

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, May 11 and 12, 1982.

Place of Meeting: Committee Room 116, Statehouse, Des Moines, Iowa.

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

Convened  
SOCIAL SERVICES

Chairman Schroeder convened the meeting at 10:10 a.m. Social Services Department was represented by Judith Welp, Rules and Manual Specialist; Suzanne Boyde, Social Worker; Lois Berens, Eligibility Specialist; Will Miller, Long-term Care. Also present: Mark Truesdell and Sid Ramsey, Iowa Speech-Language Hearing Ass and Ted Yanecek, Iowa Farm Bureau.

The following rules were reviewed:

|  |         |
|--|---------|
| SOCIAL SERVICES DEPARTMENT[770]  |         |
| Mental health and mental retardation commission, 1.6 ARC 2848 <i>F</i>   | 4/28/82 |
| Prison overcrowding state of emergency, 16.10(2) ARC 2832 <i>F</i>   | 4/28/82 |
| ADC, support information, 41.2(6) <sup>b</sup> (1) and (3) ARC 2833 <i>F</i>   | 4/28/82 |
| Medical assistance, dentist—oral prophylaxis, 78.4(1) <sup>b</sup> (12) ARC 2834 <i>F</i>  | 4/28/82 |
| Resources, general provisions, 130.3(1), 130.5(1) to 130.5(3), 130.6(1) <sup>a</sup> and "b", also terminates two notices ARC 2835 <i>F</i>  | 4/28/82 |
| ADC, applications, 40.2, 40.3 ARC 2849 <i>N</i>  | 4/28/82 |
| ADC, trusts, 41.6(8) ARC 2819 <i>N</i>   | 4/14/82 |
| Fuel stamp program, ch 65 ARC 2820 <i>N</i>  | 4/14/82 |
| Fuel stamp program, administration 65.3, filed emergency ARC 2829 <i>FA</i>  | 4/28/82 |
| Medical assistance, 75.1(15) <sup>e</sup> (3), 78.1(1) <sup>e</sup> , 78.3(15), 78.12(16), 79.1(4), 79.1(5), 81.10(4) <sup>f</sup> and "g", 81.10(5), filed emergency ARC 2821 <i>FE</i> | 4/14/82 |
| Medical services, hearing aids, 75.14, amended notice ARC 2850 <i>N</i>  | 4/28/82 |
| Intermediate care facilities, intermediate care facilities for the mentally retarded, 81.6(11) <sup>a</sup> , 82.5(11) <sup>e</sup> ARC 2851 <i>N</i>                                    | 4/28/82 |
| Social services block grant—implemented, 131.1, 131.2(1), 131.4, 131.5, filed emergency ARC 2830 <i>FE</i>   | 4/28/82 |

1.6(1)

Tieden questioned the quorum requirement in 1.6(1) and recalled the problems many Commissions have in maintaining quorum at meetings.

No questions re 16.10(2), 41.2(6)<sup>b</sup>, 78.4(1)<sup>b</sup>(12) and amendments to chapter 130. Oakley pointed out that the amendments to chapter 130 would enable the Department to terminate service when funding was no longer available--a substantial policy change. Although, in his judgment, the rules were logical and reasonable, more discretion would be provided to the Department without a public hearing process. Basically, fiscal fluctuation would dictate.

Welp emphasized individual clients would retain their appeal rights and the intent was to reduce, not cancel, services.

40.2, 40.3, 41.6

No questions re 40.2, 40.3, 41.6(8). In re amendments to chapter 65, Welp advised this was an attempt to

SOCIAL  
SERVICES  
Continued

adopt federal regulations on monthly reporting for retrospective budgeting for the food stamp program. Their ultimate goal was to adopt the food stamp portion of the rules for ADC clients at the same time ADC monthly reporting is adopted.

Priebe cautioned the DSS against haste. Welp informed Priebe the final federal regulations on the issue had been published. Welp could not answer his question as to whether the federal budgeting had been completed. Priebe opposed the concept on the basis it would generate a need for more employees to manage the program. Welp explained that the Department took the position that implementing two systems simultaneously would be more complicated.

Tieden and Priebe indicated they had heard complaints with respect to retrospective budgeting. In response to question by Tieden re eligibility, Welp declared the income was retrospective -- income and expenses. A change in the household or resources would be determined prospectively.

Welp announced that ADC monthly reporting would be discussed at the next Council meeting. Also, that staggered mailings of food stamps curb losses. No questions re 65.3.

75.1, 78.1 Changes in subrules 75.1, 78.1, 78.12, 79.1 and 81.10(5) were  
78.12 as a result of HF 2336[1982 Acts], a supplemental appropri-  
79.1 ations bill for the fiscal year. Cost-containment measures in  
81.10(5) the medicaid program will require hospitals to utilize out-  
patient service whenever possible. In addition, intermediate  
or skilled care facilities will be reimbursed for the lowest  
level of care needed and there will be a reduction in the  
number of paid bed days.

Welp reminded Tieden that the program was originally funded through March and the supplemental appropriation continued it for April, May and June. Welp apprised Priebe that 79.1(4)e was a federal mandate.

78.14 With respect to 78.14, Welp said a public hearing was scheduled on the issue of who can perform the examinations required before a person can receive a hearing aid under the medical assistance program.

Truesdell presented problems of the Iowa Speech and Hearing Association relative to the proposed rule [ARC 2738, IAB 3/3/82]. According to Truesdell, audiologists could be circumvented under the proposal. Many physicians are not qualified to do hearing aid evaluations which creates a major problem. The Iowa Court of Appeals recognized that in its hearing on the issue when it struck down the earlier ruling that it was arbitrary, capricious and unreasonable.

Ramsey discussed the evaluation process and contended that, for the very young, elderly or handicapped, an audiologist was better qualified.

SOCIAL SERVICES Continued

Truesdell presented a proposed amendment which would be relayed to the Department. He recalled that, two years ago, the DSS had set up a Hearing Aid Advisory Committee for the purpose of arbitrating problems between hearing aid dealers and audiologists.

Welp pointed out that one purpose of the rule was to allow individual practitioners to perform their lawful tasks, thus, physicians were being included in subparagraph (2). It was the Department's position that the Court decision invalidated the rule on procedural grounds only. Welp concluded that DSS had met with the various groups involved in an attempt to reach an equitable solution.

Oakley inquired if the audiologists were willing to assume the position that they had no financial interest in the hearing aid which is eventually sold. Truesdell interjected that most audiologists cannot legally sell hearing aids. Only a few are both audiologists and hearing aid dealers. He maintained the motive was not financial gain but concern for the precedent that this system might set for other third party pay arrangements, e.g., insurance. Audiologists fees were discussed.

Clark expressed concern that the Advisory Committee was not consulted prior to the Notice. The make-up of the Committee was discussed and it was pointed out Department of Social Services has jurisdiction but all appointments had not been made.

Responding to Tieden, Truesdell said there are 125 audiologists licensed in Iowa--most not in private practice.

chs 81&82 Discussion moved to amendments to chapters 81 and 82. Previously, rules limited compensation of owners which will now be extended to immediate relatives who are defined in the rule.

Schroeder questioned use of "sibling" and wondered if it were defined in the Code. Clark doubted that would be necessary.

81.6(11) In re 81.6(11)h(4), Clark inquired as to derivation of ownership interest at five percent or more. Miller said the disclosure policy of the federal government utilized the language.

ch 131 No questions re amendments to chapter 131. Clark commended the Department for the block grant rules.

AGRICULTURE DEPT. The Agriculture Department was represented by Elizabeth Duncan, Director, Regulatory Division and Jim O'Connor, Weights and Measures. Also present: D. J. Olness, Amoco Oil Company. The following was before the Committee:

- AGRICULTURE DEPARTMENT[20]
- Standards for determining gallonage on gasoline or diesel motor vehicle fuel. 55.49 ARC 2852. A..... 4/28/82
- Gas pump advertising 55.48 ARC 2196 3/31/82

Priebe requested that the review be deferred. It was decided to reschedule the Department for 8:45 a.m., Wednesday, May 12, 1982.

5-11-82

AGRICULTURE Duncan briefly discussed gas signs and pump advertising--  
DEPARTMENT rule 55.48--which reflects suggestions made at the March 2  
Continued hearing. Subrule 55.48(3) was revised to allow the posting  
of cash only prices for stations that accept credit cards.

REAL ESTATE Gene Johnson, Director, and Ken Smith, Administrative Officer,  
COMMISSION were present on behalf of Real Estate Commission for review of:

REAL ESTATE COMMISSION[700]  
Closing transactions, 1.28 ARC 2840 ... N ..... 4/28/82  
Addresses of inactive licensees, 1.33 ARC 2841 N ..... 4/28/82  
Licensees of other jurisdictions, 2.3 ARC 2842 N ..... 4/28/82

After brief discussion, no recommendations were offered.

LIVESTOCK Mark Truesdell was present on behalf of the Livestock Health  
HEALTH Advisory Council to answer any questions pertaining to the  
ADVISORY Council's recommendation for expenditure of the appropriation  
COUNCIL to be used by Iowa State for livestock disease research.  
Truesdell anticipated that most of the funds would be applied  
to existing research projects. Priebe voiced support of TGE  
funding. ch 1 ARC 2837 ... N ..... 4/28/82

There was discussion of the pros and cons of the Council's  
participation in the rulemaking process with the Committee  
essentially in favor of it.

HEALTH Mark Wheeler, Hearing Officer; Kim Field, Administrative  
DEPARTMENT Assistant; and Ronald D. Eckoff, Chief, Division of Communi-  
ty Health, represented Health Department for review of the  
following rules:

HEALTH DEPARTMENT[470]  
Funds for extending public health nursing services, visiting nurse services and homemaker-home health  
aide services, 79.1, 79.3(4) to 79.3(6), 79.4(1) ARC 2824 ... F ..... 4/14/82  
Disclosure of data, 103.1(7) ARC 2825 ... F ..... 4/14/82

Eckoff said that amendments to chapter 79 of their rules  
contain simple housekeeping matters to comply with the ap-  
propriation. The 1980 census information on elderly popu-  
lation was used, but 1980 census data was unavailable for  
low income so 1970 figures were used. Oakley reasoned the  
rules should reflect that fact.

Eckoff indicated emergency revision would be needed because  
of new legislation enacted the last day of the Session to  
be effective July 1.

103.1(7) Schroeder questioned Wheeler with respect to volunteer's ob-  
ligation of confidentiality in 103.1(7). Wheeler contended  
it was Code language but Schroeder thought it could be mis-  
interpreted. Priebe recommended "may" or "shall" rather  
than "will" in 103.1(7). Wheeler agreed that a correction  
would be made when the rules are amended.

MERIT EM- Clint Davis, Division Manager, Merit Employment, appeared  
PLOYMENT for review of the following:  
DEPARTMENT

MERIT EMPLOYMENT DEPARTMENT[570]  
Conduct of appeal hearings, grievances and complaints, 12.10, 13.3--Step 4, 15.9(2) ARC 2864,  
also filed emergency ARC 2863 N ..... 4/28/82

Davis told the Committee that Chapters 12 and 15 of their  
rules were updated to reference hearing officers required  
under chapter 17A.

Noon Chairman Schroeder recessed the Committee for lunch at  
Recess 11:40 a.m. The Committee was reconvened at 1:35 p.m.  
with Schroeder in the chair.

PLANNING & The office of Planning and Programming was represented by  
PROGRAMMING James Lynch, Director, Division of Municipal Affairs, and  
Mike Miller, Acting Program Manager, for review of the fol-  
lowing:

PLANNING AND PROGRAMMING[630]  
Community development block grant nonentitlement program, ch 23, filed emergency after notice  
ARC 2831...FFAY..... 4/28/82

23.4 (2) In answer to question by Schroeder re 23.4(2)m, Lynch said  
that if cities want to exceed 10 percent for administrative  
costs, they should make up the difference through local effort.  
Lynch emphasized there was strong sentiment for this approach.  
Responding to Priebe, Lynch stated they received static from  
communities which are denied funds. Priebe had heard argu-  
ment that areas which had upgraded the community were now  
being penalized while cities that have done nothing were  
awarded grants. Lynch said it was more a matter of relative  
wealth of the community. Clark pointed out that some commun-  
ities make improvements without imposing a tax.

Lynch admitted the system was imperfect since data was not  
available. He added that they were open to suggestions.  
Miller explained that prohibition against consecutive year  
funding for cities under 2500 had been deleted in the final  
draft. However, there could be a 2-year maximum. Lynch  
agreed to consider Clark's suggestion for a 2- or 3-year  
maximum with a descending amount.

Schroeder had received complaints about the workshops. Many  
argued that information on ranking of cities should have  
been available. Lynch presented application papers to members  
for their perusal.

Minutes Chairman Schroeder called for diposition of minutes of the  
April meeting. Holden called attention to an incorrect  
word on page 1693, third line from the bottom--"prescribed  
medical 'ration'" should read "regimen". Minutes were ap-  
proved as corrected.

Royce called attention to a presentation from Brent Appel  
concerning the Commerce Commission pilot project.

No Reps It was decided that amendments to chapter 22 of the Public  
Instruction Department should be moved from the No Repre-  
sentative status and the Department was called to appear.  
Agencies listed below were not requested to send a repre-  
sentative.

SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805]  
Address corrected, advisory council, 1.2, 1.33"d", 2.2(2), 3.5(1), 3.15(1),  
1.4, filed emergency ARC 2823...FF..... 4/14/82  
Licensure standards for treatment programs, complaints, 3.14 ARC 2822 .F..... 4/14/82  
INDUSTRIAL COMMISSIONER[500]  
Contested cases, 4.17, 4.18, 4.20, 4.31 ARC 2839...F..... 4/28/82  
LANDSCAPE ARCHITECTURAL EXAMINERS BOARD[540]  
Biennial renewal of registration, 2.8, 2.10 ARC 2827...F..... 4/14/82  
NURSING HOME ADMINISTRATORS BOARD OF EXAMINERS[600]  
License fee, 2.5 ARC 2810...F..... 4/14/82

ENVIRONMENTAL QUALITY DEPARTMENT

Holden in the chair. The following DEQ rules were before the Committee:

|  |         |
|--|---------|
| ENVIRONMENTAL QUALITY DEPARTMENT[400]  |         |
| Land application of wastes, ch 33 ARC 2815... <i>N</i>   | 4/14/82 |
| Water supplies, 22.2, 22.4(3)(d), 22.4(4)(c), 22.4(5)(d), 22.5(2)(a), 22.5(3)(d), 22.6, 22.7         |         |
| 22.12(1)(b) ARC 2811... <i>N</i>   | 4/14/82 |
| Solid waste disposal, 25.1(7), 25.3 to 25.6, 27.2(1) ARC 2290 <u>terminated</u> ARC 2813... <i>N</i> | 4/14/82 |

ch 22

Odell McGhee, Hearing Officer, Keith Bridson, Section Chief, Water Supply, Mike Murphy, Compliance Officer, and George Welch were in attendance. Discussion of chapter 22 which, according to Murphy, set out four alternatives for collecting fees for water supply operation and construction permits. DEQ was very interested in ARRC views on the issue since they received opposition to the rules which would allow raising and lowering of fees without public notice. Holden was hesitant to bypass notice process. He wanted to avoid increasing fees in anticipation of requesting bigger spending.

Murphy contended the time factor was important since fees could be lost during the 4 to 6 months rules process. He was unsure of the advantage of public participation. Tieden was interested in the procedure for approval of projects. Holden expressed interest in the attendance at the public hearing. He was informed that many people were present but only five spoke. Twenty comments had been received in other form--many from large associations, i.e, Wellwater, DOT, Utilities, etc. Murphy recalled several objections to the construction permit fees. He mentioned the fact that DEQ had been sued by the City of Chariton. Murphy agreed to inform Priebe if additional staff is added as a result of the rules.

Schroeder took the chair. Murphy pointed out that the appropriations bill required the fee charge. Holden viewed the penalty of 100 percent of the fee to be "stiff". He was also bothered that they were expected to file prior to the date of operation and Murphy said that would be reviewed.

22.6(7)

Holden interpreted 22.6(7) as providing a penalty before the permit expires. There could be a 100 percent penalty fee. Murphy agreed to clarify the subrule.

ch 33

Discussion of chapter 33. Soil Ph factor was discussed and method of sodium control in the soil--33.3(2). Tieden wondered about enforcement and Welch indicated the disposer keeps compliance records and and informs DEQ. Same process is followed by municipalities. Holden referred to 33.2(2)b and opined the executive director was being granted too much latitude which in effect was thwarting the rulemaking process. Royce responded to Holden that there were a number of remedies. Royce could see the problem confronted by DEQ. Every situation could not be addressed in such a technical area. However, one remedy would be to petition for a declaratory ruling. If the agency chooses not to grant the variance and decides against a declaratory ruling, they must detail the reasons. That should reveal whether they are acting in an arbitrary or unreasonable manner.

33.3(1)c(4)

Holden called attention to 33.3(1)c(4) and use of "but" instead of "or". Welch admitted it was an unfortunate choice

ENVIRONMENTAL QUALITY  
Continued

of words in the original chapter 33, but thought it could be confusing to operators if it were changed. Holden asked, "Is the publicly owned treatment plant mandated to see to it that application is in accordance with the rules? Welch said they are obligated to oversee the disposal. There is periodic inspection of the wastewater plant.

Tieden was hesitant to support the executive director having so much power since the Commission is the overall authority under recent reorganization.

Welch explained the chart in 33.3(2)e. McGhee distributed a memo in response to questions posed at the April meeting with respect to proposed amendments to 3.1(1) and 3.5(1)c, ARC 2785, 3/17/82 IAB.

DEPARTMENT OF PUBLIC INSTRUCTION

Dwight Carlson, Director, School Transportation and Safety Education, appeared on behalf of the Department of Public Instruction for review of the following:

PUBLIC INSTRUCTION DEPARTMENT[670]  
School transportation, 22.15(2), 22.43(1)c" ARC 2859 . N..... 4/28/82

22.15 (2)

Schroeder was interested in an explanation of what DPI was trying to achieve with 22.15(2). According to Carlson, the way the rule currently reads, it is discriminatory toward those individuals that can safely operate a school bus and carry on the functions of school bus driver--and (2), the school superintendent signs the application for the permit. Schroeder preferred leaving the matter for the school board.

Carlson indicated the Department had received quite a few complaints. Mention was made of a possible request for an AG opinion. Responding to Royce, Carlson indicated a physician's report is completed prior to approval of a driver. Carlson concluded the rule would permit individual evaluation and was not a major departure from present practice. Schroeder asked Carlson to contact a school bus drivers association, should there be one, and seek comments. No formal action.

ENGINEERING EXAMINERS

The following rules were before the Committee:

ENGINEERING EXAMINERS, BOARD OF[390]  
Buildings, structures and systems requiring professional services, ch 5 ARC 2838 . N..... 4/28/82

Bonnie Fagerstrom, Executive Secretary, appeared on behalf of the Board, which had requested deferment of the review until after their public hearing. In defense of the proposal, Fagerstrom declared it was not an attempt to set up a building code but was intended to protect public welfare. The Board plans revision after the hearing.

5.2(1)

Schroeder and Priebe called attention to 5.2(1)--combined structures containing more than 50,000 cubic feet--as taking in steel grain bins, machine sheds, etc. on farms. Schroeder contended that statutory exemptions were disregarded in the proposal and Fagerstrom agreed to relay that to the Board.

ENGINEERING  
EXAMINERS  
Continued

Chiodo questioned statutory authority. It was his opinion that such a requirement would be more appropriate in the Building Code sections rather than in the Engineering section. Priebe concurred the Board had probably exceeded its authority, and he viewed the proposal as a method to create new jobs for engineers. Fagerstrom was hesitant to discuss technicalities taking the position the Board was better qualified. Schroeder apologized for placing Fagerstrom in an awkward position, but he asked her to apprise the Board that the rules were very controversial. He highlighted some areas of concern in 5.2(1) and 5.3(2).

Royce had visited with an attorney for the Board who would have been present but for a court date that he could not break. The Board does not intend to regulate the buildings per se but those who hold themselves out as being professional in the area of construction and installation of buildings and structures.

Clark commented that it would be acceptable if the Board made these recommendations to Building Code personnel. She contended the way to "protect the public would be to state what engineers shall do, not what the public shall do about buildings." Royce reminded Fagerstrom there was no Code authority granting power to regulate structures that require application of engineering principles.

Holden was critical of the Board of Engineering Examiners for not being present at this meeting. According to Fagerstrom, the term of office of drafter of the proposal expired April 30.

Request

Tieden requested that ARRC members be supplied with minutes of the public hearing. Fagerstrom agreed. It was also decided that Royce should attend the hearing.

HEALTH  
DEPARTMENT

Health Department representatives present were Peter Fox, Hearing Officer, Harriett Miller, Chiropractic Examiners, and Jim Krusor, Board of Medical Examiners. The following rules were before the Committee:

HEALTH DEPARTMENT[470]

Medical examiners, 135.102(1) to 135.102(4) ARC 2858 .F..... 4/28/82  
Physical and occupational therapy examiners, 137.2(4), 137.2(5), 137.3(1), 137.6(1), 137.6(2), 138.2(1) to 138.2(4), 138.2(6), 138.3(4), 138.4(1) to 138.4(3), 138.7, 138.9, 138.10(3), 138.206(4), 138.210(1), 138.210(8)"b" ARC 2861 .F..... 4/28/82  
Podiatry examiners, license renewal, continuing education, fees, 139.1(16), 139.3, 139.101(1), 139.101(2), 139.101(5), 139.105, 160.2 ARC 2812 .F..... 4/14/82  
Chiropractic examiners, license renewal, continuing education, 141.12(1), 141.13(4), 141.16(2), 141.62(1) to 141.62(6), 141.66 ARC 2862 .F..... 4/28/82  
Medical examiners, conducting examinations, 135.102(5) ARC 2856 .M..... 4/28/82  
Medical examiners, grounds for discipline, 135.204(3)"d" and "e" ARC 2857 .M..... 4/28/82  
Physical therapy and occupational therapy examiners, license, 138.206(5) ARC 2860 .M..... 4/28/82

DENTAL EXAMINERS, BOARD OF[320]

License fees and hearings, 15.1, 15.2, 51.7(1) ARC 2811 .F..... 4/14/82

ch 135

Krusor said that filed amendments to chapter 135 adjust the application filing dates in order to comply with Federation bylaws and brings the Board into compliance with chapter 147, The Code, as amended by 69GA, 1981 Session, chapter 5. In response to Schroeder, Krusor explained that any failed test must be retaken in toto.

HEALTH  
DEPARTMENT  
Continued

Tieden was informed that the Federation Licensing Examination is universally accepted. Fox led the discussion on examinations and continuing education for the Board of Physical and Occupational Therapy Examiners.

Holden inquired if the fee change would recover appropriated revenue or was it an anticipated hiring appropriation request for next year. Fox contended it was to cover the cost--and the Board maintains the \$15 increase is essential.

Holden reiterated his criticism of the procedure followed by all licensing boards. In his opinion, allowing the fee to be increased anytime during the year tends to distort the theory.

138.206 (4) Schroeder requested explanation of 138.206(4). He suspected people could be blocked from obtaining an Iowa license. According to Fox, if the national exam is taken, the Iowa test is not. As a practical matter, most take the test at the schools right before graduation.

Holden saw a need to limit the amount of tax break for continuing education to eliminate subsidizing by the public. He had learned that some programs were offered in Hawaii and Jamaica. Fox explained the mechanism for obtaining interstate endorsement--138.9. He said the benefits of continuing education are not measureable.

Podiatry &  
Chiropractic  
Exam.

No questions were posed with respect to Podiatry and Chiropractic.

Amendment to 135.102(5) was acceptable.

According to Krusor, 135.204(3) "d" & "e" was implemented to aid pharmacists who were receiving prescriptions that were not signed, but rubber-stamped. Drug diversion rings would welcome an opportunity to submit a rubber-stamped prescription, as well as pre-signed one, to a pharmacist.

138.206 (5) No recommendations were offered for 138.206(5).

ch 15

In re amendments to chapter 15, Fox said the fees for dentists and dental hygienists were raised to cover additional appropriation of \$61,730.00, starting July 1.

Holden noted variance in the increase which, in his judgment, was not an equitable application. He concluded that those in the profession ought to bear the biggest share of the operating cost of that system.

Committee  
Business\*

Schroeder reaffirmed the time for the June meeting to be June 8 and 9.

In a matter not officially before the Committee, there was discussion of an apparent change of policy on the part of the Board of Nursing regarding examinations. Upon Royce's advice, the Committee agreed to seek an AG's opinion, and Royce was asked to contact the Board and the State Ombudsman. Recessed at 4:00 p.m. to be reconvened Wednesday, May 12, 1982.

Recess

5-12-82

Reconvened Chairman Schroeder reconvened the meeting at 8:50 a.m. in  
Wednesday Room 116 with Priebe, Tieden, Holden and Chiodo present.  
Clark was excused. Also present: Royce, Barry and Haag.

Social Services Audiology Schroeder recognized Chiodo who suggested the Audiologist  
Advisory Committee be requested to meet with interested parties  
re hearing aid services. It was agreed that it would be ap-  
propriate for the ARRC to request Social Services Department  
to pursue the issue by alerting the Advisory Committee of  
developing problems.

Economic Impact Statement Requested Holden made the request in the form of a motion which carried.  
Holden then moved to request an informal economic impact state-  
ment on the proposed rules re hearing aid examinations--ARC 2738  
and ARC 2850. Motion carried with 5 ayes. Clark absent.

AGRICUL- Duncan and O'Connor returned for review of:  
TURE

DEPT. AGRICULTURE DEPARTMENT[30]  
Standards for determining gallonage on gasoline or diesel motor vehicle fuel. 55.49 ARC 2852. *N*..... 4/28/82  
Gas pump advertising 55.48 ARC 2196 3/31/82

Holden pointed out that temperature correction was not a  
"method of heating" thus the word "other" should be deleted  
from the last sentence. O'Connor was amenable. Tieden was  
interested in knowing the enforcement method. O'Connor said  
a thermometer would be inserted in the fuel.

55.48 There was brief discussion of 55.48. O'Connor stated the rule  
coincides with the new legislation. Holden voiced opposition  
to use of a plus symbol on the posted signs calling attention  
to ethanol blend.  
No further questions.

CONSERVA- Nancy Exline, Superintendent of Parks, was present for review  
TION of the following  
COMMISSION

CONSERVATION COMMISSION[290]  
State forest camping. ch 41 ARC 2843. .... *F*..... 4/28/82  
CONSERVATION COMMISSION[290]  
Motor regulations. ch 40 ARC 2844. .... *N*..... 4/28/82  
Metal detectors in state parks. ch 43. also ARC 2669 terminated ARC 2845. .... *N*..... 4/28/82  
State parks and preserves. 45.2. 45.2(2)"c". 45.2(4). 45.2(5)"a". 45.2(5)"b". 45.2(6). 45.3. 45.4 ARC 2846. .... *N*..... 4/28/82

Chairman Schroeder brought up the subject of "found items"  
by persons using metal detectors. Royce quoted from chapter  
644, The Code, which requires findings with value of \$5 or more  
be advertised. Schroeder indicated he had already requested  
a research of what other states are doing. Exline reported  
that Nebraska had made inquiry of surrounding states and had  
heard from 18. She called attention to the fact that changes  
from the Noticed rules were a result of comments at the pub-  
lic hearing as outlined at last Rules Review Meeting.

It was noted that detectors were still prohibited on grassy  
areas of beaches. Schroeder requested Exline to recommend  
removal of that prohibition. Royce inquired about areas which  
are not mowed. According to Exline, conservation officials  
want to protect timber areas of state parks as possible arche-  
ological sites. Other areas are considered to be preserves.  
Schroeder recommended that provision be made whereby the Com-  
mission, under certain circumstances, could grant special per-  
mission to probe.

CONSERVATION COMMISSION Exline reported that 41.4 had been amended as suggested by the Committee. She clarified some of her remarks Continued made at the March meeting with respect to camping fees.

chs 41 & 45 Discussion of chapter 45 amendments. Schroeder wondered whether the \$1.50 fee for electricity would be adequate --suggestion was made to monitor an area for a season to determine actual use. Exline pointed out that many shower lights and restrooms are on the same circuit.

Recess No questions were raised re chapter 40. Chairman Schroeder called for a recess at 9:20 a.m. The meeting was reconvened at 9:40 a.m.

REVENUE DEPARTMENT Gerald Bair, Director, Carl Castelda, Deputy Director, and Jenny Netcott, Executive Secretary to the Director, appeared on behalf of the Department of Revenue. The following rules were before the Committee:

|   |                         |
|---|-------------------------|
| REVENUE DEPARTMENT[730]   |                         |
| Sales and use tax. 12.8, 12.9, 16.22, 18.21, 18.42(1), 19.7, 19.13, 19.13(1), 26.38 | ARC 2816 F..... 4/14/82 |
| Cigarette tax, violator penalty. 81.8(1)  | ARC 2817 F..... 4/14/82 |
| Hotel and motel tax. 103.1(2), 103.6(2), 104.6                                      | ARC 2818 F..... 4/14/82 |
| Assessors, certification, courses. 123.1, 123.3 to 123.8, 124.3--item 3, 124.6      | ARC 2847 N..... 4/28/82 |

26.38 Castelda reviewed clarifying amendments to chapters 12, 16, 18, 19 and 26 of their rules. He explained that 26.38 distinguishes between a private employment agency and an executive search agency and once that distinction is made, the Department peruses the activity of the agency.

Schroeder questioned how they could differentiate between the agencies. Castelda said the Department saw no distinction but when an issue was before the state Board of Tax Review, they ruled there was a distinction. That decision cannot be appealed. Schroeder was interested in the make-up of the Tax Review Board and Castelda said it usually consists of two attorneys and a CPA. Schroeder requested the Department to recommend legislative scrutiny of the matter next year.

81.8(1) chs 103 & 104 Amendment to 81.8(1) implements statutory change by 68GA. Castelda emphasized that amendments to chapters 103 and 104 were for clarification--not a change in policy.

chs 123 & 124 Tieden inquired if the amendments to chapters 123 and 124 had the approval of the Assessors Association. Netcott replied in the affirmative. Tieden also asked if assessments were equalized statewide and Bair replied they were by class but was unsure as to parcel. The Committee learned the make-up of the Assessors Commission included assessors from various areas of the state.

Netcott, responding to Priebe's question, said the number of Continuing Education hours was changed from 240 for assessors to 150 with 90 tested hours. Hours for deputy assessors were reduced from 150 to 90 with 60 tested hours. Priebe reasoned that was still excessive.

REVENUE DEPARTMENT Continued Netcott indicated that Item 11 listed approved courses to be certified to the Commission for approval. Courses must be completed in order for the assessor to become certified.

123.3 Netcott explained to Tieden that the formula in 123.3(441) was for proration purposes. Schroeder was informed that, under the law, examinees must score 70 percent minimum. Non-tested credit can be received until they may want to retake the exam.

Priebe was of the opinion a passing score should be required on each category to guard against incompetent assessors.

Discussion of the complex method of appointment of assessors.

SF 2153 Printers Materials In a matter not officially before the Committee, Schroeder opened the discussion of SF 2153[1982] pertaining to taxation of printing materials. An amendment to that bill gained the attention of the Revenue Department because of the possible fiscal impact to the state since a 1971 retroactive clause for refunds was included.

Chiodo said, "We did not intend it to be retroactive." Bair emphasized the whole law must be interpreted and, in their judgment, the amendment provides potential for much litigation--there should be restrictions on the intent. There was lengthy discussion of all the possible legal ramifications.

Bair favored a veto by the Governor and then the Department would be willing to work with the printers until the next General Assembly could resolve the issue.

Holden was supportive of the legislative intent and admitted "We don't know all of the ramifications." He declared, "Nothing causes more trouble than to have a change in the direction Revenue takes on tax liability." The Committee preferred to allow the legislation to become effective, and then deal with any problems legislatively next year. Bair reminded members that he would be remiss if he failed to point out possible fiscal implications to the Governor. He emphasized that they would work with the legislature regardless of the outcome. He concluded that if the bill was not vetoed, administrative rules would not resolve the problem.

Recess The Committee was in recess for five minutes.

EMPLOYMENT AGENCY LICENSE COMMISSION Michael J. Burdette, Secretary of State's Office, represented the Employment Agency License Commission for review of the following:

Revocation, fees, advertisement, contracts, records, forms, 5.1, 6.2, 6.3, 6.4, 7.3(1), 8.2(3), 9.3, 10.4 ARC 2809 .....

4/14/82

Burdette noted changes from the Notice as a result of the hearing. Schroeder questioned where information required in 10.4(95) was made available. Burdette answered that the

EMPLOYMENT  
AGENCY LIC.  
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agencies file a semiannual report but individual reports have not been made available to the public. Schroeder referred to the public records Act [Ch 68A] and questioned whether clarification was needed in the rule.

Royce quoted from rule 6.4 and noted that the commission regulates employment agency licensing but pondered how they could establish inclusion of regulation of employer-employee relationship. Burdette contended it did not. He added that a majority of complaints have been in that area. They originate in the case where the employee realizes the job was not what he expected. In view of the fact that the Commission lacks regulatory authority over the employer, the approach in the rule was adopted. Burdette admitted that there was opposition from agencies. He anticipated legislation to prohibit contracts between the employer and employee.

Recess  
COMMERCE

Chairman Schroeder recessed the meeting for ten minutes and reconvened it at 10:55 a.m.

The following rules of the Commerce Commission were reviewed:

|   |          |                 |
|---|----------|-----------------|
| COMMERCE COMMISSION(250)  |          |                 |
| Ratemaking treatment of excess electric generating capacity, 7.10(3)  | ARC 2826 | N..... 4/28/82  |
| Accounting, 16.2(7), 16.2(8), 16.3(7), 16.3(8), 16.5(5), 16.5(6), filed emergency                           | ARC 2853 | FE..... 4/28/82 |
| Compiling advertisements and expenses, 16.8, amended notice   | ARC 2854 | N..... 4/28/82  |
| Service supplied by utilities 19.2(4)rc(12), 19.3(10), 20.2(4)w, 20.3(2), 20.3(13), 21.2(5)rc(10), 21.3(12) | ARC 2855 | N..... 4/28/82  |
| Telephone utilities, 22.1(3)  | ARC 2826 | N..... 4/14/82  |
| Pilot projects/time of day rates  | 20.10(9) | IAC             |

Those in attendance included: Andrew Varley, Commission Chairman; Twila Morris, Ronald C. Polle, Alice J. Hyde, Dave Conn, Ben Stead and Robert J. Latham, Commission Staff.

7.10

Conn addressed the Committee re proposed rules on ratemaking treatment of excess electric utility generating capacity and relevant issues.

Holden wondered if the plan was to disallow so-called excessive capacity and therefore disallow it from the ratebase. Conn indicated that although it would not be a straight disallowance from the rate base, there would be a revenue requirement effect.

Schroeder asked if future expansion would be blocked. Holden viewed the proposal as "something after the fact-- you are talking about plants in service." He declared it "might have some validity if Commerce had not had some part in approving it."

Holden opined a Commission approach might be that after a plant is constructed, it should be the responsibility of the utility. Chiodo concurred. In response to Schroeder, Conn was doubtful the Commission had authority to order wholesale purchase from a given source. Holden said that would be a different issue.

Varley interjected that the rulemaking process was intended to provide opportunity to discuss provisions in their decision that could not be discussed in the procedures for Commission staff. He discussed penalties and pointed out the damaging effect to consumers and to the utility industry as well when there are no limitations on earnings.

Discussion of plant expansion. Varley concurred with Holden that perfect "foresight" was impossible. Holden reasoned the Commission should have some obligation. He was opposed to

COMMERCE  
Cont'd

unlimited expansion since, "We are not guaranteeing return on investment we don't need."

Recognizing the fact that the utility is obligated to provide service, Holden pondered the ramification of underestimating. Chiodo used the analogy of a businessman with excessive inventory who has no "overbuying protection."  
No recommendations were offered.

Ch 16

Discussion moved to filed emergency amendments to Chapter 16. Chiodo questioned the exemption for employees who receive commission on sale of appliances in 16.2(8), 424-D. Hyde was unsure but pointed out the rules were adopted in 1975 and had been followed by the Commission since that time. However, they had never been published in the Iowa Administrative Code. Copies had been supplied to utilities.

Members concurred that the emergency rules should be placed under Notice to provide for public input.

In response to Chiodo re 16.5(6)--31.642.6--rate change notification advertising for telephone companies, Hyde opined it was an "above-the-line account and charged to the ratepayers." There was no change from previous policy.

The Committee advised that Commerce Commission could reference the filed emergency rules in the Notice, thus avoiding duplication of printing.

Priebe requested that a public hearing be scheduled as well.

16.8

Hyde informed the Committee that Rule 16.8 sets out specific proposals following notice of issues and questions published in the fall of 1981.

Holden asked for the rationale of shifting the 10 percent advertising costs from the utility customers to the shareholders. Varley stated that advertising costs are not mandated by the Code or rule and the Commission considered 10 percent to be reasonable. He concurred with Holden that the figure was somewhat arbitrary, however.

Holden had no disagreement with promotion of safety and conservation but he maintained that the issue of the abuser who advertises flagrantly vs. the conservation advertising program had not been addressed.

Further discussion of the pros and cons of the 10 percent figure charged to the stockholders.

Varley reminded the group that for some time, 100% of promotional ads has been charged to the stockholder.

Chiodo suspected the issue would always be a point of contention. He personally preferred a higher percentage to encourage management to be more "accountable" and less apt to make whimsical choices on promotions.

Oakley observed shareholders are making the decisions about their advertising and whether it should be 20 percent doesn't have any effect.

Holden saw the matter starting with the connotation that "all advertising is an abuse and then moving to the point where safety

EMPLOYMENT  
AGENCY LIC.  
COMM. Cont'd

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| Telephone utilities. 22.1(3) ARC 2826 ..N.....  | 4/14/82 |

Pilot projects/tire of day rates 20.1Q(9) IAC

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Holden and Chiodo favored a Commission approach of "you are on your own--you build them, now repair them." In response to Schroeder, Conn was doubtful the Commission had authority to order wholesale purchase from a given source. Holden commented that would be a different issue.

Varley interjected that the rulemaking process was intended to provide opportunity to discuss provisions in their decision that could not be discussed in the procedures for Commission staff. He discussed penalties and pointed out the damaging effect to consumers and to the utility industry as well when there are no limitations on earnings.

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COMMERCE  
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COMMERCE  
Cont'd

and conservation is not but now we are encroaching on that too."

Oakely indicated he would be interested in the position of the stockholders at the public hearing.

Chs.19,  
20,21

Discussion of extension of service by utilities.

Chiodo noted the expression "three times the estimated annual revenue calculated on the base of similarly situated customers" throughout the rules and wondered if it had some statistical significance. Varley indicated that some gas utilities considered the amount to be excessive but the Commission had tried to provide a general extension policy.

Chiodo referred to 20.3(13)c(3) which provided, "In no event shall the total amount to be refunded to a depositer exceed the amount of advance for construction made by the depositer. Any amounts subject to refund shall be paid by the utility without interest." He asked under what circumstances would a refund exceed the deposit and also, why interest would not be paid.

Varley explained that the rules were intended to apply to someone locating well outside the service territory who pays the cost of obtaining service. The initial customer would be compensated for part of his original investment if new customers move into the serviced area and utilize the extension. He is not required to provide the extension of service for other customers.

Schroeder was concerned over assessment for construction costs incurred in anticipation of growth which never materializes. Polle emphasized that the customer would pay only for the extension necessary to serve him.

In re 21.3(12)b(1)--water plant additions--Polle told Chiodo that if a large manufacturing plant moved outside the city, the plant would be required to pay for any additional facility to serve them.

22.11(3)  
Special  
Review  
20.10

There were no recommendations made re 22.11(3).

Varley led the special review of Commerce rule 20.10 re their pilot project to obtain a cost benefit analysis of time-of-day rate billing. He noted that legislation provided the authority a few years ago and he distributed a list of projects in process.

It was emphasized that the goal of the time-of-day rate study was not to conserve energy but to shift usage and reduce peak loads--thus, reducing the need for excess generating capacity.

Schroeder was informed that the Osage project was progressing. Varley pointed out an advantage of a pilot project was that a company has only a small investment. If the project is successful, it can then apply to the whole utility or state. The risk is minimal and participants who have a loss can be compensated.

Varley observed that, in view of questions that the bill raised, perhaps there should be a hearing in the Iowa-Illinois procedure case.

COMMERCE  
Cont'd  
Pilot  
Project

In the past, it was not considered as a rate increase because the company compensated participants in the experiment for loss. Varley recognized that public notice would have been beneficial to allow for suggestions re the experiment. Holden questioned why the Commission did not see a need for formal rules which would open the door to comment by ARRC members, other legislators and affected persons. Because of the nature of pilot projects, Commission officials were unsure as to the type of general rules that would be applicable. However, they had discussed the possibility of notices for future projects with essentially the same rights as in a rate case. They were willing to adopt rules specifying some sort of procedure, if the Committee felt it was important.

In response to suggestion by Schroeder that an entire community participate in a project, Varley opined it would be virtually impossible to find volunteers. Discussion of the pros and cons of a voluntary system and inherent problems if participants had advance knowledge they would be reimbursed for loss.

Oakley reasoned that focus should be on the purpose and usefulness of the program although there may be disagreement as to the ultimate value of some of the information. He pondered the definition of rules versus the policy of general applicability and thought perhaps procedural rules in selection of projects would be appropriate. It was Oakley's judgment, however, that more specific rules on the exact project probably would not come under the definition of administrative rules.

Stead explained to Schroeder that the Davenport project became public information at a Commission agenda meeting where there was media coverage and a press announcement. Varley confirmed that letters inform the customers who have been selected to participate in a pilot project.

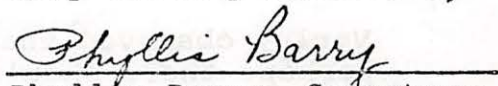
Holden reiterated his concern for the procedure and he declared that it was an attempt to "find out what we are going to demand of the customer." After further discussion, Varley agreed to draft rules setting our format re projects.

June Meet- Since the regular meeting date of June 8 would be primary elections, ing Resched the Committee agreed to change the dates to June 9 and 10, begun at 10:00 a.m. on June 9.  
Adjourn Chairman Schroeder adjourned the meeting at 12:10 p.m.

APPROVED

  
Chairman

Respectfully submitted,

  
Phyllis Barry, Secretary  
Assistance of Vivian Haag