENT Melanie Johnson, Legal Counsel, and JoAnn Callison, State Youth Coordinator, presented the following agenda:

Youth affairs, amendments to ch 14 ARC 8630	F.....	4/20/88
Public records and fair information practices, ch 100 ARC 8631	N.	4/20/88

Ch 14 Callison told the Committee that amendments to Chapter 14 were intended to comply with 1987 Acts, H.F. 379 which reduces the age from 19 to 18 for the young adult program. Also, SF 511 mandated change in evaluation criteria. No one attended the scheduled hearing on the rules.

Ch 100 In review of Chapter 100, Royce observed that the rules lacked specific information as to which records would be open and which ones would be closed. Johnson referred to 100.13(2) where confidential records were described. In addition, some of the personally identifiable information in 100.14 would be kept confidential.

Priebe questioned language in 100.15 which stated, "However, the agency's files of these records may contain confidential information..." Johnson pointed out that rule 100.13, which lists specific confidential records, was cross referenced in 100.15. Priebe interpreted the questionable language as a means to withhold any record. Royce suggested that classes of records could be listed. He referred to the Labor Division, Corrections Department, and Human Services Department which had provided detailed charts. Royce stressed the importance of detail for Economic Development to address sensitive information and business records.

After discussion, there was Committee consensus for the Department to adopt the rules, comply with the July 1 deadline, and amend them at a later date. Johnson was willing to include a note stating that a detailed chart would follow in a subsequent filing.

INSURANCE
DIVISION

Dennis Britson, Insurance Division Supervisor, and Louise Lex, Administrator, Public Health Department, explained the following agenda:

Motor vehicle service contracts, 23.3 to 23.8, 23.12, 23.13, 23.20, 23.21, 23.23 to 23.25, 23.31 to 23.34 ARC 8659 N. 4/20/88
Health maintenance organizations, 40.5(3) ARC 8661 N. 4/20/88

Ch 23

Discussion of amendments to Chapter 23 intended to implement Iowa Code Chapter 321I.

Priebe asked about the fees, and Britson informed him that the \$100 filing fee in 23.12 was pre-established. Other fees would be imposed to cover the cost of providing the particular service. Royce questioned Britson with respect to the type of hearing anticipated under 23.34. Britson indicated it would be contested case but he was willing to modify the rule, if necessary. Britson stated that no objections were voiced during their comment period and General Counsel for the Iowa Automobile Dealers Association had no problem with the rules. Administration of the motor vehicle services contract Act was delegated to the Insurance Commission in 1985. The Act was not "actively administered" and 20 to 30 complaints have been received. The proposed rules establish procedures for implementing the Act.

40.5

According to Lex, amendment to 40.5 was proposed by the Department of Public Health and the Division of Insurance on advice from the Attorney General's office.

The provision which requires that HMO referral physician specialists be "board eligible" or "board certified" will be deleted. No Committee action.

INSPECTION
AND APPEALS
DEPARTMENT

Xenda Lindel-Prine and Mary Oliver represented the Department of Inspections and Appeals for the following:

Care facilities -- to whom license is issued, 57.3(4), 58.3(4), 59.3(4), 62.3(3), 63.3(5), 64.3(4) ARC 8654 N. 4/20/88
Administration of insulin in care facilities, 57.19(3)"c," 62.15(2)"d," 63.18(3)"c" ARC 8655 N. 4/20/88

57.3

Lindel-Prine described amendments to 57.3(4) et al. as clarifying.

57.19

Discussion of revisions in 57.19(3), 62.15(2), and 63.18(3) which will allow someone other than a nurse or doctor to administer insulin to a care facility resident.

Royce questioned whether Inspections and Appeals had the authority for the rules. Lindel-Prine pointed out that the doctor makes the decision. Oliver commented on the specific requirements for those authorized by the physician to give the injections and added that liability rests with the facility. No Committee action.

Rules
Delayed
Into GA

Barry sought guidance as to the Administrative Code Editor's responsibility with respect to rules which are delayed into the General Assembly. The statute requires publication of notice of such delays but does not address procedure beyond that. Barry cited Chapter 2 of Nursing Board rules as an example.

Rules
Delayed
Into GA

Doyle suggested including the list of delayed rules with no GA action in the ARRC minutes with a statement that the rules became effective upon sine die.

Royce pointed out that the agencies would have no formal notification as to the disposition of their rules. Clark could see the importance of some notation in the Iowa Administrative Code. Priebe and Doyle discussed a possible procedure for inclusion of relevant information on the delayed rules in the Iowa Administrative Bulletin.

After further discussion, it was decided that Barry should prepare a list of the rules which had been delayed into the 1988 GA. If no action was taken by the GA, the rules would become effective on the day following sine die. A note to that effect should be included with the list and published in the Iowa Administrative Bulletin.

After conferring with GA staff, Chairman Priebe confirmed that sine die was April 17, 1988--the journals would also reflect that date.

Parker in the Chair.

COLLEGE AID
COMMISSION

Darlene Lawler, Director, Administrative Support, Iowa College Aid Commission, was present for review of amendments to the Iowa Guaranteed Student Loan Program, 245--10.79"1" and 10.79(2)"1", published under Notice in 5/4/88 IAB as ARC 8671.

Lawler said the default rate would be monitored semi-annually and would change from 15 to 20 percent to be in compliance with federal regulations. Lawler pointed out that the Commission rules could be more stringent than federal requirements. Their default policy has been in place four years and they have a 6% default rate as opposed to the national guarantor with some Iowa loans at 28% default.

Lawler continued that the Commission's strict standards have resulted in the loss of schools to the other guarantor. She said they had attempted to get Congressional action for "across-the-board regulations." Although the Commission plans to continue default management at 15%, they will not take official proceedings to suspend, terminate, or limit a lender or school at 15%.

Schools that the Commission lost to the other guarantor included Eastown School of Hair Styling and Sioux City and Burlington Cosmetology Schools.

Lawler advised Royce that HEAD (Higher Education Association Foundation) was the guarantor with high default. Iowa pays the lender of a guaranteed loan

COLLEGE AID
COMMISSION
(Cont.)

which has defaulted and the state is reinsured by the federal government. HEAF pays 100% to the lender but is reinsured only 80%. Lawler stated that the Commission had concern for the viability of the program.

Clark was aware of promises made by cosmetology schools which cannot be fulfilled. She declared that schools with high default rates are failing to place their students. Lawler mentioned a letter which alerts prospective students of placement rates. She emphasized that these programs are closely monitored.

Royce asked if certain schools of cosmetology would benefit by the 20% rate. Lawler reiterated that the 15% rate was not federal and that the change to 20% would force some to seek another guarantor. Clark wondered if Iowa students were actually benefited by "continuing this fiction."

Parker asked about the percentage of student loans through the Commission and Lawler estimated 90% but agreed to provide specific figures.

Lawler also agreed to provide the Committee with a list of all the default rates. She informed Tabor that loan applications are available at the school or through the lenders. She said that HEAF had lowered their guarantee costs for four-year students and raised it for cosmetology students because of the default rate. No Committee action taken.

Priebe took the chair.

JOB SERVICE
DIVISION

The following rules were considered:

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"

Employer's contributions and charges, claims and benefits, 3.83 to 3.88, 4.1(21), 4.2(1)"h"(1),(2),(3), 4.2(1)"j", 4.9, 4.20, 4.21, 4.22(2), 4.22(3), 4.51 to 4.54 ARC 8649

Public records and fair information practices, ch 8 ARC 8680

Employer's contribution and charges, claims and benefits, benefit payment control, 3.4, 3.7(2), 3.7(3), 3.25, 3.26, 3.40(2), 3.43(12), 3.47, 3.82, 4.13(2), 4.39(13), 4.58, 5.15 ARC 8650

EMPLOYMENT SERVICES DEPARTMENT[341]

Public records and fair information practices, ch 2 ARC 8679

F..... 4/20/88
F..... 5/4/88

N. 4/20/88

F..... 5/4/88

3.83 et al.

Joe Bervid, Paul Moran and N. John Boehm were in attendance. According to Bervid, amendments to 3.83 et al. would consolidate Job Service rules pertaining to school employees. Under the federal definition, school employees, for unemployment purposes, are treated differently from other groups.

Ch 8

No recommendation for Chapter 8.

3.4 et al.

Discussion of 3.4 et al. Bervid highlighted changes which included definitions of "back pay" and "farm" labor.

Clark referred to the definition of "farm" in 3.26(1) and questioned use of "or both." Bervid was willing to clarify. Clark also suggested clarification of 3.26(14) re services performed.

EMPLOYMENT
SERVICES
DEPARTMENTFair
Information
Rules

No Committee recommendations for 341--Chapter 2.

Barbara Burnett discussed the fact that several agencies will be filing their rules on Public Records and Fair Information Practices as Emergency after Notice. This will be necessary to comply with the July 1 effective date of the Act. Burnett continued that the Attorney General's office has requested that a list of these agencies be published in the 6/29/88 IAB to provide "advance Notice."

Burnett responded to question by Parker that the agency cannot use personally identifiable information until it is set out by rule. Priebe voiced his opposition to emergency rules in general.

Royce spoke of the unforeseen delay of the Task Force and the Attorney General's office in completing their reports to aid agencies in their rule making on fair information practices.

After further discussion, the Committee authorized Barry to publish in the Iowa Administrative Bulletin the list of agencies as requested by the Attorney General.

LOTTERY
DIVISION

The following rules were presented by Nicky Schissel, Lottery Assistant Commissioner.

Licensing, operation of the lottery, 3.19, 4.18 ARC 8686	F.....	5/4/88
Operation of the lottery, Lotto America, 4.9(4), 4.9(11), 4.9(12), 12.8, ARC 8626, also filed emergency ARC 8625 ..	N+FE	4/20/88
Lotto, 10.4(3), ARC 8628, also filed emergency ARC 8627	N+FE	4/20/88
Pull-tab general rules, 11.3, ARC 8685, also filed emergency ARC 8684	N+FE	5/4/88
Lotto America, ch 12, notice ARC 8351 terminated ARC 8629	NT	4/20/88
Lotto America, 12.7(4), ARC 8683, also filed emergency ARC 8682	N+FE	5/4/88

4.18

Discussion of 4.18 which provides for retailer compensation on sales. Schissel stated that the one percent figure had been used as incentive for Iowa Lottery retailers. She stressed the importance of the retailer's continued interest in the lottery. There were no plans to increase the one per cent.

4.9, 12.8

Schissel reviewed amendments to 4.9 and 12.8. Because the minimum jackpot is \$2 million for Lotto America, the retailer would receive \$25,000 for selling the winning ticket.

In response to a question from Tieden, Schissel stated that retailers are reimbursed a basic 5% of their sales which is very important in the marketing plan.

Schissel pointed out separate rules for Lotto America and indicated that the Division receives copies of rules of the six jurisdictions. To date, Iowa is selling the most tickets per capita but Schissel admitted that America Lotto has resulted in about 10% decrease in Iowa Lottery sales. However, the total net is up.

LOTTERY
DIVISION
(Continued)

Drawings are held in Des Moines and shown via satellite to the other areas. Schissel advised that the Lottery directors of the participating states meet periodically and draft rules. Charles Strutt is now the executive director of Lotto America.

No recommendations for 10.4(3), 11.3, or Chapter 12.

12.7(4)

In review of 12.7(4), Schissel explained that the lottery investments are made by the treasurer of state. Generally, the annuities are contracted through insurance companies. Money is turned over every 21 days.

BLIND,
DIVISION
FOR THE

Creig Slayton and Kris Lischefska represented the Division for the following:

BLIND, DIVISION FOR THE[423]
HUMAN RIGHTS DEPARTMENT[421] "umbrella"
Public records and fair information practices, 2.1, 2.2, ch 13 ARC 8702F..... 5/4/88

The Division was commended for itemizing each record. No recommendations.

PUBLIC
HEALTH
DEPARTMENT

Susan Osmann represented the Department of Public Health for the following:

PUBLIC HEALTH DEPARTMENT[641]
Fair information practices and public records, ch 175 ARC 8681F..... 5/4/88

Osmann stated that an inventory of their records was available to the public. No Committee recommendations.

TRANSPORT-
ATION
DEPARTMENT

The following rule was presented by Lew Marsh, Assistant Director, Motor Vehicle Division:

TRANSPORTATION DEPARTMENT[761]
Motor vehicle equipment regulations applicable to carriers, 450.1, 520.1(1)"a" and "b," ARC 8633, also filed
emergency ARC 8632N/HFE 4/20/88

Marsh told the Committee that the emergency amendment was necessary to ensure consistency between state and federal requirements for enforcement of motor carrier safety. Significant changes included requirement for operational brakes on all wheels of commercial motor vehicles over 10,000 pounds gross vehicle weight rating which were manufactured after July 24, 1980. Also, the list of hazardous materials subject to transportation regulation was increased. No Committee action.

UTILITIES
DIVISION

The Utilities Division was represented by Dean Stonner, Cynthia Dilley, and Sandra Makeeff and they explained the following:

Disconnection rules, 19.4(15), 19.4(15)"c" and "d," 20.4(15), 20.4(15)"c" and "d" ARC 8687N/ 5/4/88
Directory listings, 22.3(2)"i" ARC 8661N/ 4/20/88
Telephone outages, rescind 22.6(1)"b" and reletter ARC 8660N/ 4/20/88

UTILITIES
DIVISION
(Cont.)
19.4 et al.

Stonner said that amendments to 19.4 et al. would eliminate the provision for immediate disconnection of service in the event of nonhazardous tampering, or unauthorized use. The alleged offender would, in effect, be given 12 days notice of the disconnect.

In response to a question by Parker, Stonner stated that this does not require a finding of guilt in the few cases that develop. Parker voiced opposition to the rule making but no action was taken.

22.3

According to Dilley, a terminating exchange telephone utility must provide current directory listings to the utility from which the extended area call originates. Makeeff explained the federal access charge. No recommendations were offered for 22.6(1).

September
Meeting

The ARRC meeting dates of September 13 and 14 were agreed upon. Doyle moved that Barry publish in the Iowa Administrative Bulletin the list of rules delayed into the GA. Those with no action would be effective April 18, 1988.

CITIZENS'
AIDE

Chairman Priebe recognized Bill Angrick, State Ombudsman, who reported on a memo from Donovan Peeters, Legislative Service Bureau Director, to the Legislative Service Committee, who advised that since the office of Citizens' Aide was a part of the Legislative branch, their rule making was beyond the scope of Iowa Code Chapter 17A.

Peeters had reasoned that relevant statutes were sufficiently ambiguous to conceivably place the C.A. office within the purview of Chapter 17A but constitutional considerations dictate a different conclusion. He thought it would be advisable for the Service Committee and Legislative Council to review the C.A. rules. The C.A. could then seek permission of the ARRC to publish the rules in the Iowa Administrative Bulletin (17A.6(1)c).

Royce raised the question as to whether other legislative agencies such as the Code office, Legislative Service Bureau, Legislative Fiscal Bureau, and Computer Support Bureau would also have a legal obligation to promulgate rules.

Clark took the position that the public should have access to rules of the Citizens' Aide. She viewed that office as being totally different from those that work exclusively for the legislature.

Because of service to the public by the C.A. office, Angrick was of the opinion that administrative rules should be available to the public.

5-11-88

CITIZENS'
AIDE

Angrick was willing to present the Peeters proposal to the Service Committee.

Priebe and Tabor concurred that the rules should be published. Royce pointed out that the statute is specific as to what should be included in the Iowa Administrative Code.

There was consensus that Angrick should approach the Service Committee and return to the ARRC for a temporary resolution to the problem.

No Representatives requested to appear

ARCHAEOLOGIST[685]
REGENTS BOARD[681]"umbrella"
Confidentiality of archaeological site information, ch 14 ARC 8645.....N. 4/20/88

ACCOUNTANCY EXAMINING BOARD[193A]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Public records and fair information practices, ch 16 ARC 8635N. 4/20/88

APPEAL BOARD, STATE[543]
MANAGEMENT DEPARTMENT[541]"umbrella"
Amend and transfer 60—chs 1 to 5 to 643—chs 1 to 5, filed emergency ARC 8700FE 5/4/88

ARCHITECTURAL EXAMINING BOARD[193B]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Public records and fair information practices, ch 6 ARC 8636N. 4/20/88

CITY FINANCE COMMITTEE[545]
MANAGEMENT DEPARTMENT[541]"umbrella"
Rescind 230—chs 1 to 6; adopt 545—chs 1 to 9 ARC 8691N. 5/4/88

COLLEGE AID COMMISSION[283]
EDUCATION DEPARTMENT[281]"umbrella"
Iowa guaranteed student loans, amendments to 245—ch 10 ARC 8672.....F..... 5/4/88

COUNTY FINANCE COMMITTEE[547]
MANAGEMENT DEPARTMENT[541]"umbrella"
Amend and transfer 292—chs 1 to 5 to 547—chs 1 to 5; petition for rule making, declaratory rulings, agency procedure for rule making, chs 6, 7, 8, filed emergency ARC 8690FE 5/4/88

EDUCATION DEPARTMENT[281]
Rehabilitation division — public records and fair information practices, 670—35.23 ARC 8688F..... 5/4/88

EMPLOYMENT APPEAL BOARD[496]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Public records and fair information practices, ch 8 ARC 8670N. 5/4/88

MANAGEMENT DEPARTMENT[541]
Organization — personnel management information system board of review, 1.8(1) ARC 8698N. 5/4/88
Rescind 270—ch 6, filed emergency ARC 8699FE 5/4/88

MEDICAL EXAMINERS BOARD[653]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Amend and transfer 470—chs 135 and 136 to 653—chs 1 to 25, filed emergency ARC 8692.....FE 5/4/88

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Hearing aid dealer examiners, 470—145.9(1) ARC 8624N. 4/20/88
Speech pathology and audiology examiners, 470—155.5, 155.7(8) ARC 8697N. 5/4/88

PUBLIC BROADCASTING DIVISION[225]
CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"
Fair information practices, ch 3 ARC 8666N. 5/4/88

PUBLIC SAFETY DEPARTMENT[661]
Amend and transfer 680—chs 1 to 19 to 661—chs 1 to 19, 630—ch 12 to 661—ch 20, 566—ch 1 to 661—ch 21
ARC 8662F..... 4/20/88

RACING AND GAMING DIVISION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Mutuel rules — daily triple wagering, 8.2(4)"L," filed emergency after notice ARC 8667FEAN 5/4/88
Mutuel departments — daily triple wagering, 8.2(4)"L," ARC 8668, also filed emergency after notice ARC 8667 FEAN. 5/4/88

REAL ESTATE EXAMINING BOARD[193E]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Public records and fair information practices, ch 5 ARC 8634N. 4/20/88

REGENTS BOARD[681]
Transfer, renumber and amend 720—chs 1 to 16 to 681—chs 1 to 16 ARC 8619F..... 4/20/88
Personnel administration, 3.39(14), 3.6(5), 3.67, 3.67(2), 3.67(4), 3.69, 3.69(1), 3.70, 3.101 ARC 8643F..... 4/20/88
Personnel administration, 3.39(2) ARC 8644N. 4/20/88

Adjournment Chairman Priebe adjourned at 1:10 p.m.

Next meeting The next meeting was scheduled for June 14 & 15.

Bea Priebe

CHAIRMAN

Phyllis Barry
Phyllis Barry, Secretary
Assisted by Vivian Haag and
Bonnie King