

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, January 8 and 9, 1991, 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 remains hospitalized. Also present: Paula Dierenfeld, Governor's Administrative Rules Coordinator and Representative Ruhl Maulsby.

Staff present: Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Alice Gossett, Administrative Assistant.

Convened

Chairman Priebe convened the meeting at 10:10 a.m. and called up the Personnel Department for the following rules:

PERSONNEL DEPARTMENT

PERSONNEL DEPARTMENT[581]
Classification; pay; recruitment, application and examination; appointments; probationary period; grievances and appeals; leave; public records and fair information practices, 3.2(1) to 3.2(3), 8.3, 8.4(2) to 8.4(4), 8.4(6), 8.5(1), 8.5(4), 8.5(5), 8.6(1), 8.6(4), 8.6(5), 4.6(4)"a," 4.6(7)"c," 4.6(3)"c," 4.11, 5.2(6)"c," 5.2(7), 5.3(1), 5.4(2)"a," 8.3, 8.13, 9.1, 12.1, 12.1(4)"b" to "d," 14.3(11)"b," 14.8(4), 17.3(7)"b," 17.4, 17.4(2), 17.4(3), Notice ARC 1559A 12/12/90

3.2(1)
et al.

Schrader was excused for the remainder of the morning. Appearing for the Department was Clint Davis, Bureau Chief. Davis explained that amendments to 3.2(1) et al. were essentially clarifying. He summarized the various changes and informed Tieden there was no relevance to the collective bargaining agreement.

Davis and Royce discussed access to confidential records. No recommendations.

COMMITTEE BUSINESS

There was Committee consensus that they should meet on the statutory dates through the legislative session and the next meeting was scheduled for Tuesday, February 12, 1991, at 7 a.m. If necessary, it would continue on Wednesday, February 13.

Barry distributed copies of an ARRC objection which had been voted on Agriculture rule 21--45.31 on 9/12/79. The rule had remained unchanged until last week when a minor amendment was filed. Barry sought guidance as to the status of the objection. There was consensus that the objection should be reinstated and possible referral of the matter to the Legislature. [See below]

AGRICULTURE

Appearing for the Department were: Dan Cooper, Bureau Chief; Camille Valley and Ronald Rowland. Also appearing was Shirley Peckosh, Iowa Nurserymen's Association. The agenda follows:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Iowa farmers market/women infants children program, ch 50, Notice ARC 1580A 12/12/90
Noxious weeds, ch 58, Notice ARC 1573A 12/26/90

AGRICULTURE
Contd.

Ch 50

Valley presented proposed Chapter 50 which will set out in rule form the policy in use for administering the farmers market food supplemental program. She explained to Priebe that the USDA requires that the Department certify the vendors who are authorized to accept special checks from WIC recipients who purchase locally grown fresh produce. Priebe was concerned as to administrative costs of certifying vendors and inspection for compliance and suggested an Economic Impact Statement on the rules. Valley pointed out that the program had been operating for several years now and administrative costs averaged 20 percent.

In response to Doyle, Valley said that vendors coming in from other states would have to meet the same requirements. The checks issued to WIC recipients must be used by October 1 and many save to buy end-of-the-season storable produce which is better utilization of their \$20 per person allotment. Valley emphasized that the intent of the program was to stimulate the demand for locally grown produce and no out-of-state produce can be sold in the certified vendor's stall.

Motion
Economic
Impact

Pavich moved to request an Economic Impact statement on Chapter 50. Motion carried.

Cooper noted that vendors report to the Department on the amount received from WIC recipients. Vendors police themselves and the program quite successfully.

Ch 58

In review of new Chapter 58, Rowland explained that they have been working with the Iowa Nurserymen's Association to identify sterile varieties of purple loosestrife which may be sold in Iowa. The varieties identified were nonaggressive--not sterile. Because the statute specifically uses "sterile," the Department contacted the Attorney General's office and were advised that nonaggressive and sterile were different. The rules were noticed in anticipation of clarifying legislation.

Priebe indicated that he had requested a bill draft to substitute the word "nonaggressive" for "sterile" in 317.25. Rowland said that border states are more affected and the Department suggested that both sterile and nonaggressive be included in the bill.

In response to question by Maulsby, Peckosh described the loosestrife plant. Priebe pointed out that retailers of the seed would have the burden of proof.

Department officials were apprised of the earlier discussion concerning the 1979 objection to rule 21--45.31.

Motion to
Object

Pavich moved to reinstate the objection to 21--45.31 and the motion carried.

SOIL CON-
SERVATION

Kenneth Tow and James Ellerhoff were in attendance for the following:

SOIL CONSERVATION DIVISION[27]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"
 Iowa financial incentive program for soil erosion control, 10.31(2)"c," Notice ARC 1684A 12/26/90
 Coal mining, ch 40, rescind chs 40 to 49, Filed ARC 1686A 12/26/90

10.31

There were no questions on 10.31(2).

Ch 40

Tow stated that mining rules were being updated and condensed into Chapter 40 where numerous references to the 1987 Code of Federal Regulations were adopted. Work has already begun on adopting revisions of the 1990 CFRs. Tow indicated there were 4 coal mine operators in Iowa. No action taken.

DENTAL
EXAMINERS

The Board was represented by Constance Price who presented the following:

DENTAL EXAMINERS BOARD[650]
 PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Applications — address corrections, 11.1, 11.4, Notice ARC 1644A 12/12/90
 Minimum training standards for dental assistants engaging in dental radiography, 22.4(1) to 22.4(3), 22.6 to 22.11, Filed ARC 1546A 12/12/90
 Principles of professional ethics, 27.7(6) to 27.7(9), Notice ARC 1543A 12/12/90
 Mediation of disputes, ch 32, Notice ARC 1545A 12/12/90

11.4,
Ch 22

There were no questions on amendments to 11.4 or Chapter 22.

27.7

Price said that amendment to 27.7 would eliminate language regarding the reported treatment dates of patients. Revision of 27.7(6) had generated two comments. The provision requires refund of payment received by a dentist for work not completed. An example would be a root canal or crown where the work is performed in sections but billed out to an insurance company or a third-party payer for the completed service.

Price agreed to refer to the Board Doyle's concern that typographical errors would be considered fraud in 27.7(5).

Priebe suggested inclusion of "or removed" after "prosthesis inserted" in 27.7(6). Price was amenable.

Royce asked what portion of the fee the dentist could retain if work were not completed. Price responded that this was an insurance problem confronted by dentists since they are not permitted to bill by sections. No formal action.

Ch 32

Priebe questioned 32.2 pertaining to mediation. He was interested in what recourse there would be if the Board does not provide for mediation. Price indicated that disputes between licensees and their patients quite often involve fees--a lack of communication as to the type of services expected and those actually being rendered. Any mediation of this type of complaint would be at the discretion of the Board. Doyle pointed out that Iowa has only 5 mediation centers. It was Price's understanding that rules were being drafted by the Prosecuting Attorneys Training Coordination Council to implement Iowa Code chapter 679, "Informal Dispute Resolution." Royce viewed Chapter 32 as an alternative.

DENTAL
EXAMINERS
Contd.

Tieden asked how just cause for a dispute was determined and Price answered that the Board makes that decision. Most complaints received by the Board are from the public and the Board will seek some relief for the patient. Mediation must be agreed to by both parties. In conclusion, Price said that mediation does not preclude an investigation by the Board. No Committee action.

ECONOMIC
DEVELOPMENT

The Department was represented by Thomas Guzman, JoAnn Callison, Melanie Johnson, Michael Doyle and Brice Nelson who presented the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261].

Retraining program, 6.2, 6.4, 6.6(5)"a"(4), 6.6(5)"b"(13) and (14), 6.8(1) to 6.8(4), 6.8(6), 6.8(12), 6.8(15), 6.8(17), Filed ARC 1533A.....	12/12/90
Self-employment loan program, 8.3(7), 8.4(2), Filed ARC 1532A.....	12/12/90
Productivity and quality enhancement, ch 11, Notice ARC 1535A, also Filed Emergency ARC 1536A.....	12/12/90
Youth affairs, 14.3(7)"b," 14.3(8)"a" and "b," 14.4(1), 14.4(4), 14.5(2), 14.5(5)"a" and "c," 14.7(6), Filed ARC 1534A.....	12/12/90
Riverfront development grant program, ch 30, Notice ARC 1534A.....	12/12/90
Iowa main street program, amendments to ch 39, Filed ARC 1538A.....	12/12/90
Iowa export trade assistance program, 61.2, 61.4(1), 61.6, 61.7, Notice ARC 1531A.....	12/12/90
Community builder program, ch 80, Filed ARC 1537A.....	12/12/90

Chs 6, 8, 11,
and 14

Callison explained amendments to Chapters 6, 8, 11 and 14 and there were no questions.

Ch 39

Guzman discussed amendments to the Main Street Program and noted that 39.3(3) had been clarified with respect to distribution of RFPs upon availability of funds. No questions.

Ch 30

Johnson described new Chapter 30 as a \$150,000 grant program. The rules set guidelines for eligible applicants and explain how the program will be evaluated. There were no public comments. Johnson told Doyle that nothing in the rules would preclude a city from applying for funds even if they had started a project.

Ch 61

Michael Doyle stated that amendments to Chapter 61 restrict to two the number of times a participant may use the program in the same trade show and limit the number of times a company can participate in trade shows in the same country to one per year.

Priebe expressed opposition to the definition of "trade mission" in 61.2 which described it as a mission led by the Department of Economic Development, the U.S. Department of Commerce, or the Iowa Department of Agriculture and Land Stewardship. He contended the rule was too restrictive and would be objected to if not revised before adoption. He declared that John Chrystal or the Governor could not lead a mission under that language.

M. Doyle said their intent was to provide some control as to the quality of the missions being funded through the program. Tieden suggested "sanctioned" or "authorized" rather than "led". M. Doyle added that, in most cases, they would be traveling overseas. The Foundation, the Economic Development and Agriculture Departments are members of the Trade Committee and would be coordinating with that Foundation and the organization of any other eastern European activities--they would be "leading." No formal action.

ECONOMIC
DEVELOPMENT
Contd.
Ch 80

In review of Chapter 80, Nelson informed Tieden that the last sentence of 80.6, the word "shall" was changed to "may" to allow more flexibility and opportunity for comment without obligation. No other questions.

SECRETARY
OF STATE

Ch 6

The Secretary of State was represented by Harry Davis and Allen Welsh who presented adopted Chapter 6 entitled "Electronic Filing of Documents" which was published as ARC 1585A in the 12/26/90 IAB. Priebe asked if there were comments from banks and Welsh said that four comments were received and all were in support of the chapter. Welsh told Maulsby that individuals would have access to information from this system. Welsh directed attention to 721--6.6(554) which allows secured parties to submit to the Secretary of State their own description of collateral to be adopted by rule--possibly an emergency filing.

Doyle referred to 721--6.5 relative to signatures and questioned whether it was permissible under Iowa law. Welsh noted that "signature" was uniquely defined in the Uniform Commercial Code. At the request of the Secretary of State, the American Bar Association researched the matter and the office followed that research in drafting the rules. Doyle asked about compatibility with the system and Welsh answered that the information would be deposited in the State's IBM 3270 mainframe. Welsh knew of no users that were incompatible. They did not anticipate many filings. He said they have good support from Information Services Division. FAX will be acceptable. No action taken.

COLLEGE
STUDENT AID

The following agenda was explained by Laurie Wolf of the Commission:

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Organization and operation — name change, 1.1, Notice ARC 1517A	12/12/90
Iowa Stafford loan program — guarantee fee, 10.24, Filed ARC 1510A	12/12/90
Iowa Stafford loan program — eligible lender, 10.42(2), Filed ARC 1516A	12/12/90
Iowa vocational-technical tuition grant program — student eligibility, 18.1(2), Filed ARC 1511A	12/12/90
Osteopathic grant/subvention program, 14.1, Filed ARC 1512A	12/12/90
Iowa heritage corps, 18.14, Notice ARC 1521A	12/12/90
Occupational therapist loan payments program, 19.1(3)"a," Filed ARC 1513A	12/12/90
Iowa nursing loan payments program, 21.1(2)"e," Filed ARC 1509A	12/12/90
Physician loan payments program, ch 28, Notice ARC 1518A	12/12/90
Access to education grant program, ch 28, Filed ARC 1514A	12/12/90
Displaced workers financial aid program, ch 28, Filed ARC 1515A	12/12/90
Osteopathic forgivable loan program, ch 30, Filed ARC 1508A	12/12/90
Iowa work for college program, ch 31, Notice ARC 1519A	12/12/90

1.1,10.24

No comments regarding 1.1 or 10.24.

10.42

In review of 10.42, Maulsby asked if there were a time frame for notification of approval or disapproval of the loan. Wolf said that 30 calendar days from receipt of application was being considered.

13.1(2)

Doyle noted reference to Regents rule 681--1.4(262) in 13.1(2)a and wondered if a date were needed and also if the Regents rule contained waiver procedure. Wolf mentioned a waiver in the eligibility for Iowa residency requirements. Royce viewed the adoption of the Regents rule as valid. Doyle expressed preference for a date

COLLEGE
STUDENT AID
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to be added. Maulsby reiterated his concern that a student must stay out of school for two years to establish residency.

Pavich in the Chair.

14.1, 18.14,
19.1

There were no questions or comments by the Committee regarding amendments to 14.1, 18.14 or 19.1(3)a.

21.1(2)

With respect to nursing loans in 21.1(2), Wolf reported that fewer applicants than expected had applied. The largest amount available was approximately \$1000 per recipient.

Ch 23

In response to question by Pavich, Wolf agreed to clarify 23.2(5) as to the meaning of "smaller communities."

Chs 28, 29

There were no questions regarding Chapters 28 or 29.

Ch 30

In response to Doyle, Wolf said that under the federal program, a student loan would be covered by insurance in the event of a student's death before the loan was repaid. Tieden wondered if there were a waiting period to qualify and Wolf responded that the student must be enrolled in the osteopathic program. They have up to 10 years to repay this loan. If they move out of state prior to the repayment, then it becomes their responsibility.

Ch 31

No questions on Chapter 31.

Noon
Recess

The Committee was in recess for lunch at 11:55 p.m. and was reconvened at 1:35 p.m.

EDUCATION

Chairman Priebe called on Education for the following agenda:

EDUCATION DEPARTMENT[281]

Innovative programs for at-risk early elementary students, 65.2, 65.4 to 65.6, 65.8 to 65.10, 65.19 to 65.23, Notice ARC 1206A Terminated, Notice ARC 1627A, also Filed Emergency ARC 1522A..... 12/12/90
Conservation education - deadlines, 68.6(3), 68.9(1), Notice ARC 1528A 12/12/90
Teacher education and certification, rescind 84.1 to 84.17, 84.23, chs 85 to 89, Filed Emergency ARC 1529A..... 12/12/90

Appearing for the Department were Susan Andersen, Sue Donielson, Duane Toomsen, Marc Haach and Gail Sullivan. Also appearing: Henry L. Caudle, Elementary Principal, Davenport Community Schools; Bill Long, Elementary Principal, Davenport Community Schools; Elden Ragstad, Sioux City Public Schools; Jim Wise, Des Moines Public Schools; Horace Daggett, State Representative; Wally Horn, State Senator.

Ch 65

Donielson reported that 21 people attended the January 3 hearing on Chapter 65 amendments. There was unanimous agreement from the 14 speakers that the emergency rules should be withdrawn. They discussed at length the positive nature of the grants that had been awarded and urged continued funding. Because of varying interpretations of the legislation and intent, the Department was still reviewing testimony and had not come to a

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conclusion. Daggett and Donielson discussed at-risk criteria. Daggett expressed opposition to the fact that the small rural schools did not receive a fair share of the funding. Donielson said that \$3 million in 19 grants was allocated to K-3 students in 11 districts. The exception would be the three districts where there was special legislation for three schools with ESL students (English second language) in Columbus, Storm Lake and West Liberty. Donielson spoke of the problem of a continual "tug" between urban and rural districts. She stressed that their major consideration was to have size categories--varying size school districts with differing needs of students who are at-risk, and to provide models that could be replicated.

Priebe reasoned that percentages should not vary greatly between the large and small districts. He took the position that the smaller ones must be considered.

Chairman Priebe recognized Horn who had served on all the Education committees. He was concerned that legislative intent had not been followed. Horn expressed concern regarding the transportation money and he favored legislative consideration of the entire issue for clarification.

Schrader realized that the program was tilted toward the large urban schools when he voted on it. However, he did not realize that all but the large urban schools would be excluded. He presumed that the Department was also unaware of this or they would not have issued RFPS to all of the schools. He suspected there was widespread misunderstanding as to disposition of the grant dollars. Schrader continued that objection was the only option for the ARRC. He would hesitate to place any cloud over the competitive grant program by an objection and for that reason voted against changing the \$3 million which went to the urban schools.

Motion

He moved to refer the rules to the General Assembly. Priebe asked that the motion be deferred until everyone had commented.

Long and Caudle distributed a position document and expressed their appreciation and praise of the program.

Tieden recognized that at-risk needs differed in the rural and urban schools and was supportive of grants for both factions in the pilot program. Andersen spoke of the success of the program in the schools that received grants--105 districts applied for over \$13 million. The emergency rules provide for one grant to each of five district-size categories--less than 401 to 2501 and larger.

Ragstad was enthusiastic about the at-risk grant which Sioux City had received for one of the elementary schools where over 82 percent are receiving free and

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Contd.

reduced lunches. He urged the Committee to consider the opportunity for the urban schools to continue the at-risk program where the dollars are working well.

Priebe contended that small schools could realize the same results that Sioux City was experiencing. He took the position that the projects should apply to all schools and he faulted the Department in setting out some different criteria for the point system.

Wise told the Committee that he works with the Area Education Network as a program coordinator and assisted in developing the at-risk statute [HF 535]. The Act emerged as a competitive grant program that would allow school districts to apply for the grant by building which has highest percentage of at-risk students. Wise continued that Des Moines has 93 percent at-risk. He stressed the necessity of considering migration--many rural and smaller community students are moving to the urban centers. Wise urged implementation of legislative intent which was to place dollars where the concentration of disadvantaged students exists. He cited the tremendous problem of economically and socially disadvantaged families which must be faced. He concluded that diverting \$1 million from the original intent of HF 535 would not resolve rural Iowa problems.

Horn recalled an estimate of \$100 million needed to solve the problems of both rural and urban schools. There was consensus that pride precludes both urban and rural students from applying for free lunches.

It seemed to Maulsby that it had been established that our modern education system was failing, otherwise, those at-risk would not be multiplying. Also, the system for financing education was not fairly distributed.

Schrader recalled initial review of the at-risk rules, revealed serious objections to the requirement for participation in free lunches as a weighting factor. He continued that the issue was debated at length and there were numerous interpretations of intent. Schrader then quoted from the statute and appropriations language which he concluded offered little guidance to the Department. He suspected that the Department had attempted to address concerns of this Committee and others with the revised rules.

Motion

Schrader repeated his motion to refer the at-risk rules to the Speaker of the House and President of the Senate. The motion failed on a 3 to 2 vote.

68.6, 68.9

No questions on 68.6 or 68.9.

Chs 84-89

There were no questions on rescission of rules in Chapters 84 to 89 which were in effect prior to October 1, 1988.

ENVIRONMENTAL PROTECTION

Appearing for the Commission were: Michael Murphy and Joseph Zerfas and the following agenda was considered:

ENVIRONMENTAL PROTECTION COMMISSION[567]
 NATURAL RESOURCES DEPARTMENT[561] "umbrella"
 Water supply rules, 40.2, 41.1, 41.2, 41.3(4), 41.3(7), 41.4(1), 41.4(10), 41.5(1)*b," 41.5(2)*a"(2)*3," 41.5(2)*c"(11), Filed ARC 1551A 12/12/90
 Filtration rules, 40.2, 41.2(3), 41.3(3), 41.4(2), 41.5(2)*a"(2)*4," 41.5(2)*c"(10), 41.7, ch 48, Filed ARC 1552A 12/12/90
 Water quality standards, 61.3(5)*e," Filed ARC 1554A 12/12/90

40.2 et al.

Murphy explained the revisions in 40.2 et al. pertaining to drinking water. In response to a question from Doyle, Zerfas said the rule making was for monitoring of coliform bacteria not nitrates. Doyle noted that water levels vary between rains and Zerfas commented that it would be prudent for the small towns to take samples at first and last of the month. Different sample containers would be used for various kinds of testing.

Murphy discussed amendments to filtration rules in 40.2 et al. which will implement federal regulations that went into effect December 31. He stated that the rules would have immediate impact on surface water supplies. Over a period of 9 years the Commission will be identifying other sources that will be influenced by surface water and time frames will be provided for implementation. Priebe recalled his request made last year at a budget subcommittee for the Department to take samples of runoff water following a big rain. Murphy was aware of a study that served 835 public water supplies and he agreed to provide information to Priebe.

61.3

Murphy stated that amendment to 61.3(5)e added streams designated under water quality standard revisions. As a result of comments received during public hearings, the Department established a protected flow for those streams and how that would impact waste water facilities.

NATURAL RESOURCE

The Commission was represented by: Lon Lindenberg, Ralph Turkle, Kevin Szcodronski, Mike Carrier, Allen Farris and Richard Bishop.

NATURAL RESOURCE COMMISSION[571]
 NATURAL RESOURCES DEPARTMENT[561] "umbrella"
 Habitual offenders — revocation and suspension of license, 15.6, Filed Emergency After Notice ARC 1488A carried over from December meeting 11/28/90
 Resource enhancement and protection program, 33.4, 33.5, 33.9, 33.30(4), 33.30(9), 33.40(6), 33.50(8), Filed ARC 1579A 12/20/90
 Game management areas — Cottonwood wildlife area, 51.3(1)*d," Notice ARC 1580A 12/20/90
 State parks and recreation areas, 61.2 to 61.4, 61.5(9)*c and "f," Notice ARC 1578A 12/26/90
 Fishing regulations, 81.1, 81.2(2), 81.2(3), 81.2(5), 81.2(6), 81.2(9), 81.2(10), Filed Emergency After Notice ARC 1581A 12/20/90
 Commercial fishing, 82.2(1), Economic impact statement ARC 1553A 12/12/90
 Waterfowl and coot hunting seasons, 91.4(2)*f and "i," Notice ARC 1577A 12/20/90
 Wild turkey spring hunting, ch 98, Filed Emergency After Notice ARC 1582A 12/26/90

15.6

Rule 571--15.6 was before the Committee having been carried over from the December meeting. Farris spoke of a proposal for the Commission's January 17 meeting which will possibly overcome ARRC objection to the rule. They plan to require violation information to be entered into a computerized system accessible by the Department of Public Safety and to delete the requirement that "deferred judgments" be entered into the point system. He asked for guidance as to whether this amendment should be Noticed or adopted as filed emergency. Royce saw no need for Notice if the problem areas were revised as recommended.

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Contd.

51.3

In review of 51.3(1)d, Farris said that use or possession of firearms, except shotguns shooting shot, would be prohibited in Cottonwood Wildlife area in Polk County. This is a small area bordering the interstate where people have been parking illegally and shooting targets. Doyle wondered about access by a peace officer who can legally carry a concealed weapon. Farris responded that the likelihood of an officer going into this area on a case was extremely remote. The Department had received complaints from the neighbors and the rule seemed to be the only recourse. Doyle questioned whether the law would allow a rule banning possession. He contended that making possession a crime could create problems. Lindenberg suggested adding "as provided by law." Farris said the rule would be posted when it becomes effective. No formal action.

Ch 81

Farris summarized amendments to the fishing regulations in Chapter 81. Tieden questioned the 15-inch minimum length for Walleye in Storm Lake. Farris informed him that the lake had become a very important part of the brood stock source for eggs for the hatchery.

82.2(1)

With respect to the Economic Impact Statement on commercial fishing--82.2(1), Farris stated that the Department followed the guidelines set out in the request and compared commercial fishery on the Mississippi and Missouri Rivers. Last year harvest on the Missouri was valued at \$9,393 and at \$294,000 on the Mississippi River. Tieden asked about the reference to channelization and bank stabilization project and Farris said that it was started many years ago but was not completed until the early 70's. The state of Nebraska, with over 100 licensed commercial fishermen, has voted to close commercial catfishing on the Missouri River, effective January 1, 1992. The State of Missouri has taken similar action and this action will impact a large number of commercial fishermen. Iowa has only 13. No formal action.

Ch 33

According to Szcodronski the only changes from the Notice of amendments to Chapter 33 were in regard to points. They plan to work with the League of Municipalities and the Iowa Park and Recreation Association to provide additional evaluation points for local cost sharing. No recommendations.

Ch 61

Carrier presented amendments to Chapter 61 which dealt with miscellaneous camping fees. In addition, the Code provision of a 14-day camping limit in one area has been clarified. At the suggestion of Priebe, Carrier was willing to add a statement in the book of camping tickets to the effect that it was not a guarantee for space if the campgrounds are full. Carrier indicated that increased fees covered all camping areas. In response to Doyle, Carrier agreed to check the policy on fees in counties with local option tax.

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91.4

Bishop told the Committee that revisions of 91.4(2) propose altering of one area which has been closed to Canada goose hunting and creating another closed area. There will be no exclusions. Bishop stressed that the only way Iowa can provide good goose hunting is to create a safe resting place where flocks can be produced. He pointed out that an area at Rice Lake was opened where there is excellent goose hunting because of the refuge following a long closure of the area. It was noted that a portion of Red Rock is included in this rule making.

Schrader commented on fairly positive attitude taken by hunters in his district. He noted that it was almost impossible to get on farmland to hunt east of Highway 14. He expressed his concern about the goose refuges that have been in Red Rock for many years. He wondered if other hunting seasons would be impacted. Bishop assured him they would not and he spoke of the tolerance that the Canadian geese have for gunfire. They learn very quickly that they are protected. Schrader expressed support of the Department but was concerned about the large area of private land. Bishop emphasized that the program would be withdrawn in a few years if not successful.

Schrader expressed the same sentiments regarding fishing regulations. He opposed the no-wake speed limit. The rules seemed tailored for the person who owns a \$10,000 duck blind or the \$10,000 fast boat and can travel to the best duck hunting in the state. Other less affluent farm boys lack the opportunity to drive long distances to participate in the sport. Bishop stressed that the purpose of the rules was to allow the flocks to increase in the Red Rock area where currently shooting of geese is being monopolized by hunters with expensive equipment. Bishop continued that once this is accomplished, those farm boys have a much better chance than anyone because they know the landowners. At this time there is not much leasing of land which will hamper hunting.

Ch 98

In answer to a question from Tieden, Bishop explained that some wild turkey hunters favored more flexibility with additional zones. However, the Department will follow the fall zones for spring hunting.

Priebe mentioned that the pheasant season had generated many telephone calls to him contending that it is too long. Tieden had observed large numbers of pheasants along the road at one time. According to Bishop, this has been one of the best years for pheasant population. No recommendations.

HUMAN SERVICES

Appearing for the Department were: Elaine Roccosecca, Carol VanDePol, Sandi Koll, Gary Gesaman, Joe Mahrenholz and Mary Ann Walker. The following agenda was considered:

HUMAN SERVICES DEPARTMENT[441]

Burial benefits, 56.1(2), 56.1(3), Notice ARC 1539A.....	12/12/90
Extension of lock-in period, 76.9(1), Filed ARC 1525A.....	12/12/90
Medicaid coverage of clozapine, 78.1(1) ^b (4), 78.1(2) ^a (2), 78.28(1) ^g , Filed ARC 1520A.....	12/12/90
Nursing facilities, 81.13(16) ^f , 81.16(4), Filed Emergency ARC 1523A.....	12/12/90
Dependent adult abuse, 176.6(4) ^c and "e", 176.6(5), 176.7(3), 176.10(3) ^a (1) and (3), 176.10(3) ^b (5) and (6), 176.13(2), Filed ARC 1524A.....	12/12/90

- 56.1 In review of 56.1, Roccosecca informed Doyle that the maximum burial benefit was \$400.
- 76.9 Walker said that amendment to 76.9(1) changed the minimum period for lock-in from 6 to 24 months. A survey of several surrounding states revealed that most of them impose 24 months. With a lock-in, recipients are restricted to a certain doctor or pharmacy. This prevents harmful practices such as duplication of drug use and allows time for behavior modification. No action.
- 78.1, 78.28 Walker summarized amendments to 78.1 and 78.28 and discussion focused on criteria for approval of payment for clozapine to Medicaid certified providers. One significant change from the Notice was lowering the required duration of the schizophrenia from 10 to 5 years. Walker noted that clozapine is available on a limited case-by-case basis and costs \$172 per week. Patients taking the drug require weekly hematology test to ensure that the white cell count has not been affected. Mahrenholz estimated the fiscal cost of the drug at \$4.2 million. Currently, costs are being paid by families in the state and some counties have agreed to assume responsibility for the costs in anticipation of long-range savings. No Committee action.
- 81.13, 81.16 Walker stated that emergency revision of 81.16(4) lowered the in-service nurse aide training requirement from 24 to 12 hours per year, effective December 1, 1990. Subrule 81.16(4) had been delayed 30 days by the ARRC at their September 12 meeting and extended to 70 days at their October 9 meeting.

Ch 176 There were no recommendations regarding amendments to Chapter 176.

UTILITIES

The Utilities Division was represented by Gary Stump, John Pearce, Diane Munns and Vicki Place and the following was considered:

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181] "umbrella"

Alternate energy production, 15.1, 15.2(1) ^a , 15.2(1) ^c , 15.2(2), 15.4, 15.11, 15.11(1) ^c , 15.11(4), 15.11(6), 15.12 to 15.16, 20.9(2) ^b (6) Notice ARC 1572A.....	12/26/90
Options for demand charge allocations, 19.10(3), Filed ARC 1540A.....	12/12/90

Ch 15, 20.9(2) Stump presented amendments to Chapter 15 and 20.9(2). No questions.

19.10(3) In review of amendment to 19.10(3), Munns explained the purpose and procedure for demand charge. It was Schrader's opinion that some problems exist with the

UTILITIES

interruptible hookup to LP gas. Priebe felt LPs should be regulated but Munns spoke of the difficulty of this approach since there are many individual dealers.

Contd.

Recess

Chairman Priebe recessed the meeting at 3:25 p.m. to be reconvened at 9:00 a.m. Wednesday.

Reconvened

Chairman Priebe reconvened the meeting at 9:05 a.m. and called up the Insurance Division for the following:

INSURANCE DIVISION

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"
Prearranged funeral contracts, 19.1 to 19.5, 19.10 to 19.17, 19.20 to 19.24, 19.30 to 19.33, 19.40 to 19.46, 19.50 to 19.62, 19.60, 19.61, 19.70. Notice ARC 1560A 12/12/90

Dennis Britson and Daniel Pitts Winegarden were in attendance.

Ch 19

In summarizing amendments to Chapter 19, Britson said that industry was consulted and practical necessities of both consumers and businesses were considered. Britson distributed copies of a memorandum which explained the revisions. The 1990 legislature amended the law relative to prearranged funeral contracts and adopted a new statute almost identical to provisions regulating cemetery merchandise. The Division determined that rules to implement the new laws would be almost identical and it seemed logical to draft one set of rules. Existing rules governing Iowa prearranged funeral contracts will be divided into three parts: General applicability; applicable to Code chapter 523A and applicable to 1990 Acts, Chapter 1213, sections 13 to 30. Priebe questioned the 12-month limitation on installation of "cemetery merchandise." He cited an example of a monument which could require longer than one year. Britson responded that it was difficult to make the distinction between at-need and pre-need. He pointed out that many markers, etc., were purchased ahead of time. Most contracts provide for installation within 12 months. Otherwise, the money must be set aside in a special fund.

Tieden was interested in public opinion and Britson said there had been some minor comments. When the law was passed, the Division lacked staff to process complaints and keep up with permit applications so the Attorney General's office handled complaints. Britson continued that they now have three staff and a full-time investigator. He stressed that the revised rule would not preclude filing of a complaint with the Attorney General. Winegarden interjected that the Regulated Industries Unit was now a part of the Insurance Division but they will cooperate with the Attorney General's office. In response to Doyle, Britson said they have the authority to charge for an audit. However, their normal practice is to use regular funding for the audit program. In the event of a violation, there would be a charge. Britson continued that the Division lacks specific authority to take over property

INSURANCE
Contd.

but with the assistance of the Attorney General's office they could request a receivership which could be granted by the court. No formal action.

UST
BOARD
Ch 17

The Petroleum Underground Storage Tank Fund Board was represented by Robb Hubbard who explained proposed Chapter 17 on Appeals, published under Notice in the 12/12/90 IAB as ARC 1562A.

As a result of written comment, modification will be made in the final draft. Royce was concerned that the rules were too abbreviated and condensed for contested cases. He advised that more detail was needed if a party will be represented by an attorney. Hubbard stated that the rules were written with the thought that an attorney would not be necessary. Royce agreed to send Hubbard a copy of the suggested model rules for his perusal.

Schrader raised question with respect to the cost share fund for remedial action. Hubbard stated that a report will be sent to the legislature on what was spent, an estimation of the current obligation and potential obligation. In addition, they will compile a report by counties.

Schrader viewed the biggest problem to be one of inaccuracies. Figures he had seen on cleanup costs reflected the costs of replacement of facilities, for example. Hubbard assured him that the Board's report would address strictly the liability of the fund for the cleanup. Schrader mentioned the interest in adjusting the cost share amount and he asked if the Board could estimate the cost of each incremental and Hubbard answered in the affirmative.

Priebe had received calls from some constituents who complained about the tank farm at Clear Lake. He had requested DNR to probe it but they said that it was a very big operation. Priebe asked Hubbard to investigate the area. No formal action.

INDUSTRIAL
SERVICES

Clair R. Cramer, Acting Commissioner and Libby Nelson were in attendance for the following:

INDUSTRIAL SERVICES DIVISION[343]
EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"
Contested cases, informal dispute resolution process, 4.9, 4.41, 4.42, ch 10 Notice ARC 1671A 12/26/90

Chs 4, 10

Cramer advised that the Division received public input on the rules through the Workers Compensation Advisory Committee. A public hearing was scheduled January 16, 1991. He had been in discussion with Bar Association members and different organizations representing lawyers regarding these rules. Cramer summarized the amendments and estimated 30,000 to 32,000 reports of injury each year indicating there have been work-related injuries. An estimated 2500 to 3000 contested cases are filed.

LABOR SERVICES

Walter H. Johnson and Richard Ramsey appeared for the Division and explained:

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"
Licensing procedures for asbestos abatement, 82.6(1) to 82.6(6), Notice ARC 1576A 12/26/90

82.6

During his explanation of revisions in 82.6, Johnson provided some history on asbestos in schools. Prior to current legislation, the Asbestos Emergency Response Act addressed asbestos in schools. For many years, statutes relative to schools contained provisions on asbestos. The Education Department has at least one person who reviews plans, advises and works with schools on asbestos removal. Clarifying legislation placed the responsibility for licensing in the Labor office and the training courses with the Department of Education. No recommendations.

INTERNET

Tom Swartz, Executive Director, was present for the following:

INTERNATIONAL NETWORK ON TRADE (INTERNET)[497]
Organization and operation, ch 1, Notice ARC 1568A..... 12/12/90

Ch 1

Swartz distributed a packet of information on Internet which he described as a nonprofit corporation established by the legislature in 1989 as a "nongovernmental, non-bureaucratic and nonprofit" organization. However, the corporation was delegated rule-making authority under the provision of Code chapter 17A. Swartz reviewed the missions of the corporation. The public hearing had been held and no comments were received.

Swartz advised Priebe that the 18-member board was statutory and a recommendation of a four-year study committee. The makeup of the Board reflects an interest in drawing those with expertise in international arenas into a partnership with Iowa businesses.

Priebe referred to the definition of "Substantial expenditure of Internet assets" which means an amount in excess of \$50,000 and he wondered if that was excessive. Swartz commented on the speed with which international events can occur and the fact that this figure would allow some latitude to respond to proposals. A Project Review Committee will review proposals and establish an operational policy. Priebe asked how many of the 18-member board could approve expenditures. Swartz answered that the quorum was nine and nine affirmative votes are required. One member is nonvoting. There was Committee consensus that this should be spelled out in the rules. Pavich was informed that western Iowa is represented on the Board by the Morningside President. Swartz thought membership was specified in Code chapter 18B but he was amenable to making any necessary amendment. No action.

Recess

There was a ten-minute recess.

Minutes

Chairman Priebe called for disposition of the December minutes. Pavich moved to approve the minutes as submitted. Motion carried.

Rules of Procedure

Final copies of the Committee's Rules of Procedure had been provided. There was unanimous concurrence that they should be submitted for publication in the IAB as a Notice under Code chapter 17A.

PUBLIC SAFETY

The Department was represented by: Gary Lee Stevens, Director, Public Safety Commission; Carroll Bidler, Administration Director; Michael Coveyou; Tom Ruxlow and Ron Gustafson, DCI; Kenneth Danley, Des Moines Fire Department; and Roy Marshall, State Fire Marshal. The agenda follows:

PUBLIC SAFETY DEPARTMENT[661]

Weapons, 4.1, 4.4(1)"g," 4.4(2), 4.4(4)"g," 4.4(6), 4.4(7)"h," 4.6(1) to 4.6(3), Notice ARC 1558A	12/12/90
Fire marshal, 5.230(4), 5.230(6), 5.305, 5.552(1)"a," 5.552(1)"f"(6), 5.552(2)"f," 5.552(4), 5.552(5)"d"(4), 5.552(5)"d"(6), 5.552(7)"b," 5.552(8)"a," 5.552(10)"a," 5.552(12)"a," 5.552(13)"a," 5.552(15)"d," 5.620, Filed ARC 1557A	12/12/90
Fire marshal, 5.301(9), 5.314, Notice ARC 1526A	12/12/90
Law enforcement administrator's telecommunications advisory committee (LEATAC), 15.2(3), 15.2(4), 15.2(6) to 15.2(9), 15.2(11) to 15.2(13) 15.3, 15.6 Notice ARC 1560A	12/12/90
Closed circuit videotape surveillance systems on excursion gambling boats, ch 23, Filed ARC 1561A	12/12/90

Ch 4

Bidler told the Committee that amendments to Chapter 4 were designed for county sheriffs who issue weapons permits and the permits to acquire weapons in Iowa under amended Code chapter 724. Bidler reviewed the definitions of terms and noted the rules require that prior to issuing the permit, the sheriff must make a criminal record check to determine whether or not the applicant is a convicted felon. Bidler stated that under the new law, the concealed weapon permit is also used as a permit to buy. It is possible to get a permit to acquire without having a permit to carry. The statute does not provide for a charge for a permit to purchase. However, some counties have adopted an administrative fee for a permit to acquire. There is a \$5 initial charge for permit to carry and a \$2 fee for renewal. Doyle recalled some counties went to a \$5 permit fee for concealed weapons, and \$2 for renewal.

Schrader said his concern was with 4.5(2) and (3) where the sheriff must give that permit to the individual upon determining that they are not a convicted felon. There is no timeframe for that determination. Bidler said that processing time would vary. Those with computer terminals will have immediate access to information. Other sheriffs will have to contact another local agency. The permits are effective three days from the date of the application. No Committee recommendations.

Ch 5

Coveyou explained final adopted rules regarding fire safety requirements for small group homes, specialized licensing facilities for the mentally retarded that were previously known as group waiver homes, and for open parking garages. The rules also govern sharing of aboveground storage tanks by governmental subdivisions. Doyle raised question as to the meaning of "competent person" in 5.620(7). Marshall said there is sentiment for some type of certification for persons who test fire extinguishers. This has not been possible because of the cost factor. Currently, the Department

PUBLIC SAFETY
Contd.

accepts anyone who can demonstrate to them an understanding of the detection system and how to check it. The Department maintains a log of these individuals.

5.301,
5.314

According to Coveyou, opposition to proposed amendments of 5.301 and 5.314 was voiced and the Department will terminate the rule making and submit a new one. The amendments will implement legislation which requires rules governing the handling of flammable liquids and set fees for underground storage tank certification inspections. Marshall stated that the original filing was an hourly fee of \$55 but the revision will propose \$225 per tank based on three visits. Independent contractors perform the inspections and costs must be recovered.

Ch 15

Coveyou said that amendments to Chapter 15 will update the membership of LEATAC and reflect current policies. Doyle asked if any departments were considering the 800 megaherts. Stevens indicated that such a plan was being drafted for Iowa. Davenport has 800 megaherts nontrunked for their mobile data terminals. Polk County is considering a plan.

Ch 23

Rules to govern videotape surveillance systems on excursion gambling boats were before the Committee in final form with a projected effective date of January 16, 1991. Coveyou stressed that timing was crucial since operation would begin April 1.

Coveyou reviewed changes from the Notice which included additional flexibility to the operators. Ruxlow added that Department officials had met with the boat operators independently when drafting these rules. All boat operators then met with the Department and concurred with the final version. Ruxlow did not anticipate problems with surveillance. They plan to work with each operator to resolve any problem unique to a particular boat. An example of trying to accommodate boat owners; it was brought to the Department's attention that cost of converting all clocks to military time would be very expensive so that requirement was waived. No Committee action.

INSPECTIONS AND APPEALS

Rebecca Walsh presented the amendment to 481--41.9(135H) relating to psychiatric medical institutions for children, published as a Notice in 12/12/90 IAB as ARC 1541A.

The amendment was necessary to be consistent with federal requirements.

RACING AND GAMING

The following agenda was reviewed by Mick Lura:

RACING AND GAMING COMMISSION[491]	
INSPECTIONS AND APPEALS DEPARTMENT[491]"umbrella"	
Accounting and cash control, ch 24, Filed ARC 1566A	12/26/90
Riverboat operations, ch 25, Notice ARC 1567A	12/26/90
Rules of the games, ch 26, Filed ARC 1568A	12/26/90

RACING AND
GAMING
Contd.

Lura described new Chapter 24 as providing details for all cash activities on the gambling boats with emphasis on cash control. By tracking every penny taken in, the Commission believes they will be assured of no unsavory activity. The rules were patterned after those of New Jersey but are possibly more stringent. Lura noted that Nevada does not track the cash. He advised Priebe that the Commission has authority to require all deposits, etc. to be shown in gaming as well as racing. Lura anticipated there would be three boats operational on April 1 and the fourth one by April 15. They have an application for a May start. Day long cruises will not be offered because of the \$200 loss limit. Different passengers will be needed every three hours in order for operators to maximize their profits.

Lura discussed proposed recommendations for changes in the riverboat law: (1) Allow the Commission to name the games instead of having it spelled out in the Code, (2) Change the monthly CPA requirement for auditing-- other jurisdictions have annual audit; and (3) eliminate the nuisance requirement that all gaming equipment be warehoused in Iowa before it goes on the boat--legal ways have been found to circumvent the law. Schrader asked if the boat operators want poker games and Lura indicated that they do because with the \$5 limits, it is difficult to cost out the table games. Operators would prefer to eliminate all the table games and install slot machines. The Commission has required the table games contending that they add an element of class in a casino. No Committee recommendations.

Ch 25.

Lura described Chapter 25 as the final cleanup for everything not covered in the other rules. Areas covered include security, with respect to the gaming officials; boat operators' responsibility; taxes and admission fees. Tieden questioned the requirement for deposits to be made in a bank within 24 hours of acceptance--25.11(3). Lura said they will change that to "next banking day" when the rules are filed.

Ch 26

In review of Chapter 26, Lura stated that decision was made for security reasons that players will not hold their own cards. Also, the shoe will not be used for dealing cards. Tieden wondered about enforcement of the \$200 limit and Lura said that by their definition, once a player has purchased \$200 worth of chips that is the maximum. Anyone observed buying chips from another passenger will be ejected. Lura advised Pavich that football parlay sheets could not be allowed on the riverboats since that was classified as a sports bet, not a game. Tieden wondered about conflict with the season starting April 1 and the fiscal year beginning July 1. Lura pointed out that fees will be determined by the legislative appropriation which must be captured. Since this figure will be unknown until the

RACING AND
GAMING
Contd.

end of April or May, operators will be on a calendar basis but fees will be on a fiscal year. No Committee action.

REVENUE
AND
FINANCE

Appearing for the Department were Carl Castelda and Ed Henderson. The following agenda was considered:

REVENUE AND FINANCE DEPARTMENT(701)

Consent to sell, 6.7, Filed ARC 1648A	12/12/90
Interest rate for 1991, 10.2(10), Filed ARC 1647A	12/12/90
Corporations, 51.1(6), 52.10, 52.11, 53.12, Notice ARC 1649A	12/12/90
Property tax, 71.20(4)*c*(4), ch 78 title, 73.1, 73.13, 73.27(4), 74.4, 74.4(1) to 74.4(4), 74.8(1) to 74.8(3), ch 75, 80.1(1)*a,* 80.1(2)*b,* 80.1(3), 80.5, 80.11, Filed ARC 1683A	12/26/90

6.7

Castelda discussed rule 6.7 which would implement the statutory requirement that each agency adopt procedures under which employees may be granted permission to earn outside income. [68B.4] The rule was identical to the Noticed version and was one of the first adopted to comply with the law. Castelda mentioned internal litigation with one of their employees who was prohibited from selling certain items. The employee filed a grievance and the Department lost. The employee is now suing for the lost income.

Doyle questioned Castelda as to the type of hearing and Castelda said it was the usual grievance procedure under the contract. Doyle was interested in the meaning of "sell." Castelda emphasized there were no restrictions except sales to the Department. A form must be filled out and reviewed by the supervisor, before the sale. Insurance sales were examples of sales the Department wanted to prohibit. Castelda advised Royce that any of the Revenue employees who wanted outside employment would have to get permission from their supervisors. This is a protective measure for the agency and Castelda estimated that 99 percent would be approved. The Department also wants to ensure that the hours worked would not conflict with the employee's hours or capability with the Department. Royce was doubtful that employees must reveal their hours. He declared, "It's a conflict of interest provision, not a conflict of hours." Castelda concluded the Department had followed this procedure prior to enactment of the new law over 20 years.

10.2,
51.1 et al.

There were no questions on amendments to 10.2(10) or 51.1(5) et al.

71.20
et al.

Castelda offered background on amendments relative to property tax in 71.20 et al. He said the Department had met with County Assessors and agreed to make some clarifications to the rules by adding more examples.

Schrader's assessor was still concerned about the criteria for a tract of land to qualify for the family farm tax credit. In reading the bill, it seemed to him that intent was for the tract to be the farm unit. He suspected that it would not be an issue if there were not cases where the tillable ground or portion of tillable ground was leased or rented while the other portion was not. Schrader wondered if the clarification

REVENUE
AND
FINANCE
Contd.

could be accomplished by rule or would legislative change be required. It was Castelda's understanding that when they refer to a tract, it is the common definition. If that is not applicable, legislation is probably needed. Henderson interjected that tract should not be redefined merely to allow someone a credit. He reasoned that tract land would be based on what the assessor determined when assessment was made. In Henderson's opinion, any changes would not be in the credit area, but in the way the assessors assess tracts.

It was Priebe's opinion that assessors are inconsistent in assessing tracts. Ray Armel, Fayette County Assessor, concurred but pointed out that set up of the program allows this. He noted that another statute precludes assessors from defining parcels. Armel said that assessors are wondering if a tract can be defined as a contiguous ownership for purposes of farm tax credit. Priebe anticipated legislative change. Schrader's assessor had also suggested that the form for data gathering could be improved upon by defining eligibility via a flow chart list of if/then statements.

Castelda had already agreed to some sort of flow charting but wanted to wait until the legislature had clarified the law.

Armel explained to Maulsby that they can only combine properties under the same identical ownership. Maulsby opined there were many problems in identifying tracts.

TRANSPORTA-
TION
DEPARTMENT

Appearing for the Department were: Jody Johnson, Ken Pardock, Dennis Ehlert, Jan Hardy, Harold C. Schiel, Dennis Tice and Shirley Andre. Also appearing were: John R. Perkins, Attorney General's office; Steve Eckhart, Jim Clewell, Todd Elverson, Karen Renda, Laurie Renda, Brian Gleason, Breck Imhoff and Mark Bigler, all of the Iowa Window Tinters Association; Gary Windecker, Trim Line SW Iowa; Bob Heckman, Trim-Line Central Iowa; Ruth Mosher, Deputy and Ruth Cooper- rider, Legal Counsel, Citizens Aide/Ombudsman. 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," 400.3(12)"c"(2), 400.3(12)"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"(3) to (6), 400.41(2)"g," 400.50(1), 411.2, 411.4, 420.2(3). Filed ARC 1570A 12/26/90
Iowa airport registration, 720.10(2)"b," 720.10(3)"a," Filed ARC 1569A 12/26/90
Special Review, Ch 450, Tinted Windows IAC
Special Review--Damage to highway structures, Iowa Code 312.475

Chs 400,
411, 420

Ehlert explained the miscellaneous amendments to Chapters 400, 411 and 420 which would become effective January 30, 1991. No Committee action.

Ch 720

Pardock summarized the amendments to 720.10 and there were no questions.

SPECIAL
REVIEW

Chairman Priebe recognized Mosher who had sent a letter and supporting documents to the Committee regarding the

DOT
Contd.

Liability
Highway
Damage

policy of the DOT in billing motorists for all expenses incurred including the cost of labor to control traffic at an accident. A Jasper County resident had contacted the Citizens' Aide last March expressing outrage and disbelief at having received a bill for such costs following an accident in which the complainant's son was killed. In addition to labor costs, DOT billed for putting sand on spilled fuel and ice which formed from water used to extinguish a fire. There were no structural damages to the highway.

Mosher continued that DOT cited Rule of Civil Procedure 9 which allows the state to sue and be sued. She contended that DOT was an agency of the state with only those powers conferred by statute. Further, DOT policy 610.12 directs their engineers to report highway damage but does not authorize billing or suit. Mosher recalled a later communication wherein DOT stated that it was entitled to maintain a civil action pursuant to Code section 321.475 because the deceased had committed an illegal act in failing to: control his vehicle, drive at a reasonable proper speed, and drive on the right side of the road. She pointed out that section 321.475 addresses liability for excess weight, size and load of vehicles and does not include authority to sue. Mosher provided case law to substantiate her position. She was supportive of amendment to the Code, perhaps in sections 321.261 to 321.274, to authorize collection of damage to highways by accidents.

Cooperrider concurred in Mosher's summation of the legal issues and spoke briefly on the Fitch Case which was contrary to DOT's interpretation of 321.475. She argued that it was questionable whether the cleanup costs claimed regarding the accident of the 18-year-old would be recoverable since there was no actual damage to the highway.

Mosher pointed out that the young man in this case was not involved in illegal acts. There was no alcohol, no drugs, and no indication of excessive speed listed in any accident report.

Schrader was interested in response from the Department.

Perkins told the Committee that the Attorney General's office had informally advised DOT that the type of claim in question was recoverable under common law. He added that as a general rule, independently of any statutory provision, a state may institute a suit in any of its own courts whether required by its pecuniary interests or the general public welfare. The DOT has common law powers to bring a suit, but it is actually filed in the name of the state. Perkins defined "damage" as anything arising out of a negligent act. He disagreed with the Ombudsman's interpretation of the Fitch Case (1932 Iowa Supreme Court). Schrader

DOT
Contd.

referred to the final paragraph of the summary of the court case in Mosher's letter. The point was made that the question of expense for maintaining a temporary detour was not considered in any of the foregoing cases which they had referred to in the Fitch Case. In holding such expense was not allowable under statute which allowed recovery of damages to the bridge itself, it seemed to Schrader that the reference was to the issue of traffic control type of cost.

As Perkins understood the Jasper County incident, there was a mixture of duties by the crew that was called to help. It included a truck and three or four DOT employees who were flagging traffic and removing ice from the highway. Perkins contended that the ice was "damage" to road since it occurred because of negligence of someone. He thought the Fitch Case referred to a long-term detour with no foreseeable type of compensation. Labor cost to repair the bridge would certainly be an element of damage. Schrader suspected the issue could be debated at length. Priebe declared that his idea of damage was very different. Perkins maintained that the ice resulted from something other than natural elements. Perkins stressed that he was not arguing about the propriety of the bill but defending DOT's authority to charge. He noted that in fact, the Department did withdraw their bill for the Jasper County incident.

Deferred to
February

Schrader expressed his desire to continue this discussion. He wanted to object to the DOT internal policy 610.12 but could not since it was not a filed administrative rule under Chapter 17A. He asked that the issue raised by Mosher be placed on the February ARRC agenda and that the policy 610.12 be reviewed. There was no opposition. So ordered.

There was continued discussion and reiteration of positions.

Royce asked Perkins to comment on the question as to whether the DOT qualifies as a litigant in the party. Perkins responded that the DOT cannot sue under this common law power--the state sues, but the DOT is the state. The state operates by its agencies and the employees.

761--Ch 450
Deferred

Doyle asked to defer the matter of tinted automobile windows until the February meeting to allow time for Royce to request the Legislative Service Bureau to draft a proposed bill. No opposition voiced. So ordered.

No Agency Rep.

No agency representatives requested to appear for the following:

CREDIT UNION DIVISION[189]
 COMMERCE DEPARTMENT[181]"umbrella"
 Accounts, 8.5(3), Notice ARC 1542A 12/12/90

GENERAL SERVICES DEPARTMENT[401]
 Use of purchase order and purchase requisition for ordering data processing equipment, services or software,
 8.3(1)"a" and "b," Notice ARC 1574A 12/26/90

LAW ENFORCEMENT ACADEMY[501]
 MMPI testing, 2.2(2)"b," 2.2(3)"a," 2.2(5)"a," 2.2(6)"c," Filed ARC 1565A 12/26/90

PROFESSIONAL LICENSURE DIVISION[645]
 PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Licensure of nursing home administrators, 141.7(1)"d," Notice ARC 1575A 12/26/90
 Optometry examiners, 180.10(7), Notice ARC 797A TerminatedARC 1556A 12/12/90
 Optometry examiners, 180.13(5), 180.13(6), Notice ARC 1555A 12/12/90

Next Meeting

The next meeting was tentatively scheduled for February 12, 1991, at 7 a.m. with the possibility of Wednesday, February 13.

Adjournment

Chairman Priebe adjourned the meeting at 11:40 a.m.

Respectfully submitted,

Phyllis Barry

 Phyllis Barry, Secretary
 Alice Gossett, Admin. Asst.

Bert E. Priebe

 Chairman