

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, April 10, 1984, and recessed until
Tuesday and Wednesday, April 24 and 25, 1984.

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

Members Present: Senator Berl Priebe, Chairman; Representative
Laverne Schroeder, Vice Chairman; Senators Donald
Doyle and Dale Tieden; Representatives Ned Chiōdo
and James O'Kane. Staff present: Joseph Royce,
Committee Counsel; Kathryn Graf, Governor's Co-
ordinator; Phyllis Barry, Deputy Code Editor;
and Vivian Haag, Administrative Assistant.

Convened Meeting was convened at 7:30 a.m. by Chairman
TRANSPORTATION Priebe. First order of business was Department
DEPARTMENT of Transportation rules as follows:

TRANSPORTATION, DEPARTMENT OF [820]
*Interstate motor vehicle fuel permits and transport carrier registration. (07.F) 7.4(4)a ARC 4500 ... 2 29 84

Present for Department of Transportation were
Dennis Ehlert and Ron Hughes. Also present:
Senator Edgar Holden, former ARRC member.

[07,F]7.4(4)a

Ehlert explained that proposed amendments to
[07,F]7.4(4)a address computation of fuel tax
liability where credit is requested for non-
highway use by interstate motor carriers. Pump-
ing credits for the off-loading process would be
figured according to Revenue rule 730--64.7(2).
Ehlert called attention to the fact that some
states do not allow credit, but a refund. He
was hopeful the new recommendation would satisfy
Senator Holden's concerns.

Holden was supportive of the changes and reasoned
that DOT was "two-thirds of the way toward a reso-
lution of the problem." He referred to two forms
and suggested that the same format should be followed
in both. Holden took the position it was illegal
for other states to establish an amount to be
charged for fuel used in Iowa according to the
present formula. He suggested the same formula,
citing an example--"If we have determined that
3/10ths of a gallon per ton is right for unloading,
that is what a carrier should use on all his off-
loading in any state." Travel must be documented
and if it is extended to all states, a problem
would be solved.

Hughes pointed out the problem of trying to draft
a rule to provide equitable application to the tax-
payer and, at the same time, staying within the

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TRANSPORTATION DEPARTMENT
Continued

the statute with respect to the definition of "non-highway use and its applicability in other states. Priebe favored an established formula for determining pumping credits. The carrier would then need only to be concerned with the number of tons hauled. Also, the carrier could have bills of lading for proof of mileage in Iowa.

DOT was directed to follow regular rulemaking procedure in submitting the proposed changes. After further discussion, Chairman Priebe suggested that representatives from the Revenue and Transportation Departments meet with Graf, Royce and Holden to review the matter for possible change in the law.

Chiodo arrived.

CONSERVATION COMMISSION
Motion to remove 70-day delay

O'Kane reasoned there had been adequate public input re the lead shot ban--105.3(3)--and he moved that the 70-day delay imposed by the ARRC February 23, 1984 be lifted.

Tieden expressed opposition to the O'Kane motion. However, he indicated he would support a statewide ban on lead shot.

Vote

The motion failed.

HEALTH DEPARTMENT

Kenneth Choquette and John Eure appeared on behalf of the Health Department for review of:

HEALTH DEPARTMENT[470]
*State plumbing code, 25.1.25.2 ARC 4532 .F..... 3/14/84
*Licensing of mobile home parks, 71.5(5)"a", "b", 71.6(6), 71.7(2), 71.12, 71.13 ARC 4533 .F..... 3/14/84

Choquette mentioned the fact that the uniform plumbing code had been adopted in 1979. Schroeder questioned restriction on use of plastic pipe in any space where surrounding temperature will exceed 140°. Eure said the intent was a safety feature for use of home water heaters. It was pointed out that, generally, there is little pressure on drain pipes. Brief discussion of pending legislation on licensing of mobile home parks.

No formal action taken. Schroeder was excused to attend another meeting.

COMMITTEE BUSINESS

Chairman Priebe called for disposition of the March minutes and O'Kane moved approval. Motion carried.

Conservation

Priebe called attention to unhappy constituents concerning a public hearing held by the Conservation Commission in Kossuth County. He suggested that Conservation officials supply the Governor with a tape of the meeting.

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CORRECTIONS DEPARTMENT

Broxann Keigley was present to review the following:

CORRECTIONS, DEPARTMENT OF [291]

*Personnel, 6.1; publications, 20.6(2)"a", 20.6(3)"b", 20.6(5); definitions, 22.1; jail facilities, 50.1, 50.2(1), 50.2(7), 50.3 to 50.5, 50.6(2)"b", 50.7(9), 50.7(11), 50.8(2)"b", 50.11(2)"a"(1), 50.11(3), 50.15(1), 50.15(7)"d", 50.23, 50.23(4); temporary holding facilities, ch 51 ARC 4525 ... F 3/14/84
*Work release, ch 44; parole, ch 45, 46.4(5) ARC 4526 ... F also 42d 3/14/84

Keigley gave a brief overview of revisions made in amendments to chapters 6, 20, 22, 50 and 51 since Notice of Intended Action was published and in response to comments received.

Doyle asked Keigley to investigate the fact that chiropractors were excluded from 50.15(1) and she was amenable.

IOWA FAMILY FARM AUTHORITY

William Greiner reviewed the operating loan guarantee program, chapter 5, ARC 4538, filed, IAB 3/14/84.

According to Greiner, the program is now in operation and copies of the rules were mailed to Banks and Savings and Loan Associations yesterday. They will also be sent to Production Credit Associations. The program is limited to new operating loans--not for refinancing of existing loans. Priebe was told that the three-to-one ratio on loans is on net worth, instead of assets to liabilities.

Greiner opined that most problems had been resolved. However, lack of funds was a concern.

COMMERCE COMMISSION

Ray Vawter, Virginia Sheffield and David Lynch were present on behalf of Commerce Commission to review:

COMMERCE COMMISSION [250]

*Customer notification procedures, 7.4(1)"b" and "c"; intrastate access charges with end-user charges, 22.1(1), 22.1(3), 22.2(3), 22.3, 22.3(2)"d", 22.14 to 22.16 ARC 4552 ... F 3/14/84

Also present: Don Williams, Northwestern Bell Telephone; John Flannery, General Telephone; Don Heiderbrecht, United Telephone.

Lynch briefly reviewed the Commission's access charge rules--essentially identical to those adopted on an emergency basis in November.

Chiodo was interested in the status of the Teleconnect litigation. Lynch indicated it was the opinion of Teleconnect that the rule was unreasonable because access charges are the same for Teleconnect and AT&T--3 cents per minutes. There was brief discussion.

Recess

Chairman Priebe recessed the Committee at 8:44 a.m. to be reconvened, contingent upon adjournment of the Legislature, on Tuesday, April 24, 10:00 a.m.

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RECONVENED Chairman Priebe called the recessed meeting to order, 10:10 a.m., Tuesday, April 24, 1984, room 116.

Members Present Priebe, Schroeder, Doyle, O'Kane and Chiodo; not present, Tieden, who was hospitalized. Also present: All staff.

RACING COMMISSION Jack Ketterer, Executive Secretary, represented the Racing Commission for the following:

RACING COMMISSION, STATE[693].
*Applications for track licenses and racing dates, ch 5 ARC 4529, also filed emergency ARC 4528... N.F.E. 3/14/84

Two individuals had appeared at the public hearing to address the application rules. A Fairgrounds Commission Neighborhood Council representative was interested in a survey of the potential race track area to be paid for by the developer. Response was there is allowance for approval by all of the local, municipal and governmental bodies. Rules in process contain criteria for granting licenses and provision that the Racing Commission would consider the community support and public sentiment in any proposed race track. Ketterer referenced the pari-mutuel legislation which he believed contained provision for the Commission to conduct a neighborhood survey at the applicant's expense.

The National Fair representative expressed interest in a fair racing amendment and Ketterer had sent Royce copies of the Commission's proposal in this area. Also, the Commission decided to delete the word "principal" where used as an adjective to "stockholders". No further discussion.

No Agency Reps No agency representatives requested to appear for the following:

COLLEGE AID COMMISSION[245]
*Iowa guaranteed student loan program, amendment to ch 10 ARC 4527... F. 3/14 84

HEALTH DEPARTMENT
*Medical examiners, grounds for discipline, 135.204(10) ARC 4561 F. 3/28/84

MERIT EMPLOYMENT DEPARTMENT[570]
*Grievances, appeals and hearings, 1.1621, chs 12 and 15 ARC 4539 F. 3/14 84
*Pay plan, 4.5(2)"b", "e" and "f" ARC 4540 F. 3/14 84

PHARMACY EXAMINERS, BOARD OF[620]
*Controlled substances, excluded substances, 8.19 ARC 4523 F. 3/14 84

PROFESSIONAL AND OCCUPATIONAL REGULATION COMMISSION[637]
*Public hearings, 4.1(3)"f" ARC 4569, also filed emergency ARC 4568... N.F.E. 3/28/84

It was decided that Pharmacy representatives need not appear at the May meeting.

AGRICULTURE DEPARTMENT Bette Duncan and Dr. Merle Lang appeared on behalf of the Agriculture Department to review:

AGRICULTURE DEPARTMENT[30]
Ethylene dibromide (EDB) residue levels in fruit and baby food, 10.45(4), 10.45(5) ARC 4565, also filed emergency ARC 4564... N.F.E. 3/28/84
Infectious and contagious diseases, 16.1 ARC 4567, also filed emergency ARC 4566... N.F.E. 3/28/84

According to Duncan, residue levels indicated in the rule

AGRICULTURE DEPARTMENT
Continued

are recommendations of the USDA. Schroeder raised question with respect to the possibility that the Department might be moving "a little too fast" in the promulgation of the EDB rules. Duncan responded that the government was hopeful the state would adopt the "concrete recommendations" published in the Federal Register.

10.45(5)

Schroeder challenged 10.45(5) contending it would be impossible to meet both criteria. Duncan replied that "30 parts per billion" will apply to fruit with skin which will be consumed without removing the skin. A different level is established for fruits such as oranges. O'Kane supported the rule and did not believe the Department was moving too fast.

16.1

Priebe reminded ARRC that the rules were federal regulations. He opined that language in 16.1, "including, but not limited to" was too broad.

Dr. Lang noted that the definition had come from the federal level and referred to something that is a threat to the poultry industry and not a disease common to this country. Iowa wants quarantine authority to help the industry in the event of an outbreak such as the one in Pennsylvania. Priebe was concerned that it would preclude public participation by the concept of adopting rules for the future. Duncan agreed to strike the questionable language. Graf saw no problem with keeping the language as long as the Department was as specific as possible. Agreement was reached to allow the Department to change the language when rules are adopted after Notice to read: "Highly pathogenic exotic diseases of poultry or birds, such as Avian Influenza and Exotic Newcastle."

Recess

Chairman Priebe announced a 15-minute recess.

INSURANCE DEPARTMENT

Denise Horner, First Deputy, and Kim O'Hara, Attorney, were present for Insurance Department to review:

INSURANCE DEPARTMENT(510)	
Replacement of life insurance and annuities, ch 16, Exhibit B, filed emergency	ARC 4521 .C.F. 3/11.81
Sex-blended minimum nonforfeiture standards for life insurance, ch 42	ARC 4530 .N. 3/14.81

Also present: Brice Oakley, Blue Cross/Blue Shield.

Horner noted that emergency amendment was necessary to insert a line inadvertently omitted when the replacement regulation was implemented. No questions.

ch 42

Discussion of chapter 42. O'Kane questioned 42.4(508). Horner referred to a Fair Trade Practices Act in effect that makes it an unfair trade practice for an insurer to differentiate or treat insureds of the same class differently. She continued that many people consider it unfair discrimination for males and females to receive equal benefits since there is an actuarially sound difference between life expectancies. This rule is intended to ensure than an insurance company will not be subject to prosecution under that Act.

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INSURANCE
DEPARTMENT
Continued

Mention was made of the Blue Cross/Blue Shield rules filed emergency late in March. According to Horner, they differed slightly from those placed under Notice.

Priebe recalled problems with 1984 Acts, SF 2277 and Horner said rules were not in process yet. She expressed preference for emergency rules if there is to be compliance with the fifty-percent level by August 1. The Health Policy Corporation has contacted Insurance concerning legislation and presented their interpretation, as has BC/BS. Royce suggested an informal draft of the rules be submitted to the ARRC. Discussion of legislation. Oakley referenced problems with holding elections for corporations.

The Committee agreed to review the matter at the May 9 meeting, 8:30 a.m.

BLIND COM-
MISSION

The following agenda was before the Committee:

·BLIND. COMMISSION FOR[160]	
General organization and administration. 1.2 to 1.5	ARC 4542... N..... 3/14/81
Services. 2.1, 2.2, 2.4	ARC 4543... N..... 3/14/81
Procedures. 3.2(2)"b" and "e" (5), 3.2(3), 3.3(1) to 3.3(4), 3.4 to 3.6	ARC 4544 N..... 3/14/81
Vending facilities. 4.4(1)"3" and "4", 4.5(2), 4.6(2), 4.7(2), 4.8, 4.9, 4.11(4), 4.11(7), 4.12(1) and (2), 4.14, 4.15	ARC 4545 N... 3/14/81
Employment practices. 5.1(2), 5.2(5), 5.2(6), 5.4(1), 5.4(2)	ARC 4546 N..... 3/14/81
Promotions, demotions, transfers and terminations. 6.1, 6.2, 6.2(1), 6.6(1), 6.6(2)	ARC 4547... N..... 3/14/81
General personnel policies and procedures. 7.1, 7.3, 7.5, 7.8(1), 7.8(3)	ARC 4548 N..... 3/14/81
Classification and compensation policies and procedures. 8.2(1), 8.4(1) to 8.4(4), 8.4(6), 8.4(8), 8.4(10), 8.4(11)	ARC 4549 N... 3/14/81

Present for the Blind Commission were Nancy Norman and Tony Cobb. Also present: Bill and Nyla Fuller, citizens; Joseph Van Lent, National Federation of Blind, Legislative Chairman; Charles Erickson; and several other interested citizens.

Norman briefed the Committee with respect to the general organization and administration rules. Schroeder inquired as to why Commission meetings would be reduced from monthly to once quarterly. Van Lent spoke in opposition to the change and recommended some Saturday meetings to accommodate the blind. Norman stated that an agenda is published and pointed out that the rules do not limit the number of meetings. There was discussion of the Commission's policy on petition to the Board. Norman indicated they would consider all requests.

Fuller favored a mandate for meetings to be held at least ten times each year--some evenings and Saturdays. Norman indicated that most matters in dispute are handled by staff, e.g. restaurant sites, etc. If no recommendation is made by the Board, there is an appeal process. Seven meetings were held in 1983 according to Norman. The recommendation to meet quarterly was to facilitate Board members, one of whom has a very heavy schedule.

O'Kane viewed the rule as being quite general and he recommended setting out regularly scheduled meetings such as the 4th Saturday of every month. Erickson favored that approach.

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BLIND
COMMISSION
Continued

Schroeder voiced opposition to the "quarterly" meeting concept. Norman recalled the Governor's Economy Committee report and cited economic reasons for fewer meetings. Schroeder doubted costs would be exorbitant. Graf and Priebe could not recall that other agencies mandate the number of meetings.

Doyle requested the Commission to send minutes of their meetings to Royce. Priebe asked for a report on duties of the staff. Citizens present were urged to notify Royce of any problems they have with the Commission.

1.5 Schroeder requested inclusion of a date certain for federal references in 1.5. No questions re 2.1, 2.2, 2.4.

ch 3 In re amendments to chapter 3, Doyle pointed out that state law requires purchasing from Prison Industries. Van Lent addressed a situation where an individual was refused a \$200 loan under gifts and bequests--3.6. There was lengthy discussion. The loan process was reviewed by Norman--in 1983, \$10,529 was received from wills and bequests. The director makes decision on loans amounting to less than \$1000; the Board decides on amounts over \$1000. That decision is not made until after individual has exhausted all other means; borrowing from family, banks, etc.

Schroeder raised question re changes in vendor operations. According to Norman, the Director makes the appointment and sends a letter advising the Board of the successful bidder on a facility. Schroeder opined this would justify monthly meetings of the Board. According to Cobb, those assignments are infrequent.

3.6(3) In response to O'Kane, Norman referred to 3.6(3) for makeup of the Grants and Loans Committee. Three blind persons serve as advisors to the Committee. O'Kane challenged use of "approval" in 3.6(5)b.

4.15 Van Lent suspected discrimination of vending assignments made on staff recommendation--two sighted and one blind. Doyle recalled that a year ago, it had been suggested that contracts be rewritten to eliminate open-end provisions. Cobb indicated some forms on individual ones had been. The Commission continues to look at the matter and has reviewed Real Estate Commission rules on the hearing process--rules are being formulated. Doyle was told that an assistant AG is assigned to the agency.

chs 5 to 7 No questions re amendments to chapters 5 to 7.

Erickson and Norman expressed differences re appeals. Schroeder suggested that a meeting be scheduled between the two factions to resolve the problems. Royce and Graf could provide assistance.

8.2(1) Schroeder expressed consternation at new language in 8.2(1) and interpreted it to allow the Commission almost un-

BLIND
COMMISSION
Continued

limited discretion. He doubted there would be many instances when the employee could not continue on in a job. Schroeder was unsure that Merit Department could be followed in this case.

Fuller thanked ARRC for working with the blind and for their cooperation.

BUREAU OF
LABOR

Wally Johnson, Deputy Labor Commissioner, appeared for the following:

LABOR. BUREAU OF[530]
Occupational safety and health rules for general industry. 10.20 ARC 4553. M..... 3/14/84

Federal regulations will be adopted relative to the servicing of rim wheels and hazard communication standards. Johnson advised ARRC that they are going forward with the hazard communication standards with the intent of revoking it when the "right-to-know" standard is adopted. The rules apply to industry, not agriculture and cover work done in shops. Schroeder envisioned extra cost for shops.

There was discussion of use of a cage for repair of tractor tires. Schroeder preferred provision "less than 50 psi are exempt from cage requirement."

Johnson agreed to provide answers when the rule is before the ARRC for final consideration. No formal action.

Recess

Committee was recessed at 12:00 noon. Reconvened at 1:35 p.m.

BOARD OF
REGENTS

Philip Hubbard, University of Iowa, and Deborah Hunt, Attorney, Board of Regents, appeared to review:

REGENTS. BOARD OF[720]
University of Iowa, parietal rule. 2.215) ARC 4558 3/28/84

Schroeder reiterated his previous opposition to extending the suspension of the parietal rules at Iowa universities. He contended the provision should be rescinded and then reinstated through new rulemaking when needed. This would allow for public participation. Hubbard reminded ARRC that students are frequently consulted and they had agreed to the rule. He emphasized that the University has no desire to prohibit public input. There was discussion. Regents officials contend that students away from home for the first time need the environment of residence halls. In addition, bondholders need some assurance that if debt requirements could not be met, students could be forced to live in.

Graf pointed out that the rules process is intended to learn the pros and cons of an issue. Priebe declared it was imperative for students to have input on a rule suspended for three years. Hubbard was advised that if the rule is adopted, the ARRC would file an objection. O'Kane was informed that the Committee objected to the UNI parietal rule in 1983. Hubbard will research the legal ramifications of the bond resolution. No formal action.

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RAILWAY
FINANCE
AUTHORITY

Dan Franklin and Beverly Allen were present for Railway Finance Authority rules as follows:

RAILWAY FINANCE AUTHORITY[695]
Financial assistance, 3.1: projects, 4.1, 4.3 ARC 4560. F..... 3:28 84

Franklin noted that there were no comments forthcoming at the hearing. Doyle was curious as to reason why "Business Week" was substituted for "The Wall Street Journal". Agency representatives indicated that bond council, bankers, etc. preferred "Business Week."

After further discussion, the Committee recommended deletion of reference to any magazine or newspaper and advised that prime rate could be obtained from the Banking Superintendent.

REAL
ESTATE
COMMISSION

The following amendments were presented by Ken Smith, Acting Director:

REAL ESTATE COMMISSION[700]
Brokers and salespersons, 1.11, 1.21 ARC 4567 F..... 3:28 84

1.21.

Schroeder expressed opposition to 1.21 and questioned statutory authority. He contended that "just because a broker was a large farm manager was no cause to prohibit him from sponsoring salesmen." Smith said their intent was to remove "apprenticeship" and to ensure that a new salesperson has supervision by an experienced broker. The rule has never been tested in court. Smith reported there are 6000 brokers out of 18,000 licensees.

Schroeder thought the rule was unnecessary. He suggested "Any person who sponsors a new salesperson must have time available to devote for supervision of that salesperson" or "to be available to consult and review purchase offers or options." General agreement by the Committee that the rule should be amended.

Motion to
Delay
1.21(117)

Schroeder moved a 70-day delay on Real Estate Commission rule 1.21(117). Motion carried. Priebe suggested Smith meet with Royce for equitable solution.

Future
Meetings

Discussion of forthcoming meeting dates with decision made to meet in Room 22 May 8 and 9, June 7 and 8, July 10, 11 and 12 and August 14 and 15.

WATER, AIR
& WASTE

Patty Allen, Morris L. Preston, Michael P. Murphy and Christine Spackman appeared for review of:

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900]
'Criteria for award of grants, 91.1"b" ARC 4541 3:11 81
Scope of title, 140.1: location and construction of hazardous waste treatment, storage and disposal facilities, ch 150
ARC 4524 3:14 81

91.1

Allen explained that 91.1, paragraph "b" incorporates a state priority system for municipal wastewater treatment construction grants. The system must be reviewed annually. The federally mandated changes were set out in the preamble to 91.1. Allen reviewed the federal law re grant funding and the fact that it will drop from 75 to 55 percent for

WATER, AIR & WASTE MANAGEMENT (Continued)

new projects--certain projects will continue to be 75 percent funded.

Responding to Chiodo, Allen said the state formula remains at 5 percent. Des Moines has the only project that will receive 75 percent federal funding next year. Preston noted action was taken to limit to 60 percent the amount of available funds in any one year. This will limit funding to Des Moines and free funds for other areas. Grant funding for new projects will be 55 percent federally funded--in essence, this increases local share.

Preston pointed out that funding for the Des Moines project will be 75 percent federal, 5 percent state and 20 percent local match for most parts of the project--some parts are ineligible. Brief discussion.

According to Allen, certain project categories have been eliminated so that funding can be based primarily on point source rating criteria to determine which projects are most needed because of the greatest water pollution.

Preston told Chiodo that if construction of a treatment part of a plant has been initiated, that project will be funded until completed under the present system. If the project has part of the sewer system started but not the treatment plant, the rule could impact them. Des Moines should not be affected. Plans and specs for Des Moines' project have been submitted to DWAWM for approval.

91.1 (455B)

Schroeder was advised that the date certain will be included in the filed rules. Priebe requested explanation of preamble language in paragraph 3., second unnumbered paragraph. According to Allen, the federal law provides since there will be reduction in funding to 55 percent, that the innovative and alternative funding, which allows more than 55 percent, must go up. Lowering to 55 percent, federal law says you must get 20 percent, which results in 75 percent after October 1, 1984.

Priebe found it confusing and different from the explanation provided by Mayor Crivaro.

140.1 ch 150

In reviewing rule 140.1 and chapter 150, Code section 455B.453 was cited as being implemented. Murphy indicated the rule references hazardous waste site license. Some hazardous waste facilities are exempt from the law--all will be regulated by Resource Conservation and Recovery Act (RCRA) program. No action.

TRANSPORTATION DEPT

Jane Phillips, Council, TRA/DOT; Conrad Amend, Superintendent; Randahl Hyberg and Ron Hughes, DOT, appeared for review of:

TRANSPORTATION. DEPARTMENT OF[820]	
Interstate registration and operation of vehicles, making claim for refund. (07.F) 1.12 ARC 4559 .F.....	3 28 81
Truck operators and contract carriers. (07.F) 3.8(8) ARC 4564	3 28 81
Motor carriers and charter carriers. (07.F) 4.15 ARC 4565	3 28 81
Liquid transport carriers. (07.F) 13.13 ARC 4566	3 28 81

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TRANSPORTATION
DEPARTMENT
Continued

Phillips stated that the three rules on carriers were basically the same but were separated to comply with Code Chapter 17A.

Schroeder questioned need for the rules in light of federal deregulation. Phillips responded that they enforce state requirements and have permitted market entry to provide as free a market place as possible for new carriers per the Governor's Task Force request. Schroeder wondered if DOT intended to ask for more deregulation to have a totally free and open competitive market. Amend pointed out that the Motor Carrier Act of 1980 did not deregulate to the extent that many believe. Interstate carriers still have to go to the Interstate Commerce Commission for operating authority. He was unaware of any carrier who had applied for state-wide authority. Discussion.

Phillips commented, "Under these rules, the burden of proof is shifted to the party protesting the application--it is not for the applicant to make a showing." A carrier cannot thwart application process for another carrier by merely filing a protest.

Schroeder pondered whether Iowa laws on the matter should be repealed. Amend said that would be total deregulation.

4.15(3)

Doyle requested "notarized" be changed to "acknowledged" in 4.15(3). Phillips said this had been a subject of litigation and different wording has been tried. She was willing to make an amendment. General discussion. No action.

PUBLIC
INSTRUCTION

Orrin Nearhoof and Tom Anderson represented Department of Public Instruction for discussion of human relations requirement, 13.18, IAC. Also present: Harry B. Wagoner, Jr., Chairman, Iowa Coalition for Educational Freedom; Valerie Burgett and Mary Ellen Nichols.

Chairman Priebe recognized Wagoner who recalled his effort over the years in seeking recognition for Creationism in the DPI rules. He pointed out lack of resources in school libraries for teachers' reference.

Nearhoof briefed ARRC on background of human relations requirement which was passed by the Legislature in 1977. Wagoner maintained it is a disservice for schools to deal with various religions and ignore creationists.

The delicate balance needed to maintain separation of church and state was discussed. Burgett pointed out her confusion in the fact that Shinto, Buddha, etc. appeared in books her children study, but contains nothing on Christianity.

ARRC suggested petition to the Department for change in

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PUBLIC
INSTRUCTION
Continued

the rules which would require the Department to respond in sixty days.

Nichols referenced the book "Time for Anger." She had searched libraries and discovered there was nothing on creationism--only evolution. She thought both sides should be presented to ensure equitable use of tax money.

Recess

Committee was in recess at 3:32 p.m. until 9:00 a.m. Wednesday, April 25, 1984.

RECONVENED
BEER &
LIQUOR
CONTROL
DEPT.

Chairman Priebe reconvened the meeting, 9:20 a.m. William Armstrong, Attorney, and Dick Morrell represented Beer and Liquor Control Department for review of:

BEER LIQUOR AND CONTROL DEPARTMENT[150]	
On-premise advertising of distilled spirits, 6.1(8) ARC 4562	3/28/84
Transportation and warehouse, 8.2(8) to 8.2(11) ARC 4563	3/28/84
Temporary transfer of liquor licenses, 4.18(2) selective review	IAC

Also present: Linda Hodina, Owner, Pour House; Katie Beck, City Clerk, Ray Puls, Councilman, Malcom, Iowa.

6.1(8)

Discussion of subrule 6.1(8). For the record, O'Kane expressed his disapproval of subrule 6.1(8). Schroeder wondered about monetary benefits from installation of the signs. Armstrong indicated that was not addressed by rule--responsibility for cost of electricity has not been set out. He added that the majority of the items do not require electricity.

Priebe was told that Laird had petitioned for the subrule three times in the last year. Laird took the position that liquor advertising would not be offensive inside the tavern. Armstrong advised Schroeder that the statute would need revision before liquor ads could appear on billboards in baseball parks or on stadium fences. He emphasized that the rule would have no bearing on beer advertising on fences in ballparks.

8.2

Morrell reported that no one appeared at the scheduled public hearing and no comments had been received on amendments to rule 8.2

4.18(2)

There was selective review of 4.18(2) which limits temporary transfer of a liquor license or beer permit to three times in a year. Priebe called attention to the fact that the city of Malcom had exceeded the requirement. Malcolm officials explained their situation to the Committee. Priebe interpreted the Code to allow the transfers by local authorities. Armstrong said their intent was to prevent devaluation of liquor licenses, particularly in big cities. He referred to use of "one premise" in the statute and contended that the law was written to apply to a building rather than a catering situation.

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BEER &
LIQUOR
CONTROL
DEPT.

Royce quoted from section 123.38 where an administrative fee can be assessed for the transfer. The Committee took the position that the statute allowed discretion to local authorities and the home rule concept should prevail. Armstrong agreed to refer the matter to the Council on May 18. Schroeder requested the Department to redraft a proposal on the matter to preclude petition by the ARRC.

HUMAN
SERVICES

Mary Ann Walker, John Terrell and Joe Mahrenholz represented the Department of Human Services to consider the following:

HUMAN SERVICES DEPARTMENT[498]

Fair hearings and appeals, 7.7(2)g" ARC 4550 . . . N 3/14/81
Medical assistance, pharmacies, 78.2(2)e" ARC 4551 . . . N 3/14/81

No questions re 7.7(2)g.

78.2(2)

Amendment to 78.2(2) will provide a fifty-cent incentive for pharmacists to dispense generic drugs. Schroeder asked for justification and Mahrenholz reviewed the history of the rule, which had been in effect in the last year. It was rescinded and a mandatory maximum allowable cost program for generic drugs was created. This rule would allow, in cases not covered by the maximum, and encourage pharmacists to use lower-cost generic drugs. Schroeder insisted there should not be an incentive bonus. It was noted that net savings amount to approximately \$1350 per month. O'Kane opined the Department had the authority for the rule.

In response to Doyle's question with respect to copayment, Mahrenholz said this was raised to \$1 for prescriptions. Exemptions include family planning prescriptions and a number of others.

In a matter not before the Committee, Chiodo brought up foster care funding. Royce had heard from Polk County facilities. Walker said emphasis was to place the children in the least level of care facility. Priebe reminded ARRC that some changes had been made in legislation under the direction of Senator Bruner. Walker agreed to check into the matter and inform Chiodo.

HEALTH
DEPARTMENT

Mark Wheeler and Peter Fox were present for discussion of:

HEALTH DEPARTMENT[470]

Special supplemental food program for women, infants and children, 73.5(1) ARC 4534 . . . N 3/14/84
Hearing aid dealers, continuing education, 145.0(2) ARC 4535 . . . N 3/14/84

73.5(1)

In review of 73.5(1), O'Kane challenged the meaning of "competent professional authority." He voiced opposition to the extra "coursework" being imposed on registered nurses. Wheeler indicated that WIC program officials could not be present today but he agreed to bring the matter to their attention. Priebe asked Wheeler to notify the WIC officials to appear before ARRC at the May meeting.

HEALTH
Cont'd
145.6 (2)

Fox said that it was the Board's intent to make chapter 145 less restrictive with respect to continuing education. Doyle questioned new language in 145.6(2) and Fox replied that the change was directed at improvement of workload in issuing license renewals. The same staff handles renewals for all of the licensing boards. Schroeder was unsure the Department had statutory authority for the change. Graf cited Code Chapter 258A. Doyle was informed that the date in the first sentence of the subrule was left since some people have not completed their CE--the Board is being less restrictive by allowing three extra months. No action taken.

NURSING
HOME AD-
MINISTRATORS

Peter Fox explained the following amendments:

NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS[600]
Application for licensure, 2.3(1) ARC 4537 .. *N*..... 3/14/84
Operating procedures, 28(1)"e"(1), notice ARC 4437 terminated ARC 4536 .. *N.T.*..... 3/14/84

Re 2.3(1), the National examination is utilized and those who administer it require application and pertinent data to be submitted 45 days prior to the licensure examination. Schroeder expressed opposition that practice. However, Fox knew of no problems and felt the exam was a good one. He was willing to provide information on fees. Doyle opined that five days' notice of eligibility to take the exam was inadequate and Fox agreed to report same to the Board.

DENTAL
EXAMINERS

Connie Price and Kristie Burt represented the Board of Dental Examiners for the following:

DENTAL EXAMINERS, BOARD OF[320]
Biennial renewals, continuing education, adjusting fees, 6.4, 10.2, 11.2(2)"e", 11.3(2)"j", 11.5(2)"e", 13.1(3), 14.1, 14.4(2), 15.1 to 16.4, 25.2(1), 25.2(2), 25.6, filed emergency after notice ARC 4531 .. *FEAN*..... 3/14/84

Price stated that the amendments were intended to implement legislative mandate in Code §147.10. The emergency filing was utilized since the Board was delinquent in promulgating rules after their transfer from the Health Department in 1982. There was one renewal period before the biennial renewal took effect.

Chiodo expressed his strong opposition to emergency rules in general. Doyle suggested inclusion of penalty provision in 14.1(2) and Price referred him to subrule 15.3(1). She added that the Board preferred listing all fees in one chapter of their rules. Doyle was apprised that leniency for illness was set out in the Board's CE rules.

DEAF
SERVICES

Royce referred to correspondence from the Citizens' Aide wherein it was pointed out that Deaf Services--under the auspices of the Health Department--have no rules.

Motion

After brief discussion, Doyle moved to petition Deaf Services to promulgate rules under Iowa Code Chapter 17A. Carried.

Recess

The Committee was in recess for thirty minutes.

CONSERVATION The following agenda was before the Committee:
COMMISSION

CONSERVATION DEPARTMENT[290]	
Safety equipment, 27.13(9), 27.13(10) ARC 4571 ..F.....	3/28/84
Passenger capacity, ch 29 ARC 4572 ..F.....	3/28/84
Speed and distance—zoning, ch 30 ARC 4573 ..F.....	3/28/84
Special regulations pertaining to the removal of plant life, fruit and mushrooms from lands under the jurisdiction of the commission, 47.2 ARC 4574 ..F.....	3/28/84
Waterfowl hunting on Forney Lake and Riverton Area, 14.1(5) ARC 4570 ..A.....	3/28/84

Required use of STEEL SHOT IN WATERFOWL HUNTING

Al Farris, Richard McGeough, and Richard Bishop appeared on behalf of the Commission. Also present: Robert Anderson, Iowa Sportsmen Federation and Donald Scalise.

27.13

McGeough discussed the exemption for windsurfers in 27.13. Chairman Priebe observed that the ARRC recommendation had not been incorporated. McGeough had talked with the windsurfers who want to be exempted from wearing personal flotation devices (PFD's) since they can actually be hazardous. One approved device must be available on their vessel-- Type I, II or III. The seat cushion and belt style are not acceptable.

Discussion of safety factors for windsurfing. McGeough commented that 23 states have relaxed requirements for windsurfers. Priebe was concerned about setting a precedent by exempting one group. McGeough clarified the rule was intended to require water skiers to wear PFD's. Farris recalled that the legislature had exempted racing shells from PFD requirements.

Ch 29

McGeough reported positive comments from the public hearing on Chapter 29. They had consulted the Attorney General who found rule 29.3 acceptable re "Operator's Responsibility." McGeough admitted that new legislation on registration would probably result in owners wanting to "shrink the length of their vessels" to realize "a price break." The County Recorder, with an affidavit, can correct registration information without a law officer .

Ch 30

Conservation officials indicated that the entire speed, distance and zoning system is being streamlined which includes a uniform statewide buoy system. A Safe Boating Committee meets with the Coast Guard, Coast Guard Auxiliary and the Power Squadron to develop nationwide right of way and buoy regulations.

47.2

Rule 47.2 had been clarified as recommended by the ARRC.

14.1(5)

Bishop said that subrule 14.1(5) contains special regulations for controlled hunting areas on Forney Lake and Riverton. The Commission wants to prohibit use of 00 buckshot which is not available as yet in steel shot. BB size pellets would be acceptable for taking geese.

CONSERVATION
Cont'd

Doyle recommended that the Department submit legislation in 1985 relative to a uniform citation for possession of shells or nonuse of steel shot.

Mention was made that lead sinkers may also be poisonous to certain birds.

Film on
Steel
Shot

Conservation officials showed a film on the use of steel shot and discussion followed. Farris noted that a public hearing was scheduled for July 14 on the issue.

The 70-day delay of subrule 105.5(3) was noted with consensus of the Committee being that a 45-day delay in the next GA should be imposed. This would prevent "piecemeal" implementation of the lead shot ban.

Anderson was hopeful the 1984 proposal could be implemented in the interest of saving ducks from lead poisoning.

Priebe had been contacted by a dealer with a large inventory of lead shot. He asked Anderson if he were supportive of a ban on lead sinkers for fishing but Anderson was unaware of that problem.

Farris advised Priebe that woodcock would be the only exception in the 1985 rules because they are not found in marsh or slough areas.

O'Kane requested the Department to compile information on lead sinkers.

Scalise opposed steel shot in general and noted that it was unavailable. He felt the Department was moving too fast.

Discussion of the fiscal impact with agreement that steel shot is more expensive.

Farris anticipated that final rules for the statewide ban on lead shot would be submitted in August or September.

MOTION
Delay

Schroeder moved to lift the 70-day delay on subrule 105.5(3) amendment [IAB 2/1/84] and impose a 45-day delay on the regional concept with the understanding that lead shot ban will be statewide for the next hunting season. Carried.

For point of clarification, Farris asked if the 1983 version of subrule 105.5(3) would remain in effect and he was advised in the affirmative. The amendment would not be effective.

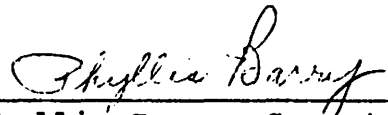
Priebe was aware of much opposition to steel shot. Cindy Hildenbrand, Sierra Club, offered her support of steel shot.

4/25/84

CONSERVATION Farris explained there was overpopulation of deer on
Cont'd the vast grounds of the Burlington Ordnance Plant.
The Committee concurred that the Department could include a special hunting season for that area in their deer hunting rules when they are adopted.

ADJOURNMENT The meeting was adjourned at 1:20 p.m.
Next regular meeting scheduled for May 8 and 9.

Respectfully submitted,



Phyllis Barry, Secretary
Assistance, Vivian Haag

APPROVED

Chairman

Date