

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday and Wednesday, November 13 and 14, 1990, Senate Committee Room 22, State Capitol, Des Moines, Iowa.

Members Present

Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; and Representative David Schrader. Not present: Representative Betty Jean Clark who was hospitalized as a result of an automobile accident.

Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Alice Gossett, Administrative Assistant. Also present: Paula Dierenfeld, Governor's Administrative Rules Coordinator; and Representative Ruhl Maulsby.

SECRETARY OF STATE

Chairman Priebe convened the meeting at 10 a.m. and called up the Secretary of State for the following rules:

SECRETARY OF STATE[721]
Electronic filing of documents, ch 6, Notice ARC 1391A 10/31/90

Appearing for the Secretary of State were Allen Welsh and Harry Davis.

Ch 6

Welsh said that the rules implement 1990 Acts, Chapter 1074, which authorized electronic filing of financing statements under the Uniform Commercial Code. Electronic filing will provide capability for paperless transactions.

Doyle wondered about original signatures and cited Code section 554.102(39) which defines a signature as any symbol adopted by a party with the intent to authenticate a document, e.g., rubber stamp, thumbprint or piece of letterhead. Welsh indicated there were a number of cases on this subject dating back to 1918.

Priebe was informed that the rules were not relevant to two-party checks.

Tieden was interested in the state's liability in case of an error and Welsh responded that the state and its agents and employees were not liable for errors and omissions in the recording and retrieving of information under the UCC--§554.940. Welsh added that the electronic financing statement system would reduce the occurrence and the likelihood of errors.

It was Priebe's understanding that Iowa Record was making searches and Welsh clarified that the Secretary of

SECRETARY
OF STATE
Contd.

State has a statutory responsibility to search and Iowa Record duplicates that service.

Priebe pointed out that lending institutions were concerned and he asked about disclaimers. He suggested the possibility of an Attorney General opinion as to liability.

Davis described the disclaimer that the Secretary of State uses on their lien searches as a way to inform the customer that they have searched the exact name as requested at a given address. Iowa Search follows the same procedure. It was his understanding that Iowa Search carried liability insurance. The state has no liability insurance but could not be sued. He added that a disclaimer could not abrogate the law. There was consensus that 100 percent accuracy was impossible. However, Welsh emphasized the importance of perfecting an electronic system to the maximum degree. They had worked with the Bar Associations and the Iowa Bankers Association.

Priebe reiterated his preference for an Attorney General opinion. Welsh suggested that disclaimer language could state what the Code permits and requires. They could also determine whether the disclaimer on the lien searches as it has been printed over the years was consistent with the Code.

No formal action.

CORRECTIONS
DEPARTMENT

Appearing for the Department were Fred Scaletta and Gene Gardner. Also appearing was Scott Moline, Iowa Law Enforcement Academy; Bill Douglas, Director of Criminal Justice Ministries; Patty MacDonnell; Organizer of Iowa CURE; Norman Searah; and Gary L. Baugher, Chairman of Iowa Board of Corrections. The following agenda was discussed:

CORRECTIONS DEPARTMENT[291]

Immediate family defined, 20.2,	Filed Emergency ARC 1313A	10/3/90
Immediate family defined, 20.2,	Filed Emergency ARC 1362A	10/17/90
Authorization for judicial districts to allow probation and parole officers to carry firearms, 40.4(11),		
40.4(12) Notice ARC 1363A		10/17/90

20.2

Scaletta offered background on revision of the definition of "immediate family" in 20.2.

Chairman Priebe recognized Douglas who was apprehensive that all immediate family members would be subject to unnecessary criminal background investigation. Priebe wondered if extra work would be created. Scaletta did not anticipate major change since they have always had authority to make background checks.

Priebe suggested substituting "may" be subject to... investigation for "will." Scaletta interpreted use of "will" to provide discretion.

Pavich was concerned as to interpretation of the word "will" by courts and attorneys.

CORRECTIONS
Contd.

Schrader favored use of "may." He recalled Representative Clark's concerns were not related to increasing or decreasing the amount of checks done but to ensure equality. Scaletta thought that Clark placed emphasis on giving more authority to the Department for background checks on all visitors. After further discussion, Scaletta was authorized to adopt an emergency amendment to substitute "may" for "will."

40.4

Scaletta stated that under subrules 40.4(11) and (12) judicial districts could authorize probation and parole officers to carry weapons. In 1988, the Department proposed a rule to prohibit such practice. The rule was delayed for 70 days and then referred to the legislature. No action was taken and it became effective. Scaletta introduced Gardner who explained the reversal in the Board's position. Schrader asked if the permit would differ from the one carried by a professional police officer.

Gardner indicated the correctional officers would be covered by the permit while on duty.

Doyle expressed concern as to police authority of the probation or parole officer in certain situations. Gardner commented on the different intensity of program supervision. For example, in the Fifth Judicial District, the probation officers make curfew and home checks at night in a dangerous environment. Concern is for their safety.

Doyle was interested in the type of training for the officers. Gardner said they would take the one and one-half day course for community corrections professionals. They will also take training that police officers go through in safety mechanisms of carrying and firing a weapon.

Moline emphasized that these officers have very limited powers but can defend themselves. If they anticipate problems, assistance from local law enforcement personnel should be requested. Moline reasoned this would be similar to role of park rangers and conservation officers.

Doyle questioned what would be adequate training for the probation and parole officers. Moline took the position that all training should be through the Academy. However, decision not to do that was made long before he was hired. Moline noted that DOT officers, county conservation rangers and park officers train at the Academy. In response to Doyle, Moline stated that the rules may have voids or loopholes. In was Doyle's opinion that, prior to adoption of the rules, the Department of Corrections should confer with the Law Enforcement Academy.

Priebe raised question in 40.4(11) as to whether the Judicial District Board of Directors had authority to determine if the employees of correctional services should carry firearms. Gardner viewed that as a policy

CORRECTIONS
Contd.

decision but Priebe preferred an opinion from the Attorney General on the question.

Gardner explained that the rule allows the district to establish policies for the possession of firearms after certain requirements have been met. He pointed out that permit to carry a gun as a nonprofessional could be obtained from the sheriff's office. The Department wants to ensure that the correction officers receive appropriate training before they are authorized to carry weapons.

Priebe did not disagree with the concept but was doubtful the Board had statutory authority in this area.

Baughner defended the Board's position citing varied decision-making procedures at the local district level.

Doyle reiterated his concern for lack of adequate training for the officers.

Motion

Pavich moved to request an Attorney General's ruling on whether or not the judicial district board of directors could allow the possession of firearms by certain correction officers.

Schrader was not opposed to seeking an Attorney General's opinion but opined there was no question that the districts have authority to make a decision either way on this issue.

Motion
Failed

The Pavich motion failed with three ayes and two nays.

Motion to
Reconsider

Schrader then moved to reconsider the vote by which the Pavich motion failed.

Motion carried. Tieden voted "no."

Motion
Carried

The Pavich motion was before the Committee and carried by voice vote.

Pavich in the Chair.

ECONOMIC
DEVELOPMENT

Appearing for the Department were Melanie Johnson, JoAnn Callison, John Goeldner, Kathleen Beery, and Gleeen Coates. The following agenda was before the Committee:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa small business new jobs training program, 7.3(1), 7.3(9), 7.4(1)"a," 7.4(2)"a" and "b," 7.5(3), 7.5(4), 7.6(1), 7.8(1) to 7.8(6), 7.9, 7.11(1), 7.11(2), 7.13 to 7.21. Notice ARC 1369A 10/17/90
Work force investment program, ch 18, Filed ARC 1353A 10/17/90
Rural enterprise fund, 67.1, 67.2, 67.2(1)"e," 67.2(2), 67.3(3), 67.3(5), 67.4, 67.5(5), 67.6, 67.8(1)"a," 67.8(2)"a," Notice ARC 1354A 10/17/90

Ch 7

In review of amendments to Chapter 7, Callison indicated that clarifying language on default would be added as a result of the hearing.

Ch 18

Coates presented Chapter 18 and there were no questions.

Ch 67

Beery reviewed amendments to Chapter 67. Tieden questioned use of "turf" in the review process--67.6(1)c and Beery agreed to substitute another term.

COMMUNITY
ACTION
AGENCIES
DIVISION

The following agenda was presented by Sue Downey, Joan Burnquist and Rod Huenemann.

COMMUNITY ACTION AGENCIES DIVISION[427]

HUMAN RIGHTS DEPARTMENT[421] "umbrella"

Affordable heating payment program pilot project, rescind 427—ch 11, Filed Emergency ARC 1288A 10/3/90

Community services block grant, 22.3(2), 22.4(3), 22.7(3), Notice ARC 1406A 10/31/90

There were no Committee recommendations.

Priebe in the Chair.

EDUCATIONAL
EXAMINERS
BOARD

Orrin Nearhoof appeared for the following:

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281] "umbrella"

Licensure, amend, renumber and transfer 281—chs 73 to 75 and 79 to 82 to 282—chs 14 to

20, Notice ARC 1319A, also Filed Emergency ARC 1316A 10/3/90

Transfer
of Rules

No questions.

EDUCATION
DEPARTMENT

The Education Department was represented by Kathy L. Collins, David Bechtel and Dick Boyer. Also present: William R. Unger, ISEA.

EDUCATION DEPARTMENT[281]

Open enrollment, ch 17, Filed ARC 1328A 10/17/90

Special education, 41.33(9), Notice ARC 1318A, also Filed Emergency ARC 1317A 10/3/90

Licensure, transfer 281—chs 73 to 75 and 79 to 82 to 282—chs 14 to 20, Filed Emergency ARC 1315A 10/3/90

Postsecondary enrollment options, 22.1, 22.3, 22.4, Filed ARC 1384A 10/31/90

Corporal punishment ban, ch 103, Filed ARC 1383A 10/31/90

Ch 17

Discussion of Chapter 17 and the definition of "good cause."

Priebe commented on his intent to propose legislation to address financial problems for schools with student loss because of open enrollment. He will propose that local property tax for the first year stay with the school that loses the student.

Bechtel preferred to count the students in the receiving district to avoid a "horrendous billing and tracking problem."

In response to Tieden, Bechtel described "alternative receiving district" as a district to which the student has open enrolled. The student can be in district A as a resident, open enroll to district B, then transfer to district C--C would be the alternative receiving district.

No other questions.

41.33(9)

Collins said that amendment to 41.33(9) would conform to a federal compliance issue relative to dismissal of an appeal. No questions.

Chs 73 to
75, 79

No questions regarding transfer of rules to implement legislative changes--ARC 1315A.

Ch 22

No questions on amendments to Chapter 22.

Collins reviewed changes from the Notice on Chapter 103. ISEA had submitted a brief at the public hearing and Collins had contacted others who would be affected by the rules. As a result, one change was made.

EDUCATION
Contd.

Ch 103

Schrader referred to the definition of "corporal punishment" in 103.2 and contended that the words "as well as spontaneous, unprivileged physical reactions" clouded the issue. There was discussion of 1990 legislation [HF 2416] which was intended to clarify a misunderstanding that no physical contact was allowed between the teacher and student. Schrader and other legislators had taken the position that "corporal punishment" was punishment, not spontaneous, unprivileged physical reaction. Schrader continued that a spontaneous, unprivileged physical reaction should be included in the provisions relative to abuse by school employees.

Motion to
Object

Schrader moved to object to the words "as well as spontaneous, unprivileged physical reactions" in 103.2 as being beyond the authority of the Department.

Royce discussed the possible impact of the objection.

Substitute
Motion

Schrader then moved as a substitute motion to delay the words "as well as spontaneous, unprivileged physical reactions" in 103.2 until adjournment of the 1991 General Assembly.

Collins spoke of two Iowa Supreme Court cases on corporal punishment which ISEA had not mentioned in their brief. In both cases, the factual dispute arose out of a spontaneous unprivileged reaction by a teacher. Each case was an individual suit against the teacher by the parents of the child who was injured. The teacher used the defense of corporal punishment and the court did not look at unprivileged physical responses as being outside the scope of corporal punishment. The rule was intended for further clarification. Collins told Schrader that the court decisions were handed down prior to the definition of corporal punishment by the legislature.

Unger commented that historically, spontaneous or unnecessary reactions or those that went beyond the bounds of disciplining a student to correct the student's behavior were never privileged or protected under corporal punishment. He discussed State vs. Misner, an 1878 case and Tinkham vs. Cole in 1961.

After further discussion, Collins said that intent was to provide that the ban on physical contact also included a ban on spontaneous unprivileged physical reactions. She was confident that compromise language could be drafted. She concluded that ending the sentence after the word "acts" would imply that other areas were not covered.

Tieden voiced support of the amended Schrader motion.

Royce suggested that the last two sentences be included in the delay. Department officials favored that approach reiterating that unreasonable and unnecessary physical force was never considered corporal punishment.

EDUCATION
Contd.

Motion
Withdrawn

Schrader moved to withdraw his motion. Motion carried.

Motion
to Delay

Schrader then moved to delay until the end of the 1991 General Assembly the last two sentences of 281--103.2(280) and refer it to the President of the Senate and the Speaker of the House. Motion carried.

COLLEGE
STUDENT AID
COMMISSION

The following agenda was presented by John Heisner.

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281] "umbrella"

Stafford loan program--guarantee fee reduced, 10.24,	Notice ARC 1309A	10/3/90
Vocational-technical tuition grant program--student eligibility, 13.1(2),	Notice ARC 1307A	10/3/90
Osteopathic subvention program, ch 14 title, 14.1,	Notice ARC 1301A	10/3/90
Occupational therapist loan payments program, 19.1(3)"a,"	Notice ARC 1305A	10/3/90
Nursing loan payments program, 21.1(2)"e,"	Notice ARC 1306A	10/3/90
Iowa grant program, ch 27,	Filed ARC 1304A	10/3/90
Access to education grant program, ch 28,	Notice ARC 1302A	10/3/90
Displaced workers financial aid program, ch 29,	Notice ARC 1310A	10/3/90
Osteopathic forgivable loan program, ch 30,	Notice ARC 1303A	10/3/90

10.24

No questions regarding 10.24.

13.1(2)

Heisner reported that amendment to 13.1(2) would define student eligibility for the Iowa Vocational Technical Tuition Grant Program. Typically, the community college programs are for a two-year period but can take up to five years to complete. Assistance would be available for the equivalent of two years of study.

14.1

According to Heisner, revision of 14.1 would clarify the osteopathic subvention program which has been in existence since 1973. He added that student recipients must have enrolled after July 1, 1986, but before July 1, 1990. Legislation now directs funds toward a certain percentage of Iowa enrollees. No action taken.

19.1(3), 21.1(2)

No questions regarding 19.1(3)a or 21.1(2)e.

Ch 28

Heisner explained Chapter 28 which summarized procedures for administration of the new access to education grant program for students enrolled in Iowa community colleges.

In response to Tieden, Heisner indicated that lenders and some schools had expressed concerns regarding time frames.

Doyle called attention to lack of a date certain in 28.1(3)--reference to U.S. Department of Education.

Ch 29

Under proposed Chapter 29, a financial aid program will assist individuals who were displaced from the two hog slaughtering plants in Iowa. The program is limited to those displaced within this calendar year. Doyle had heard complaints in his area that experienced packing house workers are not interested in returning to new

COLLEGE
STUDENT AID
Contd.

plants. They prefer to be trained for other work with state assistance. Heisner attributed the problem to lower wages in the new plants.

Ch 30

Heisner said that Chapter 30 was applicable for first-year osteopathic students--approximately 38 out of the 39 were eligible.

Ch 27

No recommendation for Chapter 27.

RACING AND
GAMING
COMMISSION

The Commission was represented by Mick Lura and Chuck Patton who reviewed the following:

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"

Manufacturer's, distributor's, vendor's and occupational licenses, ch 22, Filed ARC 1365A 10/17/90
Accounting and cash control, ch 24, Notice ARC 1366A 10/17/90
Rules of the games, ch 26, Notice ARC 1364A 10/17/90

Ch 22

Lura summarized changes from the Notice of Chapter 22. Annual fees set out in 22.14(3) were changed from a minimum to a set fee as requested by the ARRC. Lura noted that the Commission chose not to modify the qualifications for licenses since the same language appears in three other chapters of rules. No Committee action.

Ch 24

Patton discussed Chapter 24 relative to the accounting and cash controls required of each excursion gambling boat licensee. The Commission met with each of the licensees and reviewed the rules. There were no strenuous objections.

The rules were clarified to provide that possession of weapons in the casino will be prohibited.

With respect to records retention, Lura stated that no specific time frame was adopted. However, once the licensee's audit is complete and filed, other than admissions and tax information, those records could be destroyed.

Patton explained the procedure of prepaid vouchers at gaming tables.

Doyle observed that 24.30(8) was deficient in that there were no directions to the mechanic who determines that a slot machine has malfunctioned. Patton said there were two options and they would clarify the subrule.

Ch 26

There was general review of proposed Chapter 26.

Priebe questioned 26.10(3) which would prohibit gambling aids. Patton explained the need for this language since gamblers have attempted to operate all kinds of machines, e.g., one person had a calculator built into his shoes and operated it with his toes. This is a common rule in most gambling jurisdictions.

Schrader and Patton discussed card counting and the \$5 bet in relation to craps. Patton reminded that the law

RACING AND
GAMING
Contd.

specifically allows an exception regarding craps and blackjack. Also, because all the bets are not decided on each roll at a crap table, it is very difficult to call that a hand or a play as opposed to roulette wheel where all the bets are out.

Recess

Chairman Priebe recessed the meeting for lunch at 12:15 p.m. and reconvened it at 1:40 p.m. and called up the following:

REVENUE
AND FINANCE

REVENUE AND FINANCE DEPARTMENT[701]	
Organization, public inspection, 6.7, <u>Notice ARC 1329A</u>	10/17/90
Filing and extension of tax liens and charging off uncollectible tax accounts, 9.1, 9.6, 9.6(1), 9.6(4), <u>Filed ARC 1299A</u>	10/3/90
Interest rate for 1991, 10.2(10), <u>Notice ARC 1330A</u>	10/17/90
Taxable and exempt sales determined by method of transaction or usage, 18.31(1)"a" and "b," 18.54, <u>Filed ARC 1338A</u>	10/17/90
Receipts exempt from use tax, 32.4, 32.10, <u>Filed ARC 1331A</u>	10/17/90
Adjustments to computed tax; withholding; filing returns, payment of tax and penalty and interest, 42.10, 46.3(2)"a" and "b," 52.4, 52.6 to 52.10, <u>Notice ARC 1300A</u>	10/3/90
Filing returns, payment of tax and penalty and interest, determination of net income, 52.4(5), 53.2(5), 53.11(7), 59.2(5), 59.8(7), <u>Filed ARC 1298A</u>	10/3/90
Minimum tax credit, 52.5(4)"a," "c," "d," "e," <u>Filed ARC 1297A</u>	10/3/90
Special fuel, tobacco tax, 65.13, 83.1(1), <u>Filed ARC 1332A</u>	10/17/90
Assessment practices and equalization, reimbursement to the elderly and disabled for property tax paid and rent constituting property tax paid, mobile home tax, determination of tax for freight-line and equipment car companies, property tax credits and exemptions, 71.20(4)"c"(4), ch 73 title, 73.1, 73.13, 73.27(4), 74.4, 74.8, 75.1 to 75.3, 80.1(1)"a," 80.1(2)"b," 80.1(3), 80.5, 80.11, <u>Notice ARC 1342A</u>	10/17/90
Sales to other states and their political subdivisions, 17.23, <u>Filed ARC 1385A</u>	10/31/90
Cable and pay television, 26.56, <u>Filed ARC 1386A</u>	10/31/90

Appearing for the Department were Carl Castelda, Jim Moyle and Jim Hamilton. Also appearing for the Iowa State Assessor's Association were Carl Fiecke, Larry Armel, Marva Benningsdorf, Ray Armel, Marcella Thompson, Mary Pat Mitchell, Diane Janning, Jack Newell and Don Freeman, Warren County Assessor.

6.7

Castelda stated that rule 6.7(68B) would implement 1990 Acts, H.F. 2057, which requires agencies to adopt rules setting forth the method of granting consent for employees to have outside employment that does not conflict with the duties of the agency. It was his understanding there was a Uniform Rule which agencies could adopt. He explained the reasons they chose not to follow that course.

Ch 9, et al.

No questions on amendments to Chapters 9 or 18, rules 10.2(10), 32.4, or 32.10.

42.10 et al.

Castelda described revisions in 42.10 et al. as basically adopting provisions of 1990 Acts, H.F. 2556, which became effective upon enactment April 26, 1990.

Hamilton informed Tieden that corporations cannot qualify for credit until July 1, 1991. There are different effective dates for individuals versus corporations.

No ARRC action.

52.4(5) et al.,
52.5(4), 65.13,
or 83.1(1)

There were no questions on 52.4(5) et al., 52.5(4), 65.13, or 83.1(1).

71.20
et al.

In review of amendments to 71.20(4) et al., Castelda knew of no controversy regarding the rules. However,

REVENUE AND
FINANCE
Contd.

there had been many questions on the way the statute was drafted. Castelda called on Moyle, who works in the local government services division which provided expertise to drafters of the rules to answer questions. Castelda pointed out that the rules relate to several issues, i.e., basically property taxes on mobile homes and how the homestead tax credit is applied; the rent reimbursement circuit breaker programs for low-income people 18 years of age; and eligibility for additional tax benefits by family farm corporations. Effective dates of the program are set out and property tax exemption will be provided for speculative shell buildings constructed by community development organizations.

Chairman Priebe recognized Armel who presented the following observations concerning the statute and rules. The following was his prepared statement:

I Within the definition of "Agricultural Land," the bill states: "in good faith used for agricultural or horticultural purposes." The good faith here has been stretched in meaning to actually mean: Under control and having a potential use for agricultural or horticultural purposes. This is evident when land which is under forest reserve and wetlands exemption status can still qualify for the tax credit! Land also under a set aside program is also eligible for the tax credit.

II The ownership criteria and eligibility has been stretched to being more than just a family farm when large corporations are able to qualify. In many cases there are small operations that remain under family control but do not qualify, ie:

- A) daughter or son rents to the father,
- B) grandfather rents to a grandson,
- C) individual rents to a niece, nephew, etc..

It is also interesting to note that when a landowner rents the entire farm out to another individual, and the owner manages to put in at least 100 hours of participation, the owner can qualify for the tax credit.

III The administrative end will be just as costly if not more than the credit itself:

A) Assessor's

- 1) advertising & notification expense
- 2) application forms
- 3) listing of properties qualifying, including computer programs to aid in the listing
- 4) Time spent in explanation of the program both at the counter and on the phone

B) Auditor's

- 1) time spent entering data on the computer
- 2) change in the computer program

C) Treasurer's

- 1) expense of new tax receipts to indicate the tax credit

D) Supervisor's

- 1) time spent making decisions on each application

This does NOT include any administrative cost to the state.

IV The determination of eligibility is difficult unless the applicant is known personally. When investigation is needed to determine eligibility, who is to be responsible? How will one be able to verify the 100 hour minimum participation unless the applicant is known personally?

REVENUE AND
FINANCE
Contd.

- V Not all jurisdictions are being told the same information, such as the actual intent versus the written guidelines. This is not just the Assessor's office but all offices involved. Some are told that if you think they should qualify, the so be it! In many cases the applications will simply be rubber stamped!
- VI The appeal process for the applicant is not spelled out clear and definite.
- VII Who is the designated person to be considered when:
 - A) Filing the application
 - B) determining the farming operator
- VIII The dates found in 425A.6 and 425A.7 are not advantageous to the counties in affording them ample time to place information on line and properly prepare and send the tax statements.
- IX The original language in the bill called for the Auditor to prepare and receive the applications. During its passage on the last day, the language was changed to read the Assessor.

It is the opinion of many that the intent is very good and is justified, but the main problem or question is "How do you define a family farm?" It would seem that there would be a much easier approach to identify or assist the agricultural property. One is to simply increase the Ag Land Tax Credit. Another would be to increase the Homestead Tax Credit. The homestead would hit the local property owner residing in their property and would also benefit the farmer who lives in town and not on the farm.

Discussion followed with ARRC members concurring that the legislation was poorly written.

Priebe asked Castelda if modifications to the rules were possible. Castelda took the position that for the most part they were "locked in." However, he expressed a willingness to work with the assessors in any way possible.

Motion

Pavich moved that ARC 1342A be referred to the President of the Senate and Speaker of the House for review by the appropriate committees. Motion carried.

Castelda recalled three months' work spent on trying to interpret the statute and develop the rules. There was consensus that nothing more could be done for this tax year.

17.23,26.56

No recommendations for 17.23 or 26.56.

Pavich in the Chair.

SOIL CON-
SERVATION
DIVISION

Appearing for the Division were James F. Ellerhoff, James E. Gillespie, and Kenneth Tow. The following agenda was considered:

SOIL CONSERVATION DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21] "umbrella"

Soil and water resource conservation plans, ch 22, Notice ARC 1405A 10/31/90

Coal mining, ch 40, rescind chs 40 to 49, Notice ARC 971A Terminated, also Notice ARC 1394A..... 10/31/90

Ch 22

In reply to Tieden, Tow stated that the effort was totally voluntary for the districts. There are no penalties built in to the allocation system.

SOIL CON-
SERVATION
Contd.

According to Tow, their rules on mining will be updated and restructured. The federal agency that they work with in the Department of Interior has suggested a number of changes which will be incorporated. No Committee action.

HUMAN
SERVICES
DEPARTMENT

Appearing for the Department were: Mary Ann Walker, Rita Vodraska, Anita Smith, Mike Murphy, Vivian Thompson, Norma Hohlfeld, Dan McKeever, Janice Von Arb, Joe Mahrenholz, Gary Gesaman, Debborah Ozga, Jan Gorman, Carol VandePol, Charlene Hanson, Maya Krogman and Robert Krebs. Also appearing were: Paul Romans, Iowa Health Care Association; Blaine Donaldson, Storm Lake; Jennifer Tyler, Iowa Council of Health Care.

The following agenda was before the Committee:

HUMAN SERVICES DEPARTMENT[441]

ADC under the SEID project, 48.3(1)"e," 48.3(2)"b"(4), 48.3(3), Filed Emergency After Notice ARC 1350A 10/17/90
 Lock-in period for Medicaid recipients, 76.9(1), Notice ARC 1814A 10/3/90
 Medicaid coverage of clozapine for treatment of chronic schizophrenia, 78.1(2)"a"(2),
 78.28(1)"g," Notice ARC 1290A 10/3/90
 Amount, duration and scope of medical and remedial services; nursing facilities, 78.4(3)"d," 78.4(4)"a," 78.4(7)"j,"
 78.10(2)"a" and "b," 81.3(1), 81.3(4), 81.6(16)"e," 81.10(4)"h," 81.10(6), Filed ARC 1324A 10/17/90
 PROMISE JOBS program, 93.20(4)"i," 93.35, Filed ARC 1357A 10/17/90
 Collections, nonassistance child support recovery program, 95.1, 95.5(1), 95.11, 95.12, 95.12(4), 95.14, 96.1, 96.3,
 96.4, 96.11, Filed ARC 1349A 10/17/90
 Support enforcement services—medical support enforcement, 98.1 to 98.7, Filed ARC 1351A 10/17/90
 Various amendments to update mission and organization of DHS, Code references and implementations, ch 1
 mission statement, 1.1, 1.2, 1.2(4), 1.3, 1.6, 1.6(4), 1.6(6), 1.7, 1.8, 3.3(2), 3.4(3), 3.5(1), 3.6(3), 3.11(1), 3.12(2)"c,"
 4.1, 4.3, 5.1, 5.3, 9.3(1), 9.3(7)"e," 9.6, 10.1, 10.15, 10.15(3)"a," 10.15(4)"a," 10.15(5)"a," 10.15(6), 10.17(4),
 10.22(2), 10.23, 12.2, ch 73 preamble, 73.13, 73.13(2), 73.13(4)"d," 73.13(5)"a" to "c," 73.13(6)"a" and "b," 73.27,
 73.29(1), 73.29(2), 73.42, 73.51, 73.52(2), 73.53, 73.54(1), 73.54(2), 73.56(3), 73.57(4), 73.57(5), 73.58, 73.61, 73.62,
 73.62(2), 73.62(4)"d," 73.62(5)"a" to "c," Notice ARC 1397A 10/31/90
 Abuse of children, public records and fair information practices, 9.4(3), 9.4(5), 9.4(6)"a," 175.9,
 175.14(2), Filed ARC 1398A 10/31/90
 Emergency assistance program, public records and fair information practices, 9.10(4)"f," ch 58,
Filed Emergency After Notice ARC 1399A 10/31/90
 Overpayments, 11.1, 11.4, 11.4(1), 11.4(1)"a" and "b," 11.4(3)"a" and "b," 11.4(4) to 11.4(7), Filed ARC 1400A 10/31/90
 Application for Medicaid—foster care, 76.1, Notice ARC 1395A 10/31/90
 AIDS/HIV home- and community-based services waiver, 77.34, 78.38, 79.1(2), 80.2(2)"ai," 83.41 to
 83.49, Filed ARC 1401A 10/31/90
 Medicaid payment for organ and tissue transplants and services, 78.1(20), 78.3(10),
 78.3(10)"f"(4), Notice ARC 1396A 10/31/90
 Requirements for employees providing day treatment services in community mental health centers, 78.16(6)"c,"
Filed ARC 1402A 10/31/90
 Collections, support enforcement services, 95.15, 98.51 to 98.60, Filed Emergency After Notice ARC 1403A,
 also Filed ARC 1404A 10/31/90
 Payments for foster care and foster parent training, 156.18(4), 156.18(7), Filed ARC 1371A 10/31/90

81.16(4) delayed 70 days from 10-1-90

48.3 Walker summarized amendments to 48.3 and 76.9(1) and there were no recommendations.

78.1, Walker indicated that extensive comments were received on
 78.28 amendments to 78.1 and 78.2 which set up criteria for the Medicaid coverage of the drug clozapine for treatment of chronic schizophrenia. Many commenters contended that the criteria was too strict.

78.4 Walker pointed out that amendments to 78.4 et al., com-
 et al. bined three Notices of Intended Action. The first Notice clarified payment for dental services.

The second Notice addressed the special care criteria which was also adopted Emergency. Revision was made as a result of suggestion from the Iowa Council of Health Care Centers to include residents needing a Hoyer lift, as meeting the mobility criteria to be eligible for the special care permit.

The third Notice contained two main parts and was the most controversial. Commenters prefer to have oxygen

HUMAN
SERVICES
Contd.

supplied through the provider. Initially, the Notice provided that the Department would pay for oxygen if the resident needed it for 20 continuous hours. Later the hours were changed to 12. Walker continued that the supplementation portion of the Notice generated the most controversy. Over 100 persons attended the hearings, 1500 petitioned against it and 27 written comments were received regarding which services would be reimbursed by the Medicaid program and which would be the responsibility of the nursing home.

81.10(5)

Committee discussion focused on 81.10(5). Tieden asked how the Department interpreted 81.10(5)b which stated that "the facility shall arrange for transportation to receive necessary medical services...." Walker replied that the Department expects the facility to pay. She was hopeful for a resolution of this issue since at least one nursing home was billing the family for transportation costs related to the patient.

Romans urged delay of 81.10(5) into the General Assembly for their consideration of the extremely controversial matter.

Tyler concurred with Romans. She then summarized her opposition to portions of the rules. With respect to payment for the oxygen services, private industry considered the 20 or more continuous hours a day as an arbitrary figure. She was appreciative of the Department's amendment to reduce the figure to 12 hours per day but felt more research was needed. Tyler could foresee the 12-hour limitation as ultimately shifting another cost to the facilities and private paying residents. She viewed the restriction of only one mode of oxygen delivery as another critical area. Currently, residents can receive the multiple modes delivery which is very important for their quality of life.

With regard to the transportation provisions, Tyler maintained that the language should be consistent with the federal requirements. She suggested that the second sentence in subrule 81.10(5)b should be deleted to avoid having the subrule misconstrued to mandate that the facility provide and pay for transportation.

Gesaman commented that federal regulations require the nursing facility to accept payment made under the Medicaid program as payment in full for the care of the resident and that no further charges should be made to the resident or family members other than the amount authorized in the Medicaid program. That has always been the policy of the Medicaid program. The Department takes the position that clearly the nursing home cannot refuse to accept responsibility for meeting the care needs of residents and the issue must be addressed in the rules.

HUMAN
SERVICES
Contd.

It was clarified that these rules were separate from the OBRA provisions which were effective October 1.

Donaldson requested that the entire subject of services for which a nursing facility is expected to assume financial responsibility and those which will be paid by Medicaid be delayed until the General Assembly can review it. [78.10(2)a and b and 81.10(5)] He estimated that his facility will have had 70 patients transferred by ambulance this year at a minimum cost of \$140 each. He called attention to another potential financial burden in providing professional beauty and barber services since a facility cannot obligate residents to use their personal funds.

Priebe asked for Royce's opinion and he pointed out that the Department maintains that current rules do nothing more than clarify existing policy. He advised the amendments were necessary to limit cost and predicted that a delay would ultimately result in litigation. It was noted that a delay would not result in penalty to the Department.

Motion

Doyle moved to delay the rules.

Walker urged that any delay be limited to supplementation--81.10(5). She also wanted to respond to Tyler's remarks concerning oxygen.

Doyle deferred his motion.

Gesaman clarified that the Department does not approve multiple modes of oxygen for payment under the Medicaid program. They have never paid for more than one mode. He added that it had become a tremendous administrative burden to handle requests for exceptions to policy and that was their primary reason for wanting to make this a regular part of their Medicaid payment system. The criteria for payment would be in place and their fiscal agent would make the payment.

In regard to beauty and barber services, Gesaman said there was no change in policy. Neither state nor federal law allows the facility to obligate the resident to spend their personal needs funds.

Motion

Doyle restated his motion to delay the issue until adjournment of the 1991 General Assembly and limited it to transportation in 81.10(5)b.

Royce asked for clarification since supplementation was broader than transportation.

Romans urged delay of all of Item 8 in ARC 1324A--81.10(5).

HUMAN
SERVICES
Contd.

Gesaman could foresee a delay creating difficulty in enforcing supplementation prohibitions generally. He suggested limiting the delay to the transportation issue where there was the most disagreement. He stressed that the Department had worked with the industry for compromise language. They certainly will not preclude family members from assisting residents of a care facility, including transportation, if they so choose. Gesaman reiterated that the facility cannot withhold services because the family member or resident refuses to pay. State and federal inspectors will hold the facility responsible for needs of the residents.

Gesaman stressed that facilities were afforded an opportunity to submit budgets to the Department in terms of any additional costs to be in compliance with state and federal requirements. Transportation can be included in those budgets. Priebe and Tieden spoke of the difficulty in "building in" unknown costs.

Gesaman recalled an instance when the Department computed transportation costs for some Sioux City facilities. If those facilities had been paid for all of the transportation costs denied under the audit exception, their rates would have increased an average of only three cents each day, so it is not a big ticket item.

Motion
Carried

Question was called on the Doyle motion to delay 81.10(5)^b until adjournment of 1991 General Assembly. Motion carried. [See also p. 4501 herein]

93.20,
93.35

There were no questions on amendments to 93.20 or 93.35.

Chs 95,96

Walker explained the final rules pertaining to the child support recovery program. A number of minor changes were made in response to comments from Legal services and the Iowa Bar Association.

Doyle commented on new rules of the Supreme Court which set child support collection guidelines. He asked for input from Human Services officials. It was Krebs understanding that they would send written response to the Supreme Court and he was willing to provide Doyle a copy.

98.1-98.7,
1.1 et al.

There were no questions regarding rules 98.1 to 98.7 or 1.1 et al.

Pavich took the Chair.

9.4(3), et al.;
9.10 and Ch 58

Walker summarized amendments to 9.4(3) et al. and 9.10(4) and Chapter 58. No recommendations.

Ch 11

Walker stated that amendments to Chapter 11 allow the state to offset against any money owed to a person by any state agency. For example, wages of a state employee could be attached to repay an ADC or food stamp overpayment. The

HUMAN
SERVICES
Contd.

only comment they received was a question as to whether lottery winnings could be attached. They now can be attached and the title of the form was corrected in the rule.

Priebe took the Chair and called up for reconsideration Doyle's motion to delay into the General Assembly 441--81.10(5)b.

Motion to
Reconsider

Doyle moved to reconsider the motion. Carried.

There was consensus that all of Item 8 [81.10(5)] should be delayed.

Motion to
Delay

Doyle then moved to delay subrule 81.10(5) until adjournment of the 1991 General Assembly. Motion carried.

Ch 11
Contd.

Discussion returned to Chapter 11. Schrader asked about a time frame for collecting overpayments. Walker was unsure but would research the matter.

76.1

No questions regarding 76.1.

Walker indicated that revisions were made following the comment period on amendments to 77.34 et al. A major change was to allow for group counseling.

78.1,
78.3

No recommendations were offered for amendments to 78.1 and 78.3.

78.16(6)

According to Walker 78.16(6)c was revised at the request of the Council to add minimum requirements for the employee or consultant who is under the supervision of the mental health professional. No ARRC recommendations.

95.15,
Ch 98

Walker described amendments to 95.15 and Chapter 98 as clarifying the role of the child support recovery unit attorney and establishing procedures for review and adjustment of child support obligations, including notification and due process requirements. No questions by ARRC.

156.18

No recommendations regarding 156.18.

81.16(4)

There was discussion of 81.16(4) relative to in-service training for nurse aides which was delayed 70 days at the October ARRC meeting. The Committee had expressed concern that the hours of training should be reduced. Department officials indicated that the Council on Human Services would consider an emergency amendment on November 14 to reduce the hours to 12 per year.

ENVIRONMENTAL
PROTECTION

The Commission was represented by Diana Hansen, Darrell McAllister, Michael Murphy, Mark Landa, Morris Proctor and Gayle Farrell. Also present Marilyn Halterman, cattle feeder.

ENVIRONMENTAL
PROTECTION
Contd.

The following rules were considered:

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"

Controlling pollution, 22.4, Filed ARC 1345A	10/17/90
Effluent toxicity testing, 60.2, 63.4 to 63.11, Notice ARC 1368A	10/17/90
On-site wastewater treatment and disposal systems, land application of wastes, 69.14(1)"c"(1), 121.3(1), 121.3(3), Filed ARC 1343A	10/17/90
Composting facilities and yard waste disposal, 100.2, 104.1, 104.9(1)"b"(4), 104.10(4) to 104.10(12), ch 105, Filed ARC 1344A	10/17/90

22.4 Landa explained 22.4 and there were no questions.

60.2, Hansen reviewed amendments to 60.2, 63.4 to 63.11. No
Ch 63 questions.

69.14, Murphy told the Committee that amendments to 69.14 and
121.3 121.3 were final rules regarding land application of
sludge. Rules that formerly distinguished between municipi-
palities and industrial facilities were consolidated and
specify certain criteria for testing of sludge. There
were a number of comments and changes were made. At the
request of the ARRC, 121.3(1)j(3) was clarified regarding
the testing procedures.

Discussion of application of sludge. Farrell stated
that they recommend incorporation but it is not required.
Application to snow covered ground should be avoided and
is limited to areas of less than 5 percent slope.

Prior notification that the sludge will be applied is not
required. The Commission decided this would cause undue
hardship for the generators. They tend to rely on
neighbors with complaints to alert the field office and
an inspector will be sent to a problem area.

Farrell said that most of the waste has been treated
through the wastewater treatment facility and becomes
sludge at that point.

Tieden asked about toxicity of the sludge and Farrell
responded that it was not possible at this time to elim-
inate cadmium which is a toxic mineral which tends to
migrate in acid soil. Provisions in the rules attempt
to control the problems.

100.2 Murphy stated that revisions to 100.2 et al. were adopted
et al. after Notice and substantial public hearings and comments.
They are intended to implement legislation regarding
separation of yard waste from other solid waste and to
direct yard waste to composting. Construction and oper-
ation of compost facilities will be regulated. Permits
will not be required for yard waste facilities. No
Committee action.

Discussion returned to ARC 1343A. Royce had received a
call last week relative to application of sludge to land
where crops will be harvested within two months. The
caller had cited an example of a hay field where sludge
was injected and then the hay was baled. The question
posed was: Would the farmer be in compliance with the

ENVIRONMENTAL
PROTECTION
Contd.

rule if that baled hay were left in the field two months? Farrell noted that the rule requires waiting at least two months before harvest.

Chairman Priebe recognized Halterman who had called Royce and EPC officials seeking clarification of the rule.

Royce quoted from 121.3(1)1(7) and he interpreted the harvested portion to apply to cereal grains only.

Murphy was willing to adopt an emergency amendment to clarify the subparagraph (7).

REGENTS
BOARD

1.4

Barak was present at the request of the ARRC for special review of rule 681--1.4(262) pertaining to in-state residency as it pertains to tuition. This review had been requested by Representative Minnette Doderer. Royce presented the issue which focused on the Iowa resident who leaves the state for a period of time and then returns. The question is whether the individual returned to Iowa to live or to attend school. Residency status for purposes of in-state tuition is not regained by merely moving back to Iowa--you must be a bonafide resident of this state for one year before you are eligible for in-state tuition.

Barak informed the Committee that the rule had been Supreme Court tested. He spoke of the fact that the purpose for which the individual returned to Iowa would be considered. If, for example, a family moved back to Iowa, the children would automatically be residents again. If they had established residency elsewhere and had been living there for some time, they probably would have to re-establish residency.

Doyle recalled an instance in his area where the daughter of a Sioux City native attended college in California and had a job there. She returned to Iowa for a law degree and was told she was not a resident even though her parents had never left Sioux City.

Royce commented that the individual Doderer spoke of was aware of the one-year requirement and thought he would be considered a resident after one year of being a full-time student. Barak pointed out that attending school for one year was not sufficient to establish residency since that approach could be used by anyone from out of state. The student to which Royce referred could have qualified by attending classes part time.

Maulsby had a constituent who married and moved to Florida and when the marriage failed, returned to Iowa and attended community college for two years. She then applied to a four-year college and was accepted. Her grades were sufficient to qualify for a grant but she was denied because she was not a resident. Maulsby thought it was regrettable to require the individual to stay out of school in order to become a "resident" of Iowa.

REGENTS
BOARD
Contd.

Barak suspected that in this instance the person could have appealed since the Board overturns a number of these cases.

Pavich wondered about the cost to the state if the rules were relaxed. Barak reasoned that it would be costly since Iowa depends heavily on out-of-state tuition. Basically, the rules are similar to most public universities across the country. Barak said that all students are informed of the Appeals Process when they apply for residency status. Approximately six take advantage of that each year. No formal action by the ARRC.

COMMITTEE
BUSINESS

Barry asked permission to buy a Herman Miller work surface for the Rules Library. So moved by Pavich. Carried.

Motion

Royce distributed draft copies of a request for an opinion of the Attorney General concerning disclaimer for UCC records searches by the Secretary of State. Doyle moved to accept the draft.

Motion
Deferred

Schrader raised question on a paragraph that stated the committee had been informed that the database contains errors, omissions, etc. There was consensus that the paragraph should be stricken. Schrader was unsure about the need for an opinion on the disclaimer and the Doyle motion was deferred.

Minutes

Pavich moved to approve the minutes of the October meeting as submitted. Motion carried.

Recess

Chairman Priebe recessed the meeting at 4:15 p.m. to be reconvened Wednesday, November 14, at 9 a.m.

Reconvened

The meeting was reconvened by Chairman Priebe Wednesday, November 14 at 9:05 a.m. All members, with the exception of Representative Clark, and Staff were present.

BANKING
DIVISION

The following rules of Banking Division were considered:

2.8

BANKING DIVISION[187]
COMMERCE DEPARTMENT[181] "umbrella"
Acquisition by regional bank holding company, 2.8, Filed ARC 1374A 10/31/90

Appearing for the Division were Robert R. Rigler, Donald G. Senneff, and Steven C. Moser.

Rigler pointed out that changes recommended by Doyle had been made. No Committee action.

GENERAL
SERVICES

Kathy Williams and Valerie Hansen represented the Department. Also appearing were Earl Usher and Stephen Lambert from Public Safety.

GENERAL SERVICES DEPARTMENT[401]
Parking, 4.1, 4.3, 4.4, 4.6 to 4.10, Notice ARC 1327A 10/17/90

Ch 4

Proposed rules 4.1, 4.3, 4.4, 4.6 to 4.10 pertaining to parking were before the Committee. They appeared as ARC 1327A in 10/17/90 IAB. According to Williams the amendments were essentially clarifications.

GENERAL
SERVICES
Contd.

Tieden observed deletion of the dollar amount for a violation of the rules--4.10(10). Williams responded that the Department wanted to avoid promulgating a rule every time fines were altered. The information is contained in a pamphlet provided to employees. The actual citation also contains the fine amounts. Priebe suggested that amounts should be reinstated.

INSPECTIONS
AND APPEALS

Appearing for the Department were: John Barber, Chris Smith, Bob Minkler, Mary Oliver, Roland Brown, and Rebecca Walsh. The agenda follows:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Hospitals—classification, compliance and licensing; quality improvement program, 51.2,	
51.3, Filed ARC 1348A	10/17/90
Hospitals—clinical privileges to certain practitioners, 51.4(2)"c," Filed ARC 1346A	10/17/90
Hospitals—patient rights and responsibilities; records and reports, 51.5, 51.6, Filed ARC 1347A	10/17/90
Minimum physical standards for nursing facilities, ch 61, Filed ARC 1352A	10/17/90
Overpayment recovery section, 71.1, 71.5(1)"c" to "t," Filed ARC 1360A	10/17/90
Income setoff, 71.1, 71.6"6," Filed ARC 1361A	10/17/90
Field survey administration, food establishment inspections, food service establishment inspections, 30.2, 31.2,	
32.1"2" and "7," Notice ARC 1377A	10/31/90
Contractor requirements, ch 35, Notice ARC 1376A	10/31/90
Front end investigations, ch 72, Notice ARC 1375A	10/31/90

Chs 51, 61

Walsh explained the amendments to Chapters 51 and 61 and there were no questions.

With respect to amendments to Chapter 71, Barber said that they would affect state employees as to the appeals and collections aspect of the program.

30.2 et al.

Walsh stated that revisions in 30.2 et al. were intended to clarify existing rules and implement new legislation. Priebe referred to 32.1 which provided in part, "...churches fraternal societies, or civic organizations which serve food one day per week do not need to be licensed." His church provides a baby sitting service where snacks are served and he wondered if the rule would apply. Haxton stated that the rule applies to a church when they are selling to the public but not for local church events to members and their guests. He added that 1990 Acts, Chapter 1204, [H.F. 178] dictated the change from "ten times a month or less" to "one day per week." Maulsby suspected the rule would create problems in rural areas but Haxton knew of no complaints as yet. No formal action.

Ch 35

In review of Chapter 35, Tieden questioned 35.10. Haxton said the listing was a printout updated every six months listing everything they have licensed and inspected.

Ch 72

No questions regarding Chapter 72.

NURSING
BOARD

The nursing agenda was presented by Chris Newell and Lorinda Inman as follows:

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"	
Nursing education programs, 2.3(2)"d"(2), 2.6(1)"a"(1)"1," 2.6(2)"c," Filed Emergency After	
Notice ARC 1321A	10/17/90
Registered nurse certifying organizations/U.C.C.R. committee—quorum, 12.3"26," 12.5(1), Filed ARC 1373A	10/31/90

NURSING
BOARD
Contd.

2.3 et al.

Inman stated that revisions in Chapter 2 would delay enforcement of rules setting qualifications for the faculty on nursing education programs in Iowa. They will implement 1990 Acts, S.F. 2410 [Ch 1253]. Inman emphasized that the rules were not enforced after July 1. She discussed the study mandated by the Act to be completed July 1, 1991.

Doyle mentioned a Masters Program which will be offered at the new Tri-state Education Center in Sioux City and he asked if there were coordination with the Nursing Board. Inman agreed there should be but she was not aware of the program. Newell interjected that it was being offered through South Dakota State. Inman pointed out that those degrees would be granted out-of-state and so the Iowa Board would not regulate and Chapter 2 would not be applicable. That has been the advice from the Attorney General's office over the years. No Committee action.

LIVESTOCK
HEALTH
ADVISORY
COUNCIL

Ch 1

Mark Truesdell, attorney, appeared for the Council to review Chapter 1 which sets out recommendations for research on various livestock diseases. The adopted and filed rules were published in IAB 10/3/90 as ARC 1289A.

Priebe observed that paragraphs 1 and 2 listed Haemophilus somnus. Truesdell thought one was intended for "shipping fever." Truesdell pointed out changes from the Noticed rule. The \$8,917 for impact of drinking water quality on swine production in Iowa was added to \$25,000 scheduled for mystery pig disease in paragraph 9. The \$7752 targeted for turkey loadout death was allocated to a study for dietary potassium supplementation in growing turkeys.

In response to Priebe, Truesdell said that paragraph 4 would cover a study of the availability of these feed supplements to the animal so that the animal can actually make use of them on a biological level. For example, they are studying how the cell actually utilizes zinc.

NATURAL
RESOURCE
COMMISSION

Appearing for the Commission were: Kevin Szcodronski, Rick McGeough, Marion Conover, Richard Bishop and Doyle Adams. Also appearing were: Richard West, Betty L. Ranney, Darrell Ranney, and Nancy West, Commercial Fishermen. The agenda follows:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Scuba diving, state parks and recreation areas, 61.2, 61.5(8)"b,"	Notice ARC 1291A	10/3/90
Fishing regulations, 81.1, 81.2(2), 81.2(3), 81.2(5), 81.2(6), 81.2(9), 81.2(10),	Notice ARC 1293A	10/3/90
Commercial fishing, 82.2(1), 82.2(7),	Notice ARC 1292A	10/3/90
Waterfowl and coot hunting seasons, 91.1 to 91.3, 91.4(2)"k,"	Filed Emergency After Notice ARC 1296A	10/3/90
Pheasant, quail and gray (hungarian) partridge hunting seasons, 96.1(1), 96.2, 96.3,	Filed Emergency After Notice ARC 1295A	10/3/90
Wild turkey spring hunting, ch 98,	Notice ARC 1294A	10/3/90
Resource enhancement and protection program: county, city and private open spaces grant programs, 33.4, 33.5, 33.9, 33.30(4), 33.30(9), 33.40(1), 33.40(5), 33.40(6), 33.50(8), 33.50(9),	Notice ARC 1382A	10/31/90
Boating speed and distance zoning, 40.34,	Notice ARC 1381A	10/31/90
Boat motor regulations, 45.4(1)"b,"	Filed ARC 1380A	10/31/90

NATURAL
RESOURCE
Contd.

Ch 61

Adams indicated that amendments to Chapter 61 were an attempt to ensure that snorkels are not mistaken for underwater breathing apparatuses. Anyone using snorkels will be required to stay within the beach area as a safety measure.

Ch 81

Conover summarized numerous changes proposed to Chapter 81, including length limits, daily catch, possession and territories. Priebe expressed preference for consistency in length limits on all lakes. Conover admitted the rules were complex but defended different length limits because of the different size of the fish and the population. He pointed out that Iowa regulation was simple compared to other states such as Wisconsin or Michigan.

Schrader was informed that length limits on a farm pond were not regulated. Schrader referred to 81.2(10) regarding restrictions transporting fish with length restrictions. What about transporting on the highway? Conover indicated that another rule provides that when fishing on waters of the state, the angler shall comply with the most restrictive regulations. He will attempt to clarify this subject in the final rules.

Schrader and Conover discussed pros and cons on catch and release. Conover agreed there was some hooking mortality. Conover said that fish caught and released immediately, have good chance of survival. When they are live-welled for a weigh-in and then released, their chances are not good. Schrader questioned Conover on the 14- and 15-inch limits on bass and other size limits as to whether they were to serve trophy fishers or strictly to maintain biological balance. Conover suspected there was some of both but they were aware that top predator fish such as bass were easily over-exploited. There are more pressures for smaller population of fish. Conover concluded that length limits are important to ensure measure of quality.

Tieden questioned the limit of one walleye above 20 inches in length from certain lakes set out in 81.2(3). Conover responded that they want to protect some of those big fish for "milking" as long as possible. They need small fish for restocking in many areas.

Ch 82

Conover advised that amendments to Chapter 82 would remove channel catfish and flathead catfish from the permissive catch in the Missouri River. Black buffalo and bighead carp will be added to the list of species allowed to be taken by commercial fishermen.

D. Ranney addressed the Committee about costs and the fact that Iowa will lose revenue from the 13 commercial fishermen who pay \$200 for each license--sports fishermen pay only \$8.50. Ranney spoke at length about the impact of the ban on commercial fishermen.

Conover cited low population of catfish in the Missouri River and attributed this loss to drought, man-made dams

NATURAL
RESOURCE
Contd.

and habitat deterioration. He added that the limited amount of commercial fishing by Iowa and Nebraska fishermen represents 93 percent of the total harvest of channel catfish from the Missouri. Conover indicated that federal funds will be available for Missouri River projects--first one will be on Louisville Bend. Conover told Schrader that, in the event flatheads would become abundant, the Department's options remain open.

Motion

Pavich moved that the Committee request an Economic Impact Statement on the proposed ban on commercial fishing of channel and flathead catfish from the Missouri River.

Motion
Carried

Royce suggested that the Statement identify the value of the commercial harvest, the number of fishermen impacted by the ban, and address catfish population. The information should be contrasted with similar statistics for the Mississippi River. Motion carried.

Conover pointed out that Nebraska has finalized their rules with an effective date of January of 1992 and Iowa also plans to implement their rules at that time. He agreed to provide information to Tieden regarding fees for duplicate operator's license--82.2(7).

Ch 91

Bishop explained amendments to Chapter 91. No recommendations.

Ch 96

Bishop discussed the hunting seasons set out in Chapter 96. He anticipated that northern Iowa would enjoy the best pheasant season in 20 years. The season will be one day longer ending on January 10, 1991, to coincide with the license date. No recommendations.

Ch 98

Bishop reviewed changes in wild turkey spring hunting--Chapter 98. Discussion of the shot size which will be limited this season. Priebe was doubtful that turkeys would be killed with a 7 1/2 or 8 shot. He favored 2, 4, 5 and 6. Bishop noted that the Turkey Federation was supportive of the proposal.

Ch 33

Szcodronski reviewed amendments to the REAP Program, some of which were recommendations of the REAP Congress. Rule 33.4(455A) was amended to include swimming pools in the list of facilities ineligible for REAP funds.

Tieden reasoned that communities which lack funds for cost sharing were at a definite disadvantage. Szcodronski stated that a Congress recommendation was to consider cost sharing and amendment to 33.40(1) was a proposed compromise by giving bonus points. No Committee action.

40.34, 45.4

There were no questions regarding 40.34 or 45.4(1)b.

In a matter not officially before the Committee, Schrader and McGeough discussed roadblocks for illegal game hunters. Schrader expressed his disagreement with this concept.

Pavich in the Chair.

PUBLIC
HEALTH
DEPARTMENT

Appearing for the Department were Mike Guely, Paul E. Koehn, Rick L. Welke, Carolyn Caquelin, Joyce Spencer, Phyllis Blood and Carolyn Adams. Also appearing was Mary Ann Nielsen of Mercy Hospital. The agenda follows:

PUBLIC HEALTH DEPARTMENT[641]

Notification and surveillance of reportable diseases—giardiasis, 1.2(1)"a," Filed ARC 1358A 10/17/90
 Acquired immune deficiency syndrome, 11.1, 11.6(1), appendix I, Filed Emergency ARC 1356A 10/17/90
 Minimum requirements for tanning facilities, 38.1, 38.2, 38.13(1)"b," 38.13(10), ch 46, Notice ARC 1337A 10/17/90
 Minimum requirements for radon testing and analysis, 38.13(8)"c" and "e," 43.2, 43.3, 43.4(1), 43.4(5),
 43.7, Notice ARC 1340A 10/17/90
 Maternal and child health, 76.4, 76.6(2), 76.7(2), 76.12(2), 76.12(3), 76.14(4)"b," 76.14(5)"b," Filed ARC 1338A 10/17/90
 Public health nursing, ch 79, Filed ARC 1341A 10/17/90
 Governor's alliance on substance abuse, rescind ch 91, 170.4(6), Filed Emergency ARC 1359A 10/17/90
 Governor's alliance on substance abuse, ch 91, Notice ARC 1088A Terminated ARC 1372A 10/31/90

1.2
Ch 11

There were no questions on 1.2(1) or amendments to Chapter 11.

Chs 38 & 46

According to Guely, modifications would be made in Chapter 38 amendments before they are adopted. Public hearing had been held on the rules and as a result the size of signs which must be posted will be smaller and the fee structure will be reviewed.

38.13 et al.

Guely stated that amendments to radon testing rules include adjustment of the education requirements for radon testers. There will be one category of individuals who perform the testing. The number of continuing education hours will be reduced, the requirement for an Iowa certified specialist at all laboratories will be deleted and certification fees will be adjusted. No questions.

Chs 76,79

Blood presented amendments to Chapters 76 and 79. No questions.

Ch 91,
170.4

Adams explained that rule making in ARCs 1359A and 1372A will rescind all rules of, and references to, the Governor's Alliance on Substance Abuse in the rules of the Public Health Department.

The Alliance was created by Executive Order 32 and was transferred to the Drug Enforcement and Abuse Prevention Coordinator by 1989 Acts, Chapter 225, section 5. Schrader recalled earlier concerns expressed by Representative Clark and other ARRC members regarding the Governor's Alliance on Substance Abuse. He thought it would be appropriate for the legislature to review the statutory authority and operation of the program, since there are significant amounts of grant dollars involved. No formal action at this time.

PROFESSIONAL
LICENSURE
DIVISION

Harriett Miller and Susan Osmann presented the following agenda and there were no questions.

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Physical therapy examiners, petitions for rule making, declaratory rulings, agency procedure for rule making,
 chs 200, 206 to 208, Filed ARC 1336A 10/17/90
 Social work examiners board—examination fee, 280.8(2), Filed ARC 1339A 10/17/90

HEALTH
DATA
COMMISSION

5.5

Pierce Wilson represented the Health Data Commission for Rule 411--5.5(145) relating to hospital reporting of severity codes. The proposal was published under Notice as ARC 1392A in 10/31/90 IAB. Revision includes a mechanism for getting information for hospitals which are in noncompliance with the Administrative Rule mandate. Charter and Des Moines General Hospitals have not submitted data. No Committee action.

SCHOOL
BUDGET
REVIEW
COMMITTEE

The following agenda was submitted by Dick Boyer:

SCHOOL BUDGET REVIEW COMMITTEE[289]

EDUCATION DEPARTMENT[281] "umbrella"

Organization, petitions for rule making, declaratory rulings, agency procedure for rule making, public records and fair information practices, duties and operational procedures, chs 1 to 6, Notice ARC 1334A, also Filed Emergency ARC 1335A..... 10/17/90

Chs 1 to 6

Boyer stated that Chapters 1 to 6 would replace existing Chapter 1 and were intended to implement Iowa Code Supplement sections 257.30 and 257.31. Rules were needed for guidance in developing fiscal 1992 school budgets. Written comments were received from ISEA and the School Board Association. The ISEA had no questions and were supportive of the rules. The Review Committee will probably clarify some of the definitions as suggested by the School Board Association. No Committee recommendations.

Recess

Priebe took the Chair and recessed the meeting for lunch.

Reconvened

The meeting was reconvened at 1:07 p.m. with Chairman Priebe calling up the following rules:

ATTORNEY
GENERAL

ATTORNEY GENERAL[61]

Motor vehicle advertising and sales practices, ch 27, Notice ARC 1387A..... 10/31/90
Retail advertising and sales, contests, games, giveaways and sweepstakes, ch 28, Notice ARC 1390A..... 10/31/90
Record retention requirements under motor vehicle service trade practices Act, ch 29, Notice ARC 1388A..... 10/31/90

Those in attendance were: Tom Miller, Attorney General, Richard Cleland, Steve St. Claire, Julie Fleming and Bill Brauch. Also appearing were: Martha Martell, Counsel for Iowa Auto Dealers; Jim Cory, Iowa Retail Hardware Association; Jerry P. Alt, Charles Gabus Ford, Inc.; Jim West, Attorney; Gary W. Thomas, Iowa Auto Dealers Association; Dave Brasher, NFIB; Pete Wenter, Association of Iowa Merchants; and Keith Luchtel representing Iowa Newspaper Association, Grocers Association of Iowa and Iowa Broadcasters Association.

Chs 27,28

Miller told the Committee that he considered Chapters 27 and 28 as major proposals to govern retail advertising and advertising in automobile transactions in particular. He urged serious consideration of the proposals and comment by the industry and the public. Hearings were scheduled for November 27 and 30.

Miller continued that his office was aware of deterioration in advertising concerning the concept of a sale along the lines of establishing a really fictitious price and then reducing it by several percent. With respect to automobile sales, ideally the advertised price should be the total price, except for the taxes. The ultimate goal would be free and open and honest

ATTORNEY
GENERAL
Contd.

advertising. Two groups are seriously harmed by false advertising--consumers and the part of the industry that does not engage in that kind of advertising. That would be particularly true of small businesses that lack resources or the will to be involved in "misleading advertising."

Martel stated that the Iowa Auto Dealers Association was a trade association of approximately 560 franchise car and truck dealers in Iowa. She noted there had been advertising rules with respect to motor vehicles for over four years. She alluded to a study conducted by the Attorney General five years ago on automobile advertising which resulted in a set of "Enforcement Guidelines." A series of meetings were held to educate dealers and although the guidelines were never promulgated as administrative rules, the Iowa Auto Dealers Association applauded the guidelines. This created problems for dealers in larger borderline cities since neither Illinois nor Nebraska had enforcement guidelines. Martel was aware of the Attorney General's broad investigatory power but she was doubtful that his office has the resources to continuously monitor and regulate advertising by out-of-state dealers. She expressed concern about voluminous recordkeeping and investigative burden which will be required under the proposal. Martel discussed restrictions on use of the word "sale." She concluded that the economic impact of these rules would be significant and that her association would vigorously oppose them.

Miller viewed purchases of an automobile as one of the most important transactions made by a consumer. He pointed out that his office sought input on the proposals by offering advanced copies to the retail industry as well as automobile dealers. Retailers welcomed the opportunity but inexplicably, the car dealers declined to discuss the proposals. Miller viewed Martel's criticisms as somewhat exaggerated. He emphasized that there was no requirement to advertise for 12 months to constitute a sale. The rules are intended to ensure truthful and complete advertising--advertising that consumers can understand and rely on.

Luchtel, speaking on behalf of newspapers, broadcasters and grocers concurred with Martel's comments. He contended that the proposals exceeded what was contemplated by the Iowa Consumer Fraud Act. It was his interpretation that the Act envisioned an Iowa regulatory scheme that would dovetail with the Federal FTC scheme. Luchtel suspected that with the proposals, it would be possible to be in compliance with the FTC but in violation of Iowa rules. Broadcasters and newspapers, particularly in smaller communities, have a concern that the labyrinth of rules would seriously inhibit the ability for the small business person to advertise. Problems for grocers, would be numerous since they advertise so many items with frequency. Luchtel declared that grocers depend on their

ATTORNEY
GENERAL
Contd.

customers goodwill and are not trying to take advantage of anyone. He predicted that the "culprits perpetrating frauds" in Iowa would continue to function even though machinery is in place now to address those problems. Luchtel distributed written statements of each of three associations he represented. Those statements are on file in the office of the Administrative Code Editor.

Miller was aware that small business was following the law and are not the problem. The rules are directed at the larger businesses that do substantial advertising with price comparison ads. Miller had received support from small businesses.

Henter, representing the Iowa Association of Merchants, touched on opposition to the problem areas. He distributed a handout which outlined specifics regarding the Association's opposition. Also included were sections of Missouri rules that were adopted in July 1990, some of the Illinois rules and the Federal Trade Commission guidelines. That material is on file in the office of the Administrative Code Editor. Henter spoke of two meetings with the Attorney General's office in the course of the development of the rules where they provided input. They had anticipated additional meetings. Henter maintained that the rules would be detrimental to Iowa consumers with businesses and employers and employees. They have never condoned deceptions, fraud or misrepresentation but believe the proposed rules will impose unreasonable and unnecessary standards. He urged the Committee to request an Economic Impact Statement with questions on administration costs for the state, and cost to the retail community; also, how much advertising will be lost.

Brasher thanked the Attorney General on behalf of the National Federation of Independent Business for more than 12,000 small Iowa businesses, for his attempts to protect them. However, he suspected that the solution to this problem may cause more damage than the problem itself. Brasher cited recordkeeping as becoming extremely onerous and expensive and he urged careful consideration of the rules by the ARRC. Brasher advised that such a dramatic change to the regulatory process should be addressed by the legislature. He also urged the Committee to seek an Economic Impact Statement.

Priebe reminded of the scheduled public hearings and indicated that the Committee would be studying the final version of the rules. Discussion of possible Economic Impact Statement request on the proposed rule.

Committee members opined that modifications would be made in the final rules but were aware that an Impact Statement must be requested on the Noticed version.

ATTORNEY
GENERAL

Doyle moved that an Economic Impact Statement be prepared on Chapters 27 and 28 and he suggested that each chapter be voted on separately. [ARC 1387A and 1390A]

Motion

Priebe stated that Tieden had been called out of the meeting but had wanted to vote for an impact statement. Schrader indicated he would support Doyle's motion.

Miller reiterated his intent to renote major changes following the hearings. He urged debate on the issues which his office would consider with an open mind. He pointed out that similar rules have been adopted in a number of states and there is no evidence of a decrease in the amount of advertising. Miller clarified that major changes would not include more consumer protections. However, they might delete rules based on comment from the industry.

Priebe was concerned that the Impact statement developed for the Noticed rules could change drastically for the adopted versions. Schrader recalled instances when a second Impact Statement was requested after rules were renoted. Miller preferred to proceed with the Statement.

Motion
Carried

Question was called on the Doyle motion and vote was taken on Chapter 27. Motion carried with 4 ayes. Tieden had asked to be recorded as voting "aye," also. The motion for Chapter 28 carried with 4 ayes, with Tieden having asked to be recorded as voting "aye," also.

Ch 29

Braush explained Chapter 29 and there were no questions.

TRANSPOR-
TATION
DEPARTMENT

Appearing for the Department were Dennis Tice, Ken Pardock and Michael Audino. Also present was Jim Clewell, Iowa Window Tinters Association. The agenda follows:

TRANSPORTATION DEPARTMENT[761]

Vehicle registration and certificate of title; handicapped identification devices; motor vehicle dealers, manufacturers and distributors, 400.3(12)"c" and "d," 400.3(13), 400.3(20), 400.7(9), 400.27(2), 400.27(3)"a," "b," and "d," 400.27(4)"c," 400.41(2)"b" and "g," 400.50(1), 411.2, 411.2(2), 411.4, 420.2(3), Notice ARC 1322A 10/17/90
Iowa airport registration, 720.10(2)"b," 720.10(3)"a," Notice ARC 1287A 10/3/90

Motion to Object to 450.7 deferred; carried over
from September meeting

9/5/90

Ch 400

Tice reviewed miscellaneous amendments to Chapter 400 which will implement several Acts of the 1990 Session. There were no questions.

720.10

Pardock told the Committee that changes in rule 720.10 were based on FAA circulars which have been updated.

Deferred
Motion to object

Doyle asked to defer until December his motion to object to 761--450.7 which was carried over from the November meeting.

UTILITIES
22.10(1)

Priebe called for disposition of the rules for which no Department Representative had been called to appear. He then voiced opposition to 199--22.10(1)c relating to telephone service checks. The amendment was published as a final rule in 10/31/90 IAB as ARC 1393A. Priebe

UTILITIES
Contd.

interpreted the language as requiring the customer to pay for repairs outside the house, even though it was part of the utility service. Schrader doubted that intent was to charge the customer for this service. Royce thought it addressed the account to be charged--a recordkeeping provision. Royce continued that it was his opinion that all service checks would be part of the rate base. The repair cost would be under nonregulated service--not subject to the rate base.

Motion
to Delay

After further discussion, Pavich moved to delay for 70 days 22.10(1)c and the paragraph be placed on the December ARRC agenda. Motion carried.

Attorney
General
Opinion

There was further discussion of the revised draft of the Attorney General Opinion request relative to electronic filing of UCC documents by the Secretary of State. Priebe asked if there were any objections to sending the request. Schrader took the position that the request was not applicable to the rules process and he could not support a motion. Pavich concurred with Schrader and Priebe decided to make an individual request.

No Reps

No agency representatives requested to appear for the following:

CITY DEVELOPMENT BOARD[220]

Amend and transfer 220—chs 1 to 4 to 263—chs 1 to 4; rescind 220—ch 5; transfer 220—ch 6 to 263—ch 6, Notice ARC 1323A 10/17/90

IOWA FINANCE AUTHORITY[524]

Transfer 524—chs 1 to 15 to 265—chs 1 to 15, Notice ARC 1367A 10/17/90

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[841] "umbrella"

Employer's contribution and charges, claims and benefits, 3.43(4)"b" and "c," 4.1(113)"d," 4.1(120), 4.7(3), 4.9(1)"c," 4.27, Filed ARC 1370A 10/17/90

LAW ENFORCEMENT ACADEMY[501]

Salvage vehicle examinations, 1.1, ch 11, Filed ARC 1320A 10/3/90

PERSONNEL DEPARTMENT[581]

Pay, appointments, grievances and appeals, 4.6(3), 4.8(3), 8.6, 12.1(1)"a" and "b," Filed ARC 1355A 10/17/90

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"

Administrative law judge, 1.2(5)"a," Filed Emergency ARC 1378A 10/31/90

VOTER REGISTRATION COMMISSION[821]

Voter registration forms and instructions, 2.1(5), Filed ARC 1379A 10/31/90

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181] "umbrella"

Complaint procedures, 6.5(1), 19.4(1)"i," 20.4(2), 21.4(1)"f," 22.4(1)"b," Filed ARC 1311A 10/3/90

Complaint procedures, 19.4(1)"i," 20.4(2), 21.4(1)"f," 22.4(1)"b," Notice ARC 460A Terminated, Amended

Notice ARC 1312A 10/3/90

Class load data, 20.10(2)"c," 20.13(3)"c," Filed ARC 1326A 10/17/90

Telephone cost of service methodology--inquiry, 22.14(2)"d"(1), Notice ARC 1325A 10/17/90

Next
Meeting

The next regular meeting was scheduled for December 11 and 12, 1990.

Adjourned

Chairman Priebe adjourned the meeting at 2:05 p.m.

Respectfully submitted,



Phyllis Barry, Secretary
Alice Gossett, Admin. Asst.

CHAIRMAN