

MINUTES OF THE SPECIAL MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, January 4, 1983, 10:15 a.m. and Wednesday, January 5, 9:00 a.m.

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

Members Present: Representative Laverne W. Schroeder, Chairman; Senators Edgar Holden and Dale Tieden; Representative Ned F. Chiodo. Not present: Senator Berl Priebe, having reported he would be on vacation; Representative Betty J. Clark, having reported she would be in another meeting. Also present: Joseph Royce, Committee Counsel, Brice Oakley, Governor's Rules Coordinator, Phyllis Barry, Deputy Code Editor, Vivian Haag, Administrative Asst.

Convened  
CONSERVATION  
COMMISSION  
ch 74

Chairman Schroeder convened the meeting at 10:15 a.m. Conservation Commission land management agricultural lease program, chapter 74, ARC 3446, Notice, IAB 12/22/82 was before the Committee. Stanley C. Kuhn, Chief of Administration, John Beamer, Superintendent, Land Acquisition, and Gregory B. Jones, Land Management, represented Conservation Commission.

Kuhn distributed a summary report on Commission land holdings and farming practices and he explained the reason for the rules. Tieden wondered if there were common knowledge of the leasing program. Kuhn responded in the affirmative.

Schroeder raised question with respect to advertising of bids and the three-week minimum notice prior to bid openings in 74.4(1). He preferred an earlier notice to allow for advance planning.

Holden favored uniform application of the land lease program. Tieden called attention to the fact that the Courts were firm in this area. Beamer assured the Committee that the Conservation Commission was in compliance with the law and that bidders were familiar with the statute. Kuhn agreed to convey Schroeder's suggestion to the Commission.

74.2(107)

In re 74.2(107), basically, the Committee had reservations as to whether there was sufficient statutory authority for leasing of land and the disposition of the land rental funds. Tieden referred to 74.2 and asked for examples of agricultural leases for wildlife management when competitive bidding is not used. Schroeder interjected that 74.4(5) addressed that.

Kuhn pointed out that the Commission has "good faith" cooperative farming agreements with the Corps of

CONSERVATION ENGINEERS which must be honored. Some of those agreements  
COMMISSION were made on a crop share basis. These are being phased out  
Continued in all but a few special circumstances.

Holden saw no clear authority for the leasing program and he asked that the appropriate legislative Committees be notified.

Schroeder pointed out that public auction of leased land has been a viable tool in Pottawattamie County and he recommended that the concept be pursued. Kuhn agreed to consider his suggestion.

74.5 The time frame for removal of crops from leased lands was discussed -- 74.5.

Motion to Refer to Legislature Holden moved that the appropriate legislative committees be notified that the ARRC questions whether there is adequate statutory authority for the land management agricultural lease program. Schroeder recommended referral to the Natural Resources Committees. Motion carried.

Kuhn agreed to review Committee concerns.

COLLEGE AID COMMISSION Gary Nichols appeared on behalf of the College Aid Commission for review of:

COLLEGE AID COMMISSION[245]  
Iowa guaranteed loan program, ch 10 ARC 3406 ..... 12/8/82  
Iowa guaranteed loan program, tax setoff program, ch 10, filed emergency ARC 3407 ..... 12/8/82

There was brief review of the amendments to the Iowa guaranteed student loan program; no formal action was taken. In matters not officially before the Committee, Nichols discussed the tuition grant programs in general.

ARCHITECTURAL EXAMINERS' BOARD David Frevert, Vice Chairman, Board of Architectural Examiners, was present to review the following:

ARCHITECTURAL EXAMINERS, BOARD OF[80]  
Registration, rules of conduct, disciplinary action, 1.1(1), 1.2, chs 2, 4 and 5 ARC 3436 ..... 12/22/82

2.4 Fee changes to reflect the new architectural registration examination were reviewed--2.4. The Committee was advised that Iowa has 900 registered architects including those living out of state. Holden questioned meaning of "..., practicing in the same locality" at end of 4.1(1)a with respect to competency. In his opinion, that paragraph should be rewritten by substituting "as required by the licensing board" or similar language.

HOUSING FINANCE AUTHORITY George Cosson, Counsel, and Bill McNarney, Director, represented Iowa Housing Finance Authority for review of general revenue bond procedures, public hearing and approval, 4.5, ARC 3460, also filed emergency, ARC 3459, IAB 12/22/82.

McNarney provided a brief overview of the rule which will require the Authority to hold a public hearing prior to issuing bonds for a specific project.

1-4-83

HOUSING  
FINANCE  
AUTHORITY

In a matter not officially before the Committee, Chiodo discussed the small business loan program and proposed legislation. Chiodo and Schroeder planned to meet with Authority officials for further discussion.

INSURANCE  
DEPARTMENT  
36.6

Richard C. Hurst and Tony Schrader, Deputy Insurance Commissioners, appeared for review of limited benefit health insurance coverage, 36.6(10), ARC 3414, Notice, IAB 12/8/82.

Hurst stated that reductions in the level of Medicare coverage have resulted in need for consumers to secure additional Medicare Supplement coverage. The amendment would allow this. There was general discussion. Schrader noted that no opposition had been voiced at the public hearing.

PHARMACY  
EXAMINERS

The Board of Pharmacy Examiners was represented by Norman Johnson, Executive Secretary, who presented the following:

PHARMACY EXAMINERS, BOARD OF[620]

Pharmacist initial prescription, 6.1(5) ARC 3445 .....N..... 12/22/82  
Medical assistance Act participation, 6.10, filed emergency ARC 3444 .....F.B..... 12/22/82

6.1(5)

The Committee questioned proposed requirement in 6.1(5) that "the pharmacist who fills an original prescription shall hand-sign or initial" it. Schroeder thought stamping a pharmacist's number would suffice. Johnson cited possible misuse of a stamp. Chiodo doubted the adequacy of initials for identification purposes. In his opinion, the prescription should be signed. Johnson agreed to convey Committee sentiment to the Board. He thought the rule could read "hand-signed."

6.10

Responding to Schroeder re 6.10, Johnson saw no advantage for the pharmacist. He added that an effort had been made to ensure that the state receives benefit of lower prices. No further questions.

Recess  
Reconvened  
AGING  
COMMISSION

Chairman Schroeder recessed the Committee at noon. Committee was reconvened by Schroeder at 1:50 p.m. with Aging Commission nutrition services, rules 8.45 to 8.47, 8.49 to 8.53, ARC 3449, Filed, IAB 12/22/82. The Commission was represented by Paula Ritter Gooder, Lois Haecker and Ron Beane.

Haecker explained that rules pertaining to nutrition services had been modified as a result of comments from Area Agencies on Aging and the ARRC.

Responding to Tieden, Haecker said the definition of "meal ratio" will be, "The number of meals provided to the elderly in an area expressed as a percentage of the total elderly population of the area." The amendment will be filed when federal changes necessitate further revision.

8.46(2)

Schroeder asked for inclusion of a date certain in 8.46(2) at that time.

Holden wondered if there were documentation of program participation by other than "needy." Beane emphasized the



1-4-83

AGING  
COMMISSION  
Continued

federal program was not based on "need"--anyone over age 60 would be eligible. However, those financially able are encouraged to contribute. There was general discussion of possible abuse of the nutrition programs. Responding to Tieden, Gooder said two sites in the state serve meals every day. According to Haecker, two initiatives for the program are to provide meals and fellowship. Department officials agreed to supply Royce with cost figures.

Delay on  
20--4.2  
Lifted

Chairman Schroeder noted that Aging Commission rule 20--4.2 concerning the care review ombudsman had been amended as requested by the ARRC. He asked and received unanimous consent to remove the 70-day delay imposed on rule 20--4.2 at the December 1 meeting of the ARRC. No opposition voiced.

AGRICULTURE  
DEPARTMENT

The following rules were before the Committee:

AGRICULTURE DEPARTMENT[30]

Aujesky's disease, 16.149, 16.151(3), 16.153 ARC 3450..... 12/22/82  
Food establishments, license, toilet and lavatory facilities, 38.1, 38.2 ARC 3451..... 12/22/82

Agriculture Department representatives present were: Bette Duncan, Counsel, Dr. M. H. Lang, State Veterinarian, and Earl Revell. In re Aujesky's disease, Dr. Lang recalled that no one appeared at the public hearing on the rules but the pork producers had endorsed them by letter.

There was general discussion of 16.153--the pilot control program.

38.1, 38.2

In re 38.1 and 38.2, Duncan stated the rules were identical to those filed under Notice. The "eye level" requirement for posting the license remained and the Committee reiterated its opposition.

Chiodo insisted on rewording to provide that the "license number shall be in a place where it can be easily read." He could foresee harassment by inspectors if the rule were not changed. Department officials knew of no such cases but asked to be notified of any arbitrary actions by inspectors. No further comments.

PLANNING &  
PROGRAMMING

James Lynch and Lane Palmer were present on behalf of Planning and Programming for review of the following agenda:

PLANNING AND PROGRAMMING[630]

Purpose of the agency, ch 1 ARC 3435..... 12/22/82  
Community development block grant nonentitlement program, ch 23 ARC 3461..... 12/22/82

Also present: Doug Getter, Iowa Development Commission.

1.1(4)

Lynch noted that the rules reflect organizational and statutory changes. Holden saw no need for 1.1(4) when the comptroller provides similar reports. He questioned inclusion of "the governor's highway safety office" in 1.2(1).

1.2(1)

Lynch advised that the office in question allocates several million dollars in funds to local law enforcement agencies for a variety of purposes and was 100 percent federally funded. He agreed to research Holden's question, however. According to Lynch, OPP operates 24 programs which are closely monitored by the Governor.

1-4-83

PLANNING &  
PROGRAMMING  
Continued

Holden referred to 1.4(17A) which would exempt certain rules from public participation. Oakley interjected that his office and agencies are cautious in exercising the option provided under 17A.4(2). He emphasized that rules adopted without public participation are published in the IAB, therefore affording perusal by interested persons. Preambles to this type of filing are also very informative. Oakley reasoned that oversight by the ARRC was additional safeguard.

Royce aired Senator Schwengels' contention that inclusion of the criminal and juvenile justice planning agency as part of OPP was not legislative intent. It was noted that the agency was created by statute "within the office of the governor" as the successor to the Crime Commission. [1982 Acts, ch 1181]

chapter 23

Lynch summarized chapter 23--Community Development Block Grant Program. OPP surveyed all of last year's applicants to ascertain their feeling toward the program and rules. Eight major changes were made as highlighted in the preamble.

Schroeder was informed that OMB Circulars referred to in the rules were federal documents promulgated by the Office of Management and Budget setting forth financial management guidelines. Schroeder took the position that a paragraph should be included in the definitions to describe those forms. Lynch admitted that was a good point.

23.7(5)

Chiodo challenged grant ceilings for funding in 23.7(5). He maintained there should be a mechanism for exceptions--an appeal process for variance. Lynch stated that their Advisory Council had rejected the idea of raising the grant ceiling for large cities. However, he agreed to refer the matter to the Advisory Council again.

Lynch assured Schroeder that language in the 9th paragraph of 23.(3) was a protection for OPP to ensure proper distribution of grants.

Getter noted lack of any reference in the rules that economic development was a state objective. Iowa Development Commission requested this be added. Getter cited Illinois where 55 percent of funding went for job retention and job-created issues. Lynch responded that the OPP program was directed to Iowa's greatest needs rather than objectives set by someone in Washington, D. C. One of the national objectives he elected not to include in the rules was "expansion of economic opportunities" which he considered to be redundant. He was not opposed to including it, however. No further discussion.

SUBSTANCE  
ABUSE

There was brief review of Substance Abuse Department, service and care facilities, health and safety, 3.24(6), 3.24(14), 3.25(5), ARC 3415, Filed, IAB 12/8/82. Randall Ratliff represented the Department.

Holden pointed out possible misplaced modifier in 3.24(14)a.



SUBSTANCE  
ABUSE  
Continued

He also suggested that the Department of Agriculture rules could have been referenced since they are responsible for inspection of the facilities. In Schroeder's opinion, facilities using forced air ventilation would be excluded by the rule. Ratliff said that was not the intent.

Committee was reminded that the Noticed rules had appeared on the "No Representative" category on their agenda.

COMMERCE  
COMMISSION

The following rules were before the Committee:

COMMERCE COMMISSION[250]

Advertising, filing information, 7.4(3)"b", 7.4(6)"c"	ARC 3432	.....F.....	12/8/82
Electric energy demand, customer notification of peaks, 20.11	ARC 3456	.....F.....	12/22/82
Electrical safety code, 25.2(1), 25.2(2), 25.2(3), 24.11(2)"e"(2)	ARC 3433	.....F.....	12/8/82
Utilities, accounting of certain expenses, 19.2(5), 20.2(5), 21.2(14), 22.2(6)	ARC 3457	.....N.....	12/22/82
Telephone utilities, customer premise equipment, accounting, amendments to chs 22 and 16	ARC 3434	.....N.....	12/8/82
Electric plant inspection, 25.3, 20.5(5)	ARC 3418	.....N.....	12/8/82

7.4

The Commission was represented by Lex Wodtke, Ben Stead and Alice Hyde. No recommendations were offered for amendments to 7.4.

20.11

Wodtke presented an overview of Commerce action with respect to electric energy demand and customer notification of peaks. Holden questioned the exemption for rural electric cooperatives and municipalities.

Wodtke responded that many REC's purchase energy rather than produce their own and a major purpose of the rule was to delay further construction of plants. Schroeder could envision confusion. Oakley observed that the preamble lacked the unique circumstance for exempting REC's.

Wodtke explained that the Commission realizes there is a statewide peak in the summer. A number of power cooperatives that supply energy to REC's have agreements with investor-owned utilities to "swap" electricity depending upon the need. Essentially, the Commission was addressing the summer situation when energy is used almost to the maximum. Holden declared the whole matter could have been resolved by requiring companies to prove they should be exempted in the summer months. He pondered the economic impact of all the "paper shuffling." Mention was made of a possible 70-day delay on rule 20.11.

Oakley recalled an April 1 deadline for utilities to file their plans for notifying customers on days when peak demand occurs. He thought it would be preferable to allow 20.11 to go into effect and then place the question of uniform application under Notice.

Tieden was interested in knowing the impetus for this program. Wodtke cited a Missouri program.

24.11,  
25.2

Discussion moved to the electrical safety code amendments. Hyde had informed the Commission of Schroeder's concern re vertical clearance over water areas. No other comments.

chs 19, 20,  
21, 22

Hyde reviewed proposed accounting amendments which would require reporting of expenses resulting from the assembly of a utility's board of directors or the principal officers outside of Iowa or the state in which the utility's home office is located.

COMMERCE  
COMMISSION  
Continued

Holden and Chiodo wondered if guideline limits for expenditures in all cases would be more acceptable.

Oakley referred to 19.2(5)k and was of the opinion that request for purpose of the meeting was an "inappropriate intrusion on a legitimate business enterprise."

chs 22 & 16  
Telephone  
utility  
customers  
premises &  
equipment

Stead indicated that amendments to chapters 22 and 16 tend to track federal regulations. Public hearing comments revealed that Northwestern Bell, in particular, prefers the FCO definition of "customer premise equipment."

Stead, responding to Tieden, said FCC rules change almost daily but the Commission's intent was to be in accord with them, whenever possible. FCC rules will be effective 1/1/83 and utilities contend that has a pre-emptive effect on the state commissions.

16.5(46)

Stead reviewed alternatives A and B--16.5(46)--with respect to the deferred taxes and investment tax credits relative to customer premise equipment.

25.3  
29.5(5)

Wodtke discussed new rule 25.3 and amendment to 20.5(5) pertaining to periodic inspections of electric plants. Compliance records would be kept for Commission inspectors to examine. Holden was apprehensive that excessive paperwork was being created. In Chiodo's opinion, this would "increase rather than decrease costs."

February  
Meeting

Committee concurred that the February meeting would be held February 8, 1983, beginning at 7:30 a.m.

Recess

Chairman Schroeder recessed the Committee at 4:00 p.m. to be reconvened at 9:00 a.m., Wednesday, January 5.

RECONVENED

Chairman Schroeder reconvened the Committee at 9:05 a.m. in Room 116, Capitol Building. Four members were present; Priebe and Clark absent. Also present: Kathryn Graf, Governor's Rules Coordinator.

HEALTH  
DEPARTMENT  
Cosmetology

There was unanimous consent to accommodate Cosmetology officials and review their rules out of order--149.3(10), 151.12, 151.7, 160.7, ARC 3410, IAB 12/8/82. Grayce West and Nancy Welter appeared for the Board of Cosmetology. Also present: Peter Fox and Mark Wheeler, Health Department.

149.3(10)

In re 149.3(10), Schroeder voiced opposition to the requirement of a high school diploma or GED certificate for cosmetology applicants. According to West, the Board wants to discourage dropping out of high school in order to enter cosmetology profession and cosmetology schools support the concept.

HEALTH  
DEPARTMENT  
Cosmetology  
continued

Schroeder preferred a variance factor. Holden expressed the opinion that if an individual can pass the test, they should be admitted. Royce informed Schroeder of the statutory authority for the rule.

Although Tieden had some problems with the rule, he pointed out that many other trades and professions impose restrictions. Holden was told that cosmetology inspectors check for lapsed licenses. West spoke of "self-policing" of violators in the profession.

149.2(5)

In re proposed amendment to 149.2(5), cosmetology school instructors, [IAB 12/8/82] Welter referenced letter from Oakley advising that the Board has no authority to allow variance of one instructor for each 15 students. Wheeler added that the Health Department concurs and he would recommend that the Notice be terminated.

Refer to  
General  
Assembly

Tieden moved to refer the matter to the appropriate standing committees of the Legislature. Motion carried.

Introduc-  
tion of  
K. Graf

Schroeder recognized Oakley who introduced Kathryn Graf, who will succeed Oakley as Governor-elect Brandstad's choice for Administrative Rules Coordinator. Graf formerly served as an Assistant Attorney General in the Consumer Affairs Division. Oakley spoke of the valued relationships with Committee members and thanked them for the courtesies extended to the governor's office. He also recalled his good working relationship with Royce as well as Barry and her staff in the Code Editor's office. Oakley indicated that Jane Warren would continue to serve in the same capacity in the Coordinator's Office. Schroeder welcomed Graf on behalf of the Committee.

Graf addressed the Committee briefly. She was looking forward to working with them and eager to become better acquainted.

AUDITOR OF  
STATE

John Pringle was present for Auditor of State to review:

AUDITOR OF STATE[130]  
NOW accounts, 8.1(1), 8.1(5), 8.1(6), 8.2(1), 8.2(3), 8.2(4), 8.3 ARC 3426 ... 12/3/82

Pringle said the Notice concerned continuing changes surrounding Savings and Loan Associations. He briefly reviewed last year's legislative action with respect to accounts. If S & L's follow state regulations for commercial lending and commercial NOW accounts, S & L's would be subject to the same branching restrictions as state banks. If they follow limitations of federal associations, then they may branch freely within the state as in the past. In order to meet the criteria of the law, using the same terminology and limitations, the Auditor proposed rules to allow state associations to issue "demand accounts."

The Committee reviewed legislative action and learned that no one attended the hearing.



HEALTH  
DEPARTMENT  
Resumed

The Committee returned to its agenda and the following rules of Health Department:

HEALTH DEPARTMENT[470]  
Radiation emitting equipment, ch 42 ARC 3428 ..... F 12/8/82  
Nonpublic water wells, 45.6(3), 45.7(2)"d", 45.7(2)"c" ARC 3429 ..... F 12/8/82  
Vital records, fees, 96.4 ARC 3430 ..... F 12/8/82  
Chiropractic examiners, 141.11, 141.13(6), 141.12(7), 141.12(8), 141.64(1), 141.68 ARC 3439 ..... F 12/22/82  
Cosmetology, 149.3(10), 151.12, 151.7, 160.7 ARC 3410 ..... F 12/8/82  
Barbering, license fees, 160.6(1), 160.6(3) ARC 3411 ..... F 12/8/82  
Special supplemental food program for women, infants and children, (WIC), ch 73, filed emergency ARC 3412 ..... F.E. 12/8/82  
Homemaker-home health aide service, 80.3(2)"d" and "f", 80.4(1), 80.5 ARC 3427 ..... N 12/8/82  
Cosmetology school instructors, 149.2(5) ARC 3408 ..... N 12/8/82  
Barbers, reinstating lapsed license, 152.110 ARC 3409 ..... N 12/8/82  
Certificate of need program, 202.4(4), 202.4(5), filed emergency after notice ARC 3413 ..... F.E.A.N. 12/8/82

Department representatives present were David Ancell, Dr. Ronald D. Eckoff, Kenneth Choquette, J. A. Eure, Don Flater, and Jeanine Freeman; Harriett Miller, Chiropractic Board, Keith Rankin, Barber Board.

Ch 42  
Ch 45

No recommendations were made for chapter 42. In re amendments to chapter 45, Schroeder mentioned his request for use of tile with one-inch offset lip. Wheeler was amenable to a future amendment.

There was discussion of question posed by Royce as to whether the regulation of private water supplies remains within the authority of the Health Department. He interpreted 1982 Acts, chapter 1199, §9 as repealing that authority. The newly created Department of Water and Waste Management, DWAWM, appears to be charged with creating guidelines but the duty to create enforceable standards is vested in local boards of health. Choquette had perused the statutory language and concurred with Royce's interpretation. Oakley opined this was an example of why care in use of words of art by the Legislative Service Bureau drafter is very important. He recommended that ARRC refer the matter to appropriate legislative committees.

Refer to  
Legislature

It was Schroeder's understanding that formal action on the part of the new DWAWM would be needed to carry over all Health rules. Choquette indicated advice of the AG's office had been sought. Flater was of the opinion the matter could be handled administratively between the agencies.

The Committee directed Royce to draft a letter to the Speaker of the House and the Lieutenant Governor requesting the appropriate standing committees to peruse the matter.

96.4

Wheeler reported that 96.4 had not been changed since it was published under Notice. Tieden recommended clarification of the rule when it is amended again.

ch 141  
160.6(3)

No questions were posed re amendments to chapter 141. There was brief discussion of 160.6(3). Schroeder asked for statutory language on the penalty fee and Fox cited \$147.10.

ch 73

Chapter 73, supplemental food program for women, infants and children (WIC) was reviewed briefly by Freeman; the rules

1-5-83

HEALTH  
DEPARTMENT  
Concluded

comply with the federal CFR, January 1, 1982. No questions were posed re chapter 80.

Freeman reminded ARRC that, in October, ARRC had suggested a sunset clause for the certificate of need program; subrules 202.4 (4),(5) provide for June 30, 1983.

SOCIAL  
SERVICES

The following Social Services agenda was before the Committee:

SOCIAL SERVICES DEPARTMENT[770]

Medical and health services, reimbursement of providers, 79.1	ARC 3421	..E	12/8/82
Child support recovery, offsetting income tax refunds, 95.5, 95.7	ARC 3422	..E	12/8/82
Child support offset of unemployment benefits, 95.8	ARC 3423	..E	12/8/82
Unemployed parent workfare program, contracts, 59.1, filed emergency	ARC 3419	..E	12/8/82
Licensing requirements for institutional care, ch 107 rescinded, filed emergency	ARC 3420	..E	12/8/82
Payments for foster care, 137.9(2)	ARC 3438	..N	12/22/82

Judith Welp, Jim Krogman, Chris Ill, Mary Louise Filk, Dan Gilbert, Charles Ballinger and Judith Stark appeared for Department of Social Services.

95.8(3)b

No questions re 79.1, 95.6 and 95.7. In re 95.8(3)b, Schroeder questioned whether the five percent differential in garnishment action was statutory.

Holden favored an amount rather than a period of time. Oakley wondered if unemployment benefits would be garnished for a larger amount than wages. Ill did not know of a limit on recovery of back child support.

Oakley was advised that 16 public hearings were held throughout the state--only comments were from the 2 persons who attended the Waterloo hearing. They opposed garnishment of unemployment compensation. Oakley favored consistency. Council should peruse garnishment limitations to ensure compliance with the statute.

No questions were raised re 59.1, chapter 107 and 137.9(2).

Break

Chairman Schroeder declared a 10-minute break at 10:30 a.m. and reconvened the Committee at 10:43 a.m.

TRANSPORTA-  
TION DEPT.

Norris D. Davis, Gordon A. Sweitzer, Carol Coates and Carol Padgett represented Transportation Department for review of the following:

TRANSPORTATION, DEPARTMENT OF[820]

OWI and implied consent, driver licenses [07.C] ch 11, 13.13(4), 13.14, 13.5(9), 13.15(10), 13.13,		
14.6	ARC 3440	..E
Minor's restricted license, [07.C] 13.5(4)	ARC 3441	..E
Driver license, suspension, driver improvement program, [07.C] 13.13(8), 13.19	ARC 3442	..E
Financial responsibility, [07.C] 14.1, 14.6(3)	ARC 3443	..E
Abandoned vehicles, [07.D] 2.2(5)"a" and "b"	ARC 3424	..N
Motor vehicle dealers, manufacturers and distributors, amendments to [07.D] ch 10	ARC 3431	..N
Vehicle registration and certificate of title, amendments to [07.D] ch 11	ARC 3425	..N
Implements of husbandry, moving on highways, [07.E] 1.6	ARC 3452	..N
Interstate registration and operation of vehicles [07.F] 1.3(1)"a", 1.3(5)"a", 1.6, 1.9, 1.15	ARC 3453	..N
Truck operators and contract carriers, marking equipment, [07.F] 3.3(1)"c"	ARC 3454	..N
Interstate motor vehicle fuel permits and transport carrier registration, [07.F] 7.2, 7.3(6), 7.4(6)"a" and "b",		
7.4(8)	ARC 3455	..N

Also present: Ted Yanacek, Iowa Farm Bureau. In discussion of the OWI law, Sweitzer indicated a 30 percent increase in arrests over the same period one year ago. No questions re the first two sets of amendments to [97.C] chapters 11, 13 & 14.

TRANSPORTATION  
DEPARTMENT  
Continued

In reviewing driver license suspension and improvement programs, Schroeder was hopeful a fairer method of imposing penalties for speeding could be available. Sweitzer emphasized that would require legislative action and he was unsure as to the position the Department would take on that issue. Schroeder favored leniency for speeders driving less than 10 mph over the speed limit. The general inequities of speed limit enforcement among the states were discussed.

No formal action taken on [07C]14.1, 14.6(3) or [07D]2.2(5).

Tieden asked about retail auction sales and was informed that six or more per year would require a license. Coates said the rule prohibits selling of vehicles unless owned by dealer; vehicles cannot be sold on consignment without license; an auction company should take title to vehicles. Holden viewed the rules as "too protective and in conflict with the free enterprise system."

ch 11

Holden contended that enforcement of special fuel issue was the responsibility of the person issuing the permit. Coates knew of no problems.

[07E]1.6

Discussion of [07E]1.6 pertaining to "movement of implements of husbandry" on the highway. Bakke concurred with Tieden that the Code definition of implements of husbandry was confusing. Holden spoke of the problems faced by motorists when meeting these "implements" on the highways. In his opinion, lights should be placed on the back of the vehicles.

Tieden took the position that farmers, dealers and others who move implements need more guidance. Yanacek asked if an implement dealer who picks up a wagon, etc. would be subject to the rules. He preferred more specifics in the rules. In addition, he viewed the various Code references as confusing. Holden maintained that all vehicles should abide by the same rules when on the state's roads. Problem areas with lighting were pointed out. Holden spoke of the confusion along rural roads in determining which way a vehicle is traveling when it uses only flashing yellow lights. Bakke interjected that these rules require red lights on the rear of vehicles. No formal action.

No recommendations offered for amendments to [07,F] chapters 1 and 3.

ch 7

Holden raised question with respect to provision in 7.4(6)a to require the interstate fuel tax report to be postmarked by the United States postal service on or before midnight of the filing deadline. He called attention to the Miller case. Bakke stated that surrounding states require the U.S. postmark.



## MERIT EMPLOYMENT

The Merit Employment Department was represented by Clint Davis, Emmeline Wynn, and Judith Stark, Social Services employee chose as an ad hoc member of the Merit Rules Committee. The following rules were considered:

\* Professional/managerial pay plan, amendments to chs 1 to 12, 14 and 17 ARC 3458 .E..... 12/22/82  
Also present was Ed Moses.

Davis reviewed the history of the rules which were generated following passage of HF 875, 1981 GA and intended to implement a new pay plan. He recalled obstacles encountered by the agency during the last year. Throughout the time that Wallace Keating was Director of the Department, the rulemaking and legislative work had been carried out exclusively by him. Given only a month to implement the Act, Keating worked with the Comptroller's office and prepared and distributed detailed policy letters covering the pay plan. However, Keating resigned in August and Fran Van Winkle was appointed as the new Director in September 1981. In addition to rulemaking, she was confronted with a multitude of other duties. Van Winkle wanted to receive input from other state agencies and it was decided to establish a Merit Rules Committee which would include a representative nominated by other state agencies to solicit input. The Committee was formed in October 1981 and the drafting process of Ch. 4 began. As the revision progressed, it became apparent that co-ordinating amendments were also needed.

Responding to Schroeder, Davis concurred that Department heads have discretion in allocating available salary money. However, once the amounts are split into variable dollars, the former step pay plan is eliminated. All other rules referring to step pay increases had to be modified.

In order to continue to equitably administer rules for promotions, language was drafted to accommodate 5 percent increase where a one-step increase was referred to for professional/managerial employees.

Discussion of 11.1(1) with respect to absenteeism for three consecutive days by those under collective bargaining. Davis stated that those under contract are covered by the terms of the contract, not collective bargaining.

Schroeder thought contractual and noncontractual employees should be governed by the same rules.

Moses distributed information concerning his concept of the Merit pay plan. He argued that the rules were not timely since the Act will expire in June 1983; they were misleading and conflict with the Act. Moses noted that although HF 875 did not address promotions or reallocations of positions, the rules do. He maintained that elimination of pay steps was not mandated.

MERIT  
Cont'd

Moses referred to information which had been distributed by Merit since July 1, 1981, and he reviewed the provisions of the Act.

He called attention to the fact that, beginning July 1, 1982, Merit increased the minimum step by 5 percent and the maximum by 11 percent. He declared that this was a complete contradiction of §19(4) of the Act. He quoted from correspondence where Davis had indicated that "pay plan" and "pay schedule" were synonymous. Moses claimed that was contrary to the past practice. He recalled that "pay plan" was changed to "pay plans" after he had voiced complaint about the rules. Moses saw only one pay plan with about nine schedules. He viewed the Merit Department as the appointing authority for their own employees but not for all state agencies. He quoted from §19(4) of the Act and placed significance on the word "Each." Moses did not interpret §19(5) as abolishing the step. When this was done, he said, "They effectively abolished the rule that would affect me and anyone who was promoted in the last one and one-half to two years or anyone who was reallocated."

Moses continued that the minimum 5 percent and maximum 11 percent increases were not in compliance with §19(1) of the Act which provided "...shall increase by 8 percent...."

Chiodo was interested in a response from Davis. Davis displayed a chart for emphasis and explained that the 8 percent was administered across the board with the exception of the way that pay period was established for professional/managerial employees. Davis was of the opinion that the legislative intent was to allow agency directors flexibility to adjust salaries other than the straight 8 percent. He referred to general provisions in §19(1) and the variable in §19(4). He then presented an example of pay adjustments.

Chiodo thought Davis' point was well taken but questioned the authority.

Davis had consulted with the governor's attorney and the state comptroller prior to making a decision but the legislature was not in session at the time.

Chiodo was curious as to why problems were not resolved during passage of the bill. However, Davis was not aware that Merit was consulted.

Chairman Schroeder mentioned a possible 70-day delay for further study and to request an AG opinion.

MERIT  
Cont'd

Davis stated that an informal AG opinion had held that it would not be unreasonable to construe §19(4) of HF 875 as voiding the Merit rules with regard to steps. In 1982, over 52 percent were placed in pay scales which would not be consistent with continued established steps. Davis continued that between now and July 1, 1983, it was their intent to administer by rule what they have previously administered by policy.

Holden considered placing an objection on the rules which could be cured by changing the effective date to July 1 when the Department would be within their statutory authority. Schroeder preferred to pursue the 70-day delay with the possibility of Committee objection during that time.

Davis had understood that intent was to provide, on a continuing basis, a performance incentive based compensation system for professional/managerial employees. Holden opined it should have been spelled out in the law.

General discussion as to the appropriate course to pursue. Davis urged that Chapter 4 be excluded from any delay. He reiterated that the 5-11 percent factor was not addressed in the rules.

Motion

The Chairman entertained a motion to place a 70-day delay on all the Merit rules before the Committee and to seek an AG opinion on the 1981 proposal and ask whether or not a July 1, 1983, date would be more appropriate. So moved by Holden.

Holden noted the Department did not cite HF 875 as their authority for the rules.

Davis pointed to Code section 19A.9(2)--the authority to adopt rules for the administration pay plan.

The Holden motion carried with 4 ayes.

Moses wondered how the question could be resolved.

Royce reasoned the question as being "deceptively simple--has HF 875 repealed the rules that are currently on the books and in effect at this moment?". He added, "The Committee cannot object to a rule that is currently on the books."

Schroeder suggested that a declaratory ruling could be requested. No further action.



## REVENUE

Carl Castelda, Deputy Director of Revenue, appeared for the following rules for which no recommendations or comments were forthcoming:

Contested case proceedings, rehearing, 7.17(5), 7.20 ARC 3416 ..... F ..... 12/8/82  
 Request for waiver of penalty, penalty and interest, 12.11(h), 44.5(7), 52.6(12)(h), 58.6(11)(h), 63.9(h),  
 75.2, 81.15, 104.9 ARC 3417 ..... F ..... 12/8/82  
 Income tax, individual, 38.1(3), 39.1(2), 39.1(3), 39.3(3), 40.16(1), 40.16(5), 40.17, 41.3(1), 41.3(2), 41.7,  
 41.8, 42.2(3), 42.3 ARC 3418 ..... F ..... 12/22/82

## Recess

The Committee was recessed at 12:32 p.m.

Chairman Schroeder reconvened the meeting at 1:30 p.m. with Legislative Fiscal Bureau officials who had been invited to explore the possibility of their office providing assistance in preparation of economic impact statements for the ARRC. Dennis Prouty, Director of the Bureau, Thomas Freyer and Tim Fowler were in attendance.

After brief discussion, Prouty expressed a willingness to cooperate in any way possible.

## MINUTES

Chairman Schroeder called for disposition of minutes of the November and December meetings of the ARRC.

Tieden moved that the minutes be approved as submitted. Carried.

## MERIT

It was agreed that, due to the technical nature of the Merit rules question, the issue should be considered by the full Committee at a recessed meeting January 12, 1983.

## Recess

The meeting was recessed at 2:15 p.m.

## RECESSED MEETING RECONVENED

Recon-  
vened

Chairman Schroeder reconvened the ARRC meeting, Wednesday, January 12, 1983, at 7:55 a.m. in Committee Room 116, State Capitol. All members and staff were in attendance.

Also present: Clint Davis and Judith Stark for Merit Employment and Ed Moses.

## MERIT

First order of business was further discussion of the 70-day delay on the Merit rules, IAB 12/22/82. Grounds for an objection were also explored. The Committee reiterated their dissatisfaction with the length of time involved in drafting the rules. Priebe supported placing the objection and then seeking clarifying legislation. Clark wondered if the lack of timeliness created real problems with the rules.

Davis emphasized that the implementation of the rules would have no effect on methods utilized to this point--past policy, which had been widely distributed to all agencies, was merely set out in rules now. Davis had spoken with an administrative law division representative of the AG's office, who confirmed

1-12-83

MERIT  
Continued

that the Department had the latitude to proceed as they did in construing HF 875, §19(4).

Priebe suggested that the 70-day delay remain and, in addition, that a formal AG opinion be requested. However, he was doubtful of any long-term effect of a 70-day delay, since the rules had already been "delayed 19 months." Davis had visited with the AG who led him to believe the same opinion would be issued in a formal sense. He stressed that the rules have agency support. Moses was the only opponent.

Priebe thought Moses' question as to whether Merit has the authority to set a 5 percent minimum and an 11 percent maximum for professional/managers only and not for the other employees could be included in the AG request.

Discussion as to definition of "appointing authority."

Motion  
AG opinion

Priebe moved that ARRC request an AG opinion as to whether the Merit Employment Department can repeal a rule without completing the rulemaking process and whether §19(4) of the Act was an implied repeal of the rule since it authorized pay increases.

Davis was willing to supply ARRC with minutes of the Executive Council and Merit Employment Commission meetings where the procedure was approved.

Vote

Short form requested on the Priebe motion--motion carried. Tieden was out of the room at the time of the vote but asked that he be recorded as voting "aye."

Oakley arrived and was briefed on Committee action.

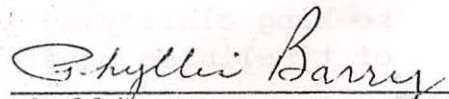
Priebe and Chiodo were excused to attend other legislative meetings.

After further general discussion, the Chairman brought the matter to a close and adjourned the meeting at 8:25 a.m.

February  
Meeting

Next regular meeting scheduled for Tuesday, February 8, 1983.

Respectfully submitted,

  
Phyllis Barry, Secretary  
Assisted by Vivian Haag

APPROVED:

  
CHAIRMAN