

MINUTES OF THE SPECIAL MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The special meeting of the Administrative Rules Review Committee was held Monday, February 12, 1990, Committee Room 22, State Capitol, Des Moines, Iowa. This meeting was held in lieu of the statutory date of February 13, 1990.

Members Present

Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives David Schrader and Betty Jean Clark. Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Alice Gossett, Administrative Assistant. Also present: Barbara Burnett, Governor's Administrative Rules Coordinator; Evelyn Hawthorne, Democratic Caucus.

Convened

Chairman Priebe convened the meeting at 8:05 a.m. and called on Kathy Collins, Legal Consultant, for special review of 281--Chapter 102 of Education rules relating to procedures for charging and investigating incidents of abuse of students by school employees.

EDUCATION  
DEPARTMENT

Ch 102

Schrader spoke of teachers' concern with respect to "physical contact with students" and what constitutes corporal punishment. He referred to rule 281--102.4 as it read in 3/8/89 Iowa Administrative Code. It was his opinion that this version was preferable to the 12/13/89 language.

Collins discussed their interpretation of the legislation and reasoned that terms "reasonable" and "unreasonable" were vague. She declared that it would always be necessary to justify "physical force against a student."

There was discussion of the bill proposed by the ARRC to amend Iowa Code Supplement section 280.21 by specifying instances when force may be used by a school employee without constituting corporal punishment of a student. Schrader wanted to refer this bill to the appropriate committees and continue to work with the Department.

Motion

Schrader moved that the proposal, TLSB8363SI, be referred to the appropriate committees. Collins commented that if this bill were passed by the General Assembly, Iowa would follow the policy of Wisconsin. Schrader's motion was

Motion  
Carried

seconded by Pavich, carried.

DOT  
MINORITY  
CONSTRUCTION  
CONTRACTS

Chairman Priebe called on Royce to review the proposed ARRC bill which would codify supplemental specifications for federal aid highway construction contracts let by the Transportation Department which embody subcontracts for disadvantaged business enterprises certified by the Department.

DOT  
(Cont) The Committee had reviewed the Department's rules on this matter at their January meeting and found them to be deficient.

Motion Pavich moved that the bill--TLNB7887SC be referred to the appropriate committees. Seconded by Tieden.

Motion Doyle moved that proposed ARRC bill TLNB8306SI be referred to the appropriate committees. Seconded by Pavich. Carried. The bill requires reimbursement of the health-related transportation costs of residents of health care facilities eligible for medical assistance.

AGRICULTURE AND LAND STEWARDSHIP Daryl Frye, Laboratory Director and Charles Eckerman, Chief of Pesticides, appeared for the following new rule:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
Restrictions on distribution and use of pesticides containing atrazine. 45.51. Notice ARC 556A ..... 1/10/90

45.51 Frye explained the rule which would impose restrictions on the sale and use of all pesticides containing atrazine. Responding to question by Tieden, Frye said the Department will monitor the program and if it is not effective, they will pursue other measures. He added that this approach has much support and they feel confident that noncompliance will be minimized when the public is enlightened.

Schrader reasoned that even though less atrazine was added, the same level would be maintained because of soil buildup. Priebe did not disagree with the concept but suspected that the rule was unenforceable. Frye declared that the alternative was more severe--some effort must be made to eliminate groundwater contamination. Tieden thought there would be voluntary compliance and Priebe concurred.

Frye pointed out that use of atrazine has doubled in the last 10 years. He said that 30 to 40 interested persons attended the hearing on the rules where support outweighed opposition.

ECONOMIC DEVELOPMENT The Department of Economic Development was represented by Melanie Johnson, Legal Counsel; Roselyn Wazny, Supervisor; Mike Miller, Chief, Targeted Small Business; Tom Guzman, Main Street Coordinator; Leo Hough, Bureau Chief, Community Progress; and Kathy Beery, Rural Development. The following agenda was considered:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
Emergency shelter grants program, ch 24. Notice ARC 524A, also Filed Emergency ARC 575A ..... 1/10/90  
Targeted small business financial assistance program, ch 27. Filed ARC 573A ..... 1/10/90  
Main street linked investments loan program, ch 43. Notice ARC 568A ..... 1/10/90  
Rural enterprise fund, ch 57. Filed ARC 567A ..... 1/10/90

Ch 24 Wazny reviewed emergency adopted rules for the Shelter Grants Program. The grant ceiling was raised and local governments will be required to apply for the funds.

Tieden questioned her concerning the authenticity of the homeless lists which were prepared by a Drake professor. Wazny was unsure about legality of publishing the list.

ECONOMIC  
DEVELOPMENT  
(Cont)  
Ch 27

Miller reviewed revised Chapter 27 and discussed rating factors for financial need. In the past financial need amounted to only 20 to 25 percent of the funds. Priebe requested a list of projects which have been funded. Assistance is not based on geographical basis. No formal action.

Ch 43

Guzman discussed the application procedure by the property owner to the local design review board and the bank. The local bank determines credit worthiness and the design review board determines whether or not the criteria established by the Secretary of the Interior has been met. The Departments of Cultural Affairs and Economic Development review for final approval and notify the Treasurer of State when the building meets the specified criteria. It was pointed out that the Loan Program would not be available to publicly owned buildings. Historical societies can own the buildings as long as they are nonprofit organizations and qualified. A strict guideline booklet is available from the National Park Service.

Doyle referred to 43.5 and suggested that a paragraph be added to indicate who makes the appointments to the Main Street Linked Investments Design Review Board. Doyle was also interested in how the private sector architect was selected and Guzman said that member would serve on the state board. The Department intends to contact the Iowa Association of Architects to fill this position and Guzman discussed 43.4(4) and the fact that the Design Review Committees are to be selected from an Iowa Main Street Community or a certified local government.

Ch 67

Kathy Beery reviewed final rules on the Rural Enterprise Fund and reported that two persons attended their December 5 hearing. The informal comments were very supportive of the program so no changes were made in the Noticed version. There is \$400,000 appropriated for this new program.

HUMAN  
SERVICES

Those representing the Department of Human Services included: Mary Ann Walker, Dan McKeever, Mary Helen Cogley, Anita Smith, Marv Wagner and Harold Poore.

HUMAN SERVICES DEPARTMENT 4411

Public records and fair information practices, application for aid, granting assistance, unemployed parent, alternative payees, aid to dependent children eligibility under the grant diversion program, aid to dependent children eligibility under the self-employment investment demonstration project, work and training programs, unemployed parent welfare program, work incentive demonstration project (WIN/CMS), grant diversion program, PROMISE JOBS program, 9.10(4)a, 40.1, 41.4, 41.7(2)f-b(2), 41.7(2)f-d(1), 41.7(2)f-e, 41.7(7)f and "no," 41.7(11), 41.8(1), 41.8(3)f-e and "d," 42.1, 42.4(1)f-a, 42.4(2)f-a, 42.4(3), 42.4(4) to 42.4(7), 42.5, 43.2(1)f-b, ch 47, 48.3(4), chs 55, 59, 90, 91, 93. Filed ARC 559A ..... 1/10/90  
Conditions of eligibility, 75.1(2), 75.1(15)f-a(1), (3) and (5), 75.1(15)f-e, 75.19. Filed ARC 562A ..... 1/10/90  
Medicaid-certified hospice providers — standards and basis of reimbursement, 77.32, 78.36, 79.1(2), 79.1(14), 80.2(2)f-d-d and "g," Filed Emergency After Notice ARC 558A ..... 1/10/90  
Amount, duration and scope of medical and remedial services, 79.13(10)f-c. Notice ARC 583A ..... 1/24/90  
Collections, 95.1, 95.3, 95.3(1) to 95.3(4). Filed ARC 557A ..... 1/10/90  
Child care centers, 109.2(10), 109.4(8), 109.4(8)f-c, 109.6(3)f-f, 109.6(5)f-b, 109.11. Notice ARC 584A ..... 1/24/90

9.10 et al. Walker offered background on the amendments to 9.10(4) et al. addressing PROMISE JOBS. An ARRC objection was imposed on the Emergency After Notice version adopted in July 1989. Extensive revisions have been made to the

HUMAN  
SERVICES  
(Cont)

Noticed rules based on final federal regulations, dated October 13, 1989, and negotiations with legislators and the Legal Services Corporation. Clark took the position that the massive revisions should have been renoticed.

Pavich took the Chair.

Wagner defended the course followed by the Department in responding to the comments received at public hearings, negotiations with Senator Charles Bruner and new federal regulations.

Clark asked about changes which were not federal mandate. Wagner cited Job Club, a job search activity, as an example. Under the revision, the Job Club requirements will be waived when the person has already determined that they want to enter the training program. There was expansion of the good cause criteria for participation exemption, e.g., health or the health of a relative, transportation problems, etc. Many advocates wanted that expanded to include a totality of circumstances beyond simply one good cause criteria. There are extensive procedures for the conciliation period which took some time to develop. Failure to participate in the program must be justified to avoid jeopardizing Aid to Dependent Children benefits. Department officials recalled Senator Bruner's concern about required participation for those who are working 20 hours or more a week. The Department is challenging the federal regulations on this while allowing a waiver from participation for these individuals. Also, provisions were added to exempt those not functional enough to participate in the program.

Tieden wondered about potential ramifications in the event that federal regulations did not change. Wagner replied that the state has some discretion in this "gray area" in the federal requirements and the program will not be in jeopardy.

Walker interjected that the massive program was being refined on an ongoing basis and many rules have been placed under Notice. Wagner estimated that over 4000 people participate in the work and training programs. Statistics reveal that Employment Services, one of two agencies operating this program, made nearly 500 job placements in the first seven months. ARRC was assured there would be plenty of opportunity for oversight by them as well as the public. It was noted that the lawsuit by Legal Services had been dropped.

Motion  
Objection  
Ch 55

Tieden moved that the ARRC objection to the rescission of Chapter 55 at the August 4, 1989, meeting be lifted. Carried.

75.1, 75.19 No committee recommendations for amendments to 75.1(2) et al.

HUMAN  
SERVICES  
(Cont)77.32  
et al.

Walker reminded that amendments to 77.32 et al. would add Medicare certified hospice providers as eligible Medicaid providers for terminally ill persons. Changes made as a result of the hearings include clarification of "room and board", noncovered drugs for AIDS patients, and the responsibility of a hospice recipient who enters a skilled nursing or intermediate care facility. Conklin discussed hospice certification.

78.13,  
Ch 95

No recommendations for amendments to 78.13(10)c or Chapter 95.

Ch 109

Walker reviewed the changes reflected by amendments to Chapter 109 with respect to child care centers. Tieden asked if "mildly ill child" was defined and Poore indicated that the doctor and day care center who develop the program make this determination. He pointed out that rule 109.11 describes a "mildly ill child" as one with a temporary illness of short duration. Tieden referred to 109.11(2)b--triage policy and Poore said that it was used in determining which child should be admitted to the get-well center.

INSPECTIONS  
AND APPEALS

Mary Oliver, Rebecca Walsh and Kim Schmett appeared on behalf of Inspections and Appeals for the following:

INSPECTIONS AND APPEALS DEPARTMENT(481)  
Contested case hearings, ch 10, Notice ARC 600A ..... 1/24/90  
Residential care facilities for the mentally retarded, 63.47, Notice ARC 568A ..... 1/10/90  
Overpayment recovery section, ch 71 title, 71.1, 71.5(1), 71.5(2)F, 71.7, Filed ARC 599A ..... 1/24/90

Ch 10

Walsh told the Committee that revised Chapter 10 would expand the current rules and add procedures not previously covered. Schrader questioned 10.4(1) which included information which should accompany the transmittal form in a contested case. Paragraph h required "Any special legal or technical expertise needed to resolve the issues in the case." Schmett commented that normally, the department involved would be represented by an attorney from the Attorney General's office. Schrader thought it would be appropriate to inform the party of this fact. Schmett admitted that the practice varies and the Attorney General sends an assistant for the more complicated cases. Schrader recalled a case when one of his constituents was surprised to see an Assistant Attorney General at the hearing. Schmett pointed out that the transmittal form mentioned in the rule differs from the one Schrader's constituent would have received. However, he thought Schrader's point was well taken. If that information were available from the departments in advance, Schmett would be receptive to notification that an Assistant Attorney General would be present.

Doyle questioned 10.16(3)e which stated that parties at a prehearing conference may "enter into stipulations for waiver of any provision of Iowa Code chapter 17A..." Royce cited "procedures" set out in Code sections 17A.10 through 17A.18 the most commonly waived one being right to an open hearing. Doyle contended that a law cannot be

INSPECTIONS  
AND APPEALS  
(Cont)

waived and he suggested clarification. Doyle also raised question as to the proposed \$350 transportation hearing fee in 10.27(1). Schmett said that language was taken from DOT rules. Rule 10.27(10A) is intended to clarify that Inspections and Appeals will now be doing the hearings and the fee should be paid to them. Schmett explained that these hearings involve large trucking firms, bus lines, and liquid transport carriers--commercial carriers.

63.47

In reviewing amendments to rule 63.47, Oliver recalled that the 1989 General Assembly directed the Department to establish a special classification of residential care facilities. The provisions are consistent with those for the existing demonstration waiver project. The proposal sets standards for a specialized license for a three- to five-bed facility serving persons with mental retardation, chronic mental illness, and other developmental disabilities. In addition, the classification of violation codes was included--Roman numerals in parentheses. According to Oliver, some technical difficulties precluded a total revision of Chapter 63. However, this major undertaking should be accomplished within 12 to 18 months.

Ch 71

Walsh stated that amendments to Chapter 71 would implement changes in procedure for recovery of overpayments made to recipients of public assistance by the Departments of Inspections and Appeals and Human Services. No comments were received and there were no changes from the Notice. Doyle recounted a regrettable incident when a constituent of his received a \$1000 warrant from ADC--several months late. Then at Christmas, a letter to the recipient admitted overpayment error. Allotment was reduced to less than \$100 leaving no money for gifts or food. Walsh pointed out that this situation should be addressed by Human Services. Doyle reasoned there was room for improvement in handling of gross errors by the Department. Schmett clarified that the Department of Inspections and Appeals responds only to collection referral from Human Services based on information in the mainframe system which consists of a series of codes regarding the cause of overpayment, etc. The benefit amount is determined strictly by Human Services. In an agency-caused error, the benefits are reduced at a one percent rate to satisfy the amount paid. No Committee action.

NATURAL  
RESOURCE  
COMMISSION

Ross Harrison, Victor Kennedy, Richard Bishop, Bob Walker, and Kevin Szcodronski appeared for the following:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[161] "umbrella"

State migratory waterfowl, trout and habitat stamp design contests, ch 9.	Filed ARC 606A	1/24/90
Wildlife habitat on private lands promotion program, 22.1, 22.3, 22.4(2), 22.5, 22.6.	Filed ARC 605A	1/24/90
Snowmobile and all-terrain vehicle registration revenue cost-share program, ch 26.	Noted ARC 604A	1/24/90
Resource enhancement and protection program: county, city and private open spaces grant programs, ch 33.		
rescind chs 24, 29	Filed ARC 603A	1/24/90

Also present: Kenneth Meyers, President, Iowa ATV Association.

Ch 9

Harrison presented revised Chapter 9 and there were no questions.

NATURAL  
RESOURCE  
COMMISSION  
Continued  
Ch 22

Bishop advised that adopted amendments to Chapter 22 were unchanged from the Notice of Intended Action. Cost-share rate on shelter belts will be increased from 25 to 75 percent and the top limit increased from \$500 to \$1600. Harrison advised Schrader that the Ding Darling license sales were moderate.

Ch 28

Walker stated that proposed Chapter 28 was intended to implement 1989 legislation for ATV's and snowmobiles, specifically, a cost-share program. Basically, the rules spell out variables for scoring projects, the selection process, the selection committee and its makeup, and how the funds will be handled. Walker anticipated changes following the Notice which would include substitution of "shall" for "will" throughout the rules. A deadline of July 1 will be changed to September 15 in 28.4(6)b, last sentence. In addition, they plan to add a variable in the ATV portion of the rules for scoring projects. There will be added bonus points for any portion of the land development of the facility previously funded by the program.

In response to Tieden, Walker advised that the snowmobile rules had to be rewritten to implement new law which now allows cost sharing with private incorporated organizations. Previously, cost sharing was limited to governmental subdivisions. A prepayment format will aid the local snowmobile clubs on limited budgets. Walker suspected that sponsorship would revert to these local clubs. The Iowa State Snowmobile Association and the Iowa ATV Association concur with the rules. Clark recommended grammatical changes in 28.6.

REAP  
Ch 33

Szcodronski provided background on rules pertaining to the Resource Enhancement and Protection Program (REAP). Extensive work had been done on the rules which were originally Filed Emergency After Notice 11/29/89. Minor changes were made after the second public hearing held December 19, 1989. Szcodronski reported that 57 counties have qualified for the 22 percent. A number of counties are seeking budget amendments yet this spring and will be eligible the next fiscal year. Schrader complimented the Department for a job well done and thanked them for reopening the comment period for the major changes made since the first Notice.

PUBLIC  
SAFETY

Mike Coveyou, Public Safety, and Don Appell, Deputy Building Code Commissioner, appeared for the following:

PUBLIC SAFETY DEPARTMENT[661]  
State of Iowa building code, 16.120(3), 16.120(6), 16.140(1)"k," 16.200, 16.700(2), 16.702(2), 16.704(4), 16.705(3),  
16.706(3)"b," 16.706(7), 16.706(1), 16.706(1)"a," 16.706(1)"c," Table 705A, Table 705A notes "J,"  
16.800(3), Filed ARC 678A..... 1/10/91  
Handicapped parking, ch 16, Notice ARC 577A..... 1/10/91

Ch 16

Coveyou explained that amendments to Chapter 16 differed from the Notice in that the two items addressing handicapped parking had been omitted. Another Notice created a new Chapter 18 on the subject.

PUBLIC  
SAFETY

There was discussion of pending legislation to rewrite the new law on handicapped parking. Coveyou indicated that the Department was not taking an advocacy position on how many handicapped parking spaces should be provided. However, they have made the suggestion that if the law is amended, that it would be appropriate to adopt by reference the federal standards on dimensions of handicapped parking spaces. It was his understanding that the necessity to define the terms "business district" and "lineal block" would disappear. If the rule-making authority is left intact and the rules and federal standards are adopted by reference, the Department would print the actual content of the federal standards for ready access. Coveyou pointed out that DOT had jurisdiction over handicap identification devices for organizations that transport the handicapped.

It was noted that one major concern to the handicapped as well as to those providing parking spaces was the dimension factor. Coveyou pointed out that somewhat conflicting language between the federal standard and new Iowa law requires 17 feet of width for a single handicapped parking space. He reasoned that was not the intent.

Ch 18

Doyle referred to Royce's memo wherein he recommended that rules set out in new 661--Chapter 18, "Handicapped Parking," be included in the building code. Coveyou responded that the Building Code Advisory Council had mentioned the possibility of adopting provisions in Chapter 18 either in toto or by reference. Royce saw no real reason to have them in two places. Appell called attention to Iowa Code chapter 104A which specifies handicapped accessibility in construction projects and parking but refers to Code chapter 321L for the dimensions to be included in the building code. He favored discretion for the Council to adopt National Standards whenever possible. There was general discussion of the federal standards and the likelihood that any argument would be moot since most issues will be addressed by the General Assembly this year.

In conclusion, Coveyou reminded that the state building code generally applies only to those jurisdictions which adopt it. The handicapped access provisions apply whenever federal standards must be met. Doyle requested a copy of federal standards on width. Priebe took the Chair.

INSURANCE  
DIVISION

Kevin Howe presented the following:

INSURANCE DIVISION[191]  
COMMERCE DEPARTMENT[181] "umbrella"  
Credit life and credit accident and health insurance, ch 28, Notice ARC 564A ..... 1/10/90

Ch 28

Howe stated that the proposed rules set out comprehensive provisions in the area of credit insurance which basically is sold in conjunction with a large finance purchase such as a new car. The rules were based on model law from the National Association of Insurance Commissioners. Howe continued that as a result of comments from the industry, banks, auto dealers, attorney general's office, and banking division, extensive nonsubstantive technical

INSURANCE  
DIVISION  
continued

clarifications would be made. There was Committee consensus that any substantive changes should be renoticed with Priebe noting that there is often disagreement as to what is and what is not substantive.

Clark called attention to rates in 28.7(1), paragraph a, of "\$.77 per month per \$1000..." and in b, of "\$.50 per annum per \$100...". Howe agreed to doublecheck for accuracy. He agreed to investigate as to the legality of selling credit life insurance on a credit card from Oklahoma to a citizen of Iowa. No formal action.

TRANSPOR-  
TATION  
DEPARTMENT

The following rules were presented by William Zitterich, Maintenance Services Engineer, and Roger Anderberg, Urban Systems Engineer:

TRANSPORTATION DEPARTMENT[761]  
Adopt-a-highway program, ch 121. Notice ARC 585A ..... 1 24 90  
Traffic signal synchronization, ch 143. Notice ARC 582A ..... 1 24 90

Ch 121

Zitterich reported that upon recommendation of the ARRC last November, the Department developed brief rules for the Adopt-A-Highway program and conducted hearings around the state.

Schrader thanked the Department for their cooperation and reiterated his apprehension as to ineligible sponsors--121.4(2). He would feel more comfortable if the prohibition on the "political parties, candidates and elected officials" extended to "hate" groups, whose main purpose is to "inflame others," e.g., KuKluxKlan. Zitterich said that the Department shares Schrader's concern but after research of other states, they see no legal basis to discriminate against those groups. Court cases on this issue are pending in other states. In 1986, the state of Texas lost a lawsuit with the Austin Lesbian/Gay Rights Association and had to provide the group a sign.

Schrader declared that Iowa could not tolerate issuing an official state of Iowa sign to groups such as KKK. He would favor a moratorium on the program or abandonment if this issue cannot be resolved. Zitterich emphasized that the Department plans to consider each request on a case-by-case basis. Schrader asked about legitimate groups, such as the abortion issue, where there are people on both sides--would it be appropriate for them to have these signs? Zitterich responded that if it were deemed partisan endorsement, they would preclude it. But that decision has to be made on each one of the groups.

Priebe reasoned that the Adopt-A-Highway Program should be eliminated. Clark favored apprising the Legislature of the problems and discontinuing the whole program. She contended that good, conscientious citizens should pick up litter without recognition.

Zitterich pointed out that the Iowa program was based on those in other states. Currently, 24 states have programs.

TRANSPOR-  
TATION  
DEPARTMENT  
Continued

Pavich expressed his concern as to liability for injuries. Zitterich responded that their application is very specific on holding the DOT harmless. In other states, this has not been an issue. The Department provides a safety brochure which outlines dangerous situations and recommends preventive measures. Zitterich spoke of the support of the program voiced at the six public hearings.

Motion

Doyle moved that the issue of Iowa's Adopt-A-Highway Program be referred to the Speaker and Lieutenant Governor with recommendation for review by the House and Senate Transportation Committees. A copy of the rules and an outline of ARRC discussion are to be included. Motion carried.

Ch 143

Anderberg told the Committee that Chapter 143 was in response to 1989 legislation [§364.24] which requires synchronization of traffic signals in cities with more than three signals. He distributed revisions they plan to make before the rules are final.

Doyle asked if there were provision to allow a fire department to turn all lights red. Anderberg answered that the rules do not preclude this. Doyle was concerned that small vehicles such as motorcycles do not activate detector devices. However, Anderberg said that newer devices can be tuned to remedy that situation. No Committee recommendations.

PUBLIC  
HEALTH  
DEPARTMENT

Don Flater, Bureau of Radiological Health Chief, gave brief explanation of the following amendments:

PUBLIC HEALTH DEPARTMENT[641]

Exemption of aerosols used in nuclear medicine, bankruptcy notification, 39.31(3) 57(6); and (7), 39.48(5), 39.49(6). Notice ARC 545A.....

1/10/90

The new subrules are relative to agreement with the U. S. Nuclear Regulatory Commission to regulate the use of radioactive materials in the state of Iowa. According to Flater, there had been no opposition to the subrules and he asked for ARRC support in Emergency After Notice action. There was no opposition.

Minutes

Doyle moved approval of the January minutes as submitted. Carried.

SECRETARY  
OF STATE

Chairman Priebe announced a special review of the procedure followed by the Secretary of State in providing access to disseminating the Uniform Commercial Code (UCC) data base. Those in attendance included: Marilyn Monroe, Deputy Secretary of State; Allen Welsh, Deputy Assistant for Corporations; Harry Davis, Director, Uniform Commercial Code; Tim Waddell, representing Secretary of State; Elizabeth Osenbaugh, Deputy Attorney General, and Christie Scase, Counsel, Attorney General's office; Mark Schantz, Attorney, and William N. Bump, President, Iowa Public Records Search, Inc.

Priebe recognized Bump, who was concerned about the

SECRETARY  
OF STATE  
Continued

announcement by Elaine Baxter, Secretary of State, of proposed sale of the UCC data base to four major national reporting companies. Such action would seriously impact Search's market share and possibly put them out of business. The Secretary of State has cited uniform rule 5.3(7)b, Fair Information Practices, as authority for the action. Bump contended that Iowa Code chapters 17A and 23A had been ignored and he had called this to the attention of Baxter.

Bump described his corporation as a "small Iowa company which has been doing business in Iowa as a public record reporting company since 1966." The Company was founded the year that the Uniform Commercial Code was enacted and they have been supplying public record information--county, state and national--to many clients. His company completed computerization and began searching from their data base in 1981, over a year before the Secretary of State began computerization. Search's data is updated and verified daily by a person who goes to the Secretary of State's office to microfilm all the filings. Bump continued that Search has a number of on-line subscribers who hook directly into their data base. He had always thought of their system as "a backup for the state in case of an emergency." He spoke of the good rapport and cooperation with the Secretary of State over the years where there has been a "mutual help situation" and he cited examples.

Bump sought to dispel myths that have circulated from the office of Secretary of State. One being that Iowa Search has been given advantages not afforded other companies and the other that offered sale of data base for national coverage will do no more than put those companies on an equal footing with Search. It was Bump's understanding that the state will sell the data base for \$50 a week, an amount with which he could not compete. He declared that the proposal by the Secretary of State merely gives these other companies an advantage of a state asset which has cost thousands of dollars to create. Bump introduced Schantz who provided background on operation of the Iowa Public Record Search. He distributed handouts including the "Business Bulletin" published by the Secretary of State. Schantz contended that rule 5.3(7)b was inappropriately applied and would result in violation of Code chapter 23A which prohibits competition by the state with services. After the Secretary of State had been apprised of Search's concerns, she posted a list of charges for single copy of a data base. He was unsure as to the basis for the prices but pointed out that Chapter 23A requires use of generally accepted accounting principles.

Schantz continued that the ARRC was the only representative group of the Legislature who could decide the type of ruling to satisfy chapter 23A. Since the Secretary of State insists on relying on the uniform rule, Schantz

SECRETARY  
OF STATE  
Continued

urged the ARRC to object to 5.3(7)b in an attempt to resolve the matter.

Priebe recognized Scase, who spoke on behalf of the Secretary of State, and said that the AG's office had looked at the legality of the provision of the UCC and corporate records data bases to information services and the national information services that Bump had addressed. The AG viewed the issue as one which involves the Secretary of State's office fulfilling its duties under Iowa Code chapter 22 to provide public access to public records. A summary of what they believe to be the statutory and legal principles involved was distributed to the Committee. The summary cited from Iowa Code sections 22.1 to 22.3 and 554.9407(4) of the UCC. Scase continued that the AG's office views the proposal of the Secretary of State to be an appropriate method for disseminating UCC information. Their interpretation of chapter 22 over the years has consistently held that access to electronic records should be granted in the same method or to the same extent that access to other public records is granted. Relevant Attorney General's Opinions were cited. Scase reiterated that, essentially, the AG's view of the law is that this issue is not a chapter 23A competition question but the Secretary of State's office fulfilling its statutory duty under chapter 22 to provide access to public records. The fact that a private entity is providing a service which the state is required to provide does not obviate the state's duty to comply with the statute.

Scase asked Osenbaugh to discuss the remedy being sought and the propriety of application of rule 5.3(7) in this circumstance. Osenbaugh mentioned that she had served along with Royce and Burnett on the Uniform Rules Task Force. She concurred with Scase that a computer tape is the same as any other record and the only charge an agency can make is the cost of the copying service. Osenbaugh stated that chapter 23A does not apply because they have opined that providing access to public records is not the sale of goods and service. The Secretary of State is not selling its computer data base--it is providing access to the public records. Osenbaugh saw the issues as "whether one copies public records and creates a business based on that then gets an entitlement so that anybody else who wants to use those records has to pay a much greater amount." She found it difficult to see grounds for objection to the existing rule.

Welsh focused on what they believe to be the public policy reasons for what they do. He stressed the importance of the UCC records to many factions. Welsh emphasized that Secretary Baxter's goal was to offer the widest possible access to those records to effectuate the purposes for which that information is collected. He disagreed that government competes with private industry when they are simply making public records available.

SECRETARY  
OF STATE  
Continued

Welsh commented on their work with Iowa Search and others who are dealing with the same information. Iowa Search copies the UCC records in the Secretary of State's office on a daily basis but does not pay the state of Iowa anything for that service. Welsh provided detailed history on the ongoing relationship that the office of Secretary of State has shared with Iowa Search for over 20 years. During earlier years, Search physically occupied the premises of the Secretary of state. In 1984, the Citizens' Aide issued a critical report of that arrangement and Secretary of State Odell evicted Iowa Search from the premises. Welsh cited instances over the years where Search had attempted to block or limit access to the UCC records. Welsh defended the service fees and concluded that the challenge to their office was to provide wide open access to all user information in suitable formats.

Chairman Priebe recognized Bump who reiterated that he had no dispute with comments on chapter 22, Public Records law. He contended that sale of the entire data base was not limited to a public records question but instead involves Code section 23A.1. Bump wondered if the ARRC should ask the Legislature to address that question. He cited an example of legislation last year involving sale of information by DOT. Clark pondered whether the issue should be settled by the Legislature. Priebe thought the ARRC would need to decide whether referral was appropriate. Schrader took the position that the matter should not have been before the ARRC and voiced opposition to any Committee action.

Priebe called for Committee consensus. Doyle suggested that this was a complicated question and, in fact, should be taken under advisement to decide what if anything could or should be done. Schrader respectfully disagreed with Doyle.

In response to Clark, Royce advised that the legal authority of the Committee was to determine whether a rule is arbitrary, capricious, unreasonable, or beyond the statutory authority of the Department. In doing so, the Committee usually looks at the totality of the drawing that is under review, and makes a decision. So, while the review actually strayed far from the actual text of the rule [5.7(3)b], you could argue that the issue was properly before the Committee.

Priebe expressed concern as to the fee setup and he preferred to settle the matter. However, he thought more information was needed. Welsh responded that the Secretary of State discussed the fee schedule with the GAAP Administrator for the state and was told there could be no objection to the way the fees were developed under GAAP principles. A fee is paid for each financial statement filing and that more than covers the cost of filing. That key entry must be made regardless of whether a tape is provided.

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SECRETARY  
OF STATE  
Concluded

Welsh referred to their list of charges per single copy of a data base--\$165 for corporations and \$260 for UCC. There is no conflict with GAAP. Priebe asked if purchasers of data could resell the information and Welsh answered in the affirmative. Priebe asked about liability for accuracy of data furnished by the Secretary of State. Welsh said they guarantee it to be the index of the UCC records that is the official data base for the office. The liability would not differ from any other state agency. Schantz interjected that the Tort Claims Act accepts the tort of negligence and misrepresentation--the only avenue for suit.

Bump clarified that Gifford Strand had worked with him for a year in setting up Iowa Search and was then hired by the Secretary of State. He was then on the state payroll. Search paid for the 281 telephone number, the business address, and the office rent which was decided by General Services. Search was "evicted in 1984" when the state began to be very competitive with them. Pavich thought the public was entitled to know the charge being made for these records and he concurred with Schrader's position. No Committee action.

No Agency  
Reps

No agency representatives requested to appear for the following:


ATTORNEY GENERAL[161]  
Victim assistance program, 9.1 to 9.12. Filed ARC 569A ..... 1/10/90  
Victim assistance grants program, 9.50 to 9.57. Filed ARC 570A ..... 1/13/90  
CIVIL RIGHTS COMMISSION[161]  
Public records and fair information practices, ch 11. Filed ARC 581A ..... 1/10/90  
COMMUNITY ACTION AGENCIES DIVISION[427]  
HUMAN RIGHTS DEPARTMENT[421] "umbrella"  
Community services block grant, 22.3(2). Filed ARC 561A ..... 1/10/90  
CORRECTIONS DEPARTMENT[291]  
Medical and classification center -- visiting, 27.2(1) to 27.2(4). Filed Emergency After Notice ARC 610A ..... 1/24/90  
Jail facilities, 50.1, 50.1(2), 50.1(3), 50.12. Filed ARC 612A ..... 1/24/90  
Temporary holding facilities, 51.9(2), 51.9(3), 51.10. Filed ARC 611A ..... 1/24/90  
EDUCATION DEPARTMENT[281]  
Use of telecommunications for instruction by schools, ch 15. Notice ARC 572A ..... 1/10/90  
Child development coordinating council, ch 64. Filed Emergency After Notice ARC 596A ..... 1/24/90  
Innovative programs for at-risk early elementary students, ch 65. Filed Emergency After Notice ARC 597A ..... 1/24/90  
HISTORICAL DIVISION[223]  
CULTURAL AFFAIRS DEPARTMENT[421] "umbrella"  
Main street linked investments loan program, ch 46. Notice ARC 579A ..... 1/10/90  
IOWA FINANCE AUTHORITY[524]  
Homeless shelter assistance program, 14.3. Filed ARC 614A ..... 1/24/90  
Housing assistance fund program, 15.14(2). Filed ARC 613A ..... 1/24/90  
NURSING BOARD[655]  
PUBLIC HEALTH DEPARTMENT[641] "umbrella"  
Licensure to practice -- registered nurse/licensed practical nurse, 3.6(2). Notice ARC 555A ..... 1/10/90  
Registered nurse certifying organizations/utilization and cost control review, ch 12. Notice ARC 560A ..... 1/10/90  
PHARMACY EXAMINERS BOARD[657]  
PUBLIC HEALTH DEPARTMENT[641] "umbrella"  
Minimum standards for the practice of pharmacy, 8.1, 8.1(4), 8.8. Filed ARC 583A ..... 1/24/90  
Minimum standards for the practice of pharmacy, nuclear pharmacy, 8.9(3)"c", 8.12(2)"d"(9), 8.13(3)"b", 16.3(6), 16.3(8)"c". Notice ARC 576A ..... 1/10/90  
PROFESSIONAL LICENSURE DIVISION[645]  
PUBLIC HEALTH DEPARTMENT[641] "umbrella"  
Chiropractic examiners, 40.72. Filed Emergency ARC 607A ..... 1/24/90  
REAL ESTATE COMMISSION[193E]  
Professional Licensing and Regulation Division[193]  
COMMERCE DEPARTMENT[181] "umbrella"  
Prelicense education and continuing education, 3.3(5). Filed ARC 571A ..... 1/10/90  
REVENUE AND FINANCE DEPARTMENT[701]  
Forms -- magnetic tape and diskette reporting, 8.31, 8.32. Filed ARC 563A ..... 7/10/90  
Sale or rental of industrial machinery, equipment or computers used in recycling or reprocessing of waste products -- exemption, 18.4b, 18.4b(1), 18.4b(2)"a", 18.4b(6). Filed ARC 601A ..... 1/24/90  
Offset of debts owed state agencies, 160.2(5). Filed ARC 602A ..... 1/24/90  
SECRETARY OF STATE[721]  
Voter registration in state offices -- quarterly reports, 23.5. Filed ARC 588A ..... 1/24/90  
Filing of documents, 40.1. Filed Emergency After Notice ARC 609A ..... 1/24/90  
Reinstatement of corporations, 40.2. Filed Emergency After Notice ARC 608A ..... 1/24/90  
UTILITIES DIVISION[199]  
COMMUNICATIONS DEPARTMENT[181] "umbrella"  
Interexchange carriers, 7.4(1), 22.1(3), 22.4(7)"b", 22.12(1), 22.13(1). Filed ARC 584A ..... 1/24/90

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Next Meeting      The next meeting was scheduled for Monday and Tuesday,  
March 12 and 13, 1990.

Adjourned      Doyle moved adjournment at 11:10 a.m. Carried.

Respectfully submitted,

  
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Phyllis Barry, Secretary  
Assisted by Alice Gossett  
and Vivian Haag

APPROVED:

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CHAIRMAN