

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, June 11 and 12, 1985.

Place of Meeting: Committee Rooms 24 and 116, State Capitol, Des Moines, Iowa.

Members Present: Senator Berl E. Priebe, Chairman, Representative James O'Kane, Vice Chair; Senator Donald V. Doyle; Representatives Edward G. Parker and Betty Jean Clark. Not present: Senator Dale Tieden who was excused. Also present: Joseph Royce, Committee Counsel; Phyllis Barry, Deputy Code Editor; Benita Jansma, on behalf of the Governor's Rules Coordinator; Vivian Haag, Executive Administrator.

Convened Chairman Priebe convened the meeting in Room 24, State Capitol, 10:05 a.m.

**BEER & LIQUOR  
CONTROL DEPT**

William Armstrong appeared on behalf of the Department for the following:

Liquor licenses - beer permits. 4.4(3), 4.7(6), 4.13, 4.18, 4.20(1), 4.20(4), 4.21, 4.27, 4.32 to 4.37 ARC 5537 *F*..... 5/22/85  
License and permit division, native wines, change of ownership, 5.1(2), 5.1(7), 5.7(1) ARC 5538 *F*..... 5/22/85  
License and permit division, combination retail and wholesale licenses, 5.10 to 5.13, filed without notice ARC 5535  
(see also Div I, Notice ARC 5536) *F*..... 5/22/85  
Complaint procedure, forms, appeal, 10.2, 10.14 ARC 5539 *F*..... 5/22/85  
Forms, certification of bond, 12.2(7) ARC 5540 *F*..... 5/22/85  
Operation of state liquor stores, liquor mailgrams, 13.2 ARC 5541 *F*..... 5/22/85

4.7(6)

Armstrong discussed liquor licenses and informed the Committee that no changes had been made since Notice. O'Kane indicated interest in 4.7(6) "...unopened and opened containers and glasses of beer may be allowed to be taken off the licensed premises." Many questions had been posed by licensees re this subject. Armstrong replied that the Attorney General had verbally advised the Department that the statute would not preclude this. O'Kane asked for explanation as to "open glass of beer." Armstrong said the Department interprets the "vague statute" (section 123.30) as allowing beer to be taken out in a glass.

4.33

Parker discussed 4.33 re delivery of beer to residences. Armstrong said that common practice was being set out in rule form. O'Kane viewed 4.35 as "another unnecessary rule" since there was no law prohibiting minors from being in a bar. Further, he considered 4.37 as "unnecessary" since bars have been open on election day for many years. According to Armstrong, some of the most frequently asked questions were put into rule form. Priebe concurred with O'Kane and suggested that the rules in question be rescinded when the chapter is amended again.

BEER & LIQUOR  
CONTROL DEPT  
Continued

Armstrong called attention to legislation [SF 395] which impacts native wine sales so amendments to chapter 5 would be rescinded July 1. Revised rules will be submitted.

Motion to  
delay

O'Kane moved to impose a 70-day delay on amendments to 5.1(2), 5.1(7) and 5.7(1). Motion carried.

5.10 to  
5.13

Discussion of new rules 5.10 to 5.13 which will also be affected by SF 395 which becomes effective July 1. The Department will need combination licenses at that time. Armstrong pointed out errors that will be corrected: Subrule 5.11(4), "beer" will be added after "class 'D'"; 5.11(5), first line, "beer" will be added after "class E"; 5.12(4), second line, class "D" will be "F"; subrule 5.13(4), the bond amount will be changed from \$6,000 to \$1,500. Armstrong was amenable to adopting an emergency amendment to be effective July 1. O'Kane suspected that many small establishments would be in violation of 5.10(4) which required tables and seats to accommodate at least 25 persons at one time. Armstrong cited Code §123.134 which describes class "B" permit. He added that the new "D" permit is a "B" plus the right to sell bottles of wine for off-premise consumption. The rule was copied from Code section 123.131. Clark moved to refer the matter to the appropriate legislative committees. Carried.

Motion to  
refer to GA

Responding to Parker, Armstrong said a current class "C" permit would be a new class "F". Armstrong called attention to a need for statutory change in §123.45 which allows a brewery to have a class "B" beer permit to sell beer to go. The Dubuque Star was the only one in Iowa and ownership has changed. The new owners want a class "C" permit in order to sell six packs only. Corrective legislation could provide "...one retail beer permit" and that would allow either "B" or "C". Clark asked that this request be included in her motion to refer. No objections. So ordered.

Clark  
request

10.2, 10.14

Armstrong explained that the 30-day time period allowed for filing an appeal in 10.14 was cumbersome and the Department reduced it to fifteen days. No comments had been received regarding the change. Royce advised that most agencies have authority to set this time which is usually 20 or 21 days. The Committee requested that rule 10.14 be amended to provide for 21 days. Armstrong was amenable.

12.2(7)

Armstrong told the Committee that 12.2(7) relative to payment by bonding companies would also be precluded by new legislation in SF 395. Armstrong discussed the provision in the Act which allows native wineries to ship inside as well as outside of Iowa. He queried if the word "ship" would be synonymous with "mailed." He concluded, "Many believe that was legislative intent."

BLIND  
COMMISSION

Anthony Cobb, Assistant Director, was present for review of vending facilities, 4.12, ARC 5506, Notice, IAB 5/8/85. Also present: Joe Van Lent, National Federation of the Blind; Sylvester Nemmers, Vendor; Travis Robinson, Commission Member, and Bill Fuller.

Cobb pointed out that more detailed rules will be provided to govern vending facility programs. He continued that the rules were unique in their content and complexity for a number of reasons. They embody Commission policy in being responsive to the procedural due process rights of clients, vendors and other consumers of agency service. The Commission cooperated with the elected state Committee of Blind Vendors and the President of the National Federation of the Blind. Cobb was aware of several technical changes which would be made. He noted that 4.12(1)e should read "A vendor can commence arbitration...".

The Committee advised Cobb to retain the 20-day provision re appeals in 4.12(3)j. Cobb emphasized that primary consideration is for vendors who use tape recorders for reading. He was willing to clarify 4.12(3)o with respect to the proper citation of rules. Legal problems relative to burden of proof and deposition of vendor will be resolved with the assistance of Royce and the Commission's counsel. The objective was to protect the vendor by not forcing them to retain counsel. Clark suggested that reference to open meetings law be clarified and Priebe thought citing the Code chapter 21 would be a reasonable approach. Clark took the position that two definitions for "Commission" were confusing--4.12(3)a. Clark suggested that 4.12(3)g(2) be revised to read: "The hearing officer shall schedule the prehearing conference so that all parties or their representatives may be present."

Van Lent spoke in support of the rules. O'Kane referred to "Sanctions" in 4.12(3)e(8) and advised Cobb that a definite penalty should be attached. Cobb concurred. Clark viewed 4.12(3)d(3), failure to respond, last sentence, as somewhat confusing.

## MINUTES

O'Kane moved approval of the May minutes. Motion carried.

TRANSPOR-  
TATION  
DEPT

The Department was represented by Carol Padgett, Ruth Skluzacek, Al Chrystal, and Norris Davis for the following:

Driver licenses, (07,C) 13.5(2), 13.7(8), 13.7(9), 13.11(8)c and "d" 13.13(11), 13.16, 13.20 ARC 5493 F..... 5/8/85  
Financial responsibility, (07,C) 14.2, 14.3, 14.4(3)a and "b" 14.4(6)a and "b" 14.5(2)a(1) ARC 5494 F..... 5/8/85  
Vehicle registration and certificate of title, (07,D) 11.1(9), 11.16, 11.35, 11.51(1)c, "11.51(2)a" and "e" ARC 5514 N..... 5/22/85

Chrystal explained changes made since rules were under Notice. At ARRC request, a specific suspension period for a minor's school license was included in 07C--13.5(2)e(2). Doyle was told that a parent or guardian cannot withdraw affidavit consent for those under 19 years of age [321.184, 321.194]. Doyle asked Chrystal to request legislation to allow a parent to withdraw this consent. Chrystal made a point that the parent could prohibit use of the car.

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TRANSPOR-  
TATION  
DEPT  
Continued

Discussion of school license violations. Priebe had heard criticism of Drivers' Education and asked if studies had been made as to its effectiveness. He cited lack of training in "stick shift" and how to change a tire as weakness in the program. Chrystal indicated Ohio and Georgia had conducted a study and thought they had a fair control group. After a given period of time, there appeared to be little difference except that driver educated students have fewer accidents in the first 12 to 18 months. Also, there is less alcohol use among Drivers' Education students. Chrystal pointed out that insurance companies offer a better rate to Driver Education students. Studies have revealed that many students rank Drivers' Education as the second or third most important course. Chrystal was willing to provide a copy of the study.

Chrystal advised O'Kane to contact Dwight Carlson in the Department of Public Instruction regarding juvenile drop-outs who receive GED diplomas, but cannot get their drivers' licenses. O'Kane recommended that 13.13(11) be amended by deleting "or if the department has received other evidence that the person has violated section 321.216." Chrystal said the evidence used was the license itself. O'Kane preferred definite criteria for evidence.

ch 14

Chrystal briefly explained the changes in [07C]. No questions. Skluzacek reviewed [07D] chapter 11 amendments pertaining to kit vehicles. Priebe was informed that "kit vehicle" was defined by rule only--[07,D]11.1(6). Discussion of means of identification. If VIN number is not known, one can be created by a law enforcement officer. General discussion of rebuilt vehicles. No action taken.

Recess  
Reconvened

Committee was recessed at 12:05 p.m. for lunch. Chairman Priebe reconvened the meeting in Room 116 at 1:35 p.m.

HEALTH  
DEPARTMENT

Gloria Piatt, Mike Guey, Peter Fox and Ronald Eckoff appeared on behalf of the Health Department for the following:

|   |          |         |
|---|----------|---------|
| Physical and occupational therapy examiners, limited permit, 139.204(1)   | ARC 5488 | 5/8/85  |
| Optometry examiners, local study groups, 144.2(5)   | ARC 5511 | 5/22/85 |
| Mortuary science examiners, fees, reinstatement of inactive practitioners, 147.98(3), 147.98(9), 147.98(10), 147.109  | ARC 5486 | 5/8/85  |
| Cosmetology examiners, examination requirements, 149.7(1)   | ARC 5487 | 5/8/85  |
| Barber examiners, license fees, 150.6(2)  | ARC 5497 | 5/8/85  |
| Public health nursing, ch 79  | ARC 5538 | 5/22/85 |
| Financial assistance to eligible end-stage renal disease patients, 111.1(2), 111.1(13), 111.1(13)c, 111.1(14)a and "b," 111.5, 111.5(4) to 111.5(6), 111.6(1), 111.7(3), 111.7(6)b and "d," 111.8, 111.9(6), 111.9(8), 111.11(2), 111.11(3), Tables 1 and 2 | ARC 5523 | 5/22/85 |
| Barber examiners, board members, 152.111  | ARC 5524 | 5/22/85 |
| Social work examiners, code of ethics, 161.212 to 161.217   | ARC 5496 | 5/8/85  |

No question re 138.204(1) or chapter 147 and 147.98 et al.

144.2(5)

O'Kane was informed that formal Continuing Education programs exist for optometrists. Fox pointed out that the Optometry Board had CE prior to passage of Code

149.7(1)

chapter 258A. In reviewing 149.7(1), O'Kane failed to see the need for an "exact graduation date." According to Fox, this was statutory.

HEALTH  
DEPARTMENT  
Continued

Re 160.6(2), O'Kane asked if out-of-state applicants were charged more. Fox answered in the affirmative. Doyle thought an explanation might be needed in the rules and he suggested \$25 for background check from the state from which the barber transferred.

ch 111

Guely highlighted important areas in the renal disease rules pertaining to last resort financial assistance for individuals who need dialysis or transplant. A cap rate was placed on monthly funding for individuals ineligible for medicare coverage. The Department will pay for a patient's portion of the premium--1985 poverty guidelines for eligibility were adopted. The appeal process was amended. Discussion of possible emergency rule to authorize 100 per cent of the expenses.

Guely spoke of the difficulty of following the rules process when quick changes are necessary to obtain maximum benefit for the patient while staying within the budget. Royce saw problems with paying less than amounts set out by rule. According to Guely, the appropriation is \$940,000 and a substantial sum will be reverted this fiscal year. In re 111.6(1)b(1), Guely thought it was fair distribution. No action taken.

111.8(1)

Doyle questioned the six months' provision in 111.8(1) and recalled that, in similar instances, it would be two years. Piatt interjected that most people do not know two years in advance that they will require treatment. No action. No questions re 152.111.

Social  
Workers  
161.212 -  
161.217

Clark expressed concern that guidelines were needed for 161.213a. She could foresee hesitancy on the part of a client to confide in the social worker because of the rule. Clark viewed the rules as requiring perfection from social workers. Fox admitted that confidentiality was a problem area. No action taken.

NURSING  
HOME  
ADMIN.

There was brief explanation by Fox re Nursing Home Administrators Board of Examiners as follows:

Continuing education, attendance record report. 3.7 ARC 5485 ... 5/8/85

No questions.

ch 79

Eckoff reported on comments made at the hearing held this morning on revised chapter 79. Ten people were in attendance and three written comments were received. One suggestion was to add a definition of "board of health." Clark called attention to "board of health" in 79.5 and asked if that referred to local boards of health. Answer was in the affirmative. She recommended that it be clarified.

79.4(3)d

Doyle asked if "standards" referenced in 79.4(3)d were in rules. Eckoff was willing to incorporate them as rules, if necessary. The reference will be deleted until decision is made.

HUMAN  
SERVICES

6-11-85

Mary Ann Walker, Vernon Woodard, Carl Meisel, Dan McKeever, Robert Lippman and Dick Moore appeared for Human Services. The agenda follows:

ADC, general public assistance, medical assistance, collections. 40.1(2), 40.1(5), 40.7(4)<sup>e</sup> and "f." 41.1(5)<sup>b</sup>, 41.2(3), 41.2(7)<sup>b</sup>, 41.4(1)<sup>f</sup>, 41.5(6), 41.6(1)<sup>h</sup> and "i." 41.6(2)<sup>b</sup>, 41.6(8)<sup>d</sup>, 41.6(9), 41.7, 41.7(2) and "a" to "e." 41.7(5), 41.7(6)<sup>n</sup> and "u." 41.7(7)<sup>r</sup>, 41.7(8), 41.7(9)<sup>a</sup> (1), (2) and (5), 41.7(9)<sup>b</sup> (1) and (2), 41.7(10), 41.8, 42.6, 46.4, 46.4(5), 46.4(6), 46.5, 46.5(3)<sup>d</sup>, 46.5(4), 59.3(5), 59.5(4), 75.1(19), 75.1(20), 75.1(21), 95.3(1) to 95.3(4) ARC 5516 .. 5/22/85  
Unemployed parent workfare program. 59.6(13) ARC 5517 .. 5/22/85  
Medical and health services, genetic counseling clinics. 77.25, 78.27, 79.1(2) ARC 5518 .. 5/22/85  
Amount, duration and scope of medical and remedial services, nonprescription drugs. 78.1(2)<sup>f</sup>, 78.2(1)<sup>d</sup> ARC 5519 .... 5/22/85  
Foster parent training. 113.8, 156.18, ch 117 ARC 5520 .. 5/22/85  
Supplementary assistance standards. 52.1(1) ARC 5490 .. 5/8/85  
Supplementary and medical assistance, level of reimbursement. 54.3(11)<sup>e</sup>, 81.6(11)<sup>e</sup>, 82.5(11)<sup>e</sup> (4) and "k" ARC 5491 .. 5/8/85  
Federal surplus food program. 73.4(3)<sup>c</sup> and "d" ARC 5500 .. 5/8/85  
Collections, nonassistance child support recovery program. 95.1, 95.6(7), 95.7(1)<sup>b</sup> (2), 95.7(9), 96.5, 96.9, 96.12, 96.13 ARC 5527 .. 5/22/85  
Eldora training school, detention. 103.14(1) ARC 5498 .. 5/8/85  
Family-centered services. 130.3(1)<sup>e</sup>, ch 182 ARC 5526 .. 5/22/85

In re ADC general public assistance, Walker distributed comments from the public hearing which resulted in clarifying amendments. Two major changes: (1) The 4-month limit on the \$30 disregard of earned income is extended to 12 months. The 1/3 disregard income continues to be limited to 4 months. If a recipient who had been canceled came in and reapplied, they would get the 8 months, regardless of when application was made. (2) Child support rules had a major change--when two payments came in the same month, a change was needed to permit the \$50 rebate for both payments to implement the intent. No questions.

59.6(13) No change since Notice in 59.6(13). The audit process with respect to Community Action Agencies was discussed. No questions re 77.25, 78.27, 79.1(2).

In re 78.1(2)<sup>f</sup> and 78.2(1)<sup>d</sup>, changes were made in strength of drug after consultation with the Board of Pharmacy.

No questions re foster parent training rules and 52.1(1). Brief explanation by Walker of 54.3(11) et al, 73.4(3), chapter 95 and 103.14(1). No recommendations were offered.

ch 182 In review of chapter 182, Walker stated that "health services" were not specifically defined. Clark reasoned that 182.5(1) could be less "complicated." Moore said the program was an attempt to make six services available to families in need. However, the program needs flexibility. The therapy service or the parents' guild development service may be a complete service package. Allied services were reviewed by Moore and he said that it was not specifically defined. According to Walker, homemaker health care would be the most common service. Committee in short recess to return to Committee Room 24.

COMMERCE Dennis Downing and Cindy Dilley represented Commerce  
COMMISSION Commission for:

Gas, electric and telephone utilities, unclaimed deposits. 19.4(7), 20.4(8), 22.4(2)<sup>f</sup> and "g" ARC 5504 .. 5/8/85  
Gas and electric utilities, winter energy assistance. 19.4(15), "h" (5), 20.4(15)<sup>h</sup> (6) ARC 5546 .. 5/22/85

Also present: Don Williams, Northwestern Bell Telephone.

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COMMERCE  
COMMISSION  
Continued

After brief explanation by Downing, Priebe asked what would be considered a reasonable effort to return an unclaimed deposit. Downing said it would be decided on a case-by-case basis. Priebe wondered if it were worth the effort. Parker had no problem with the amendment. No other comments.

In re winter energy assistance, Downing said the amendments to rules 19.4 and 20.4 provide that utilities with less than 6,000 customers have the option of notification through advertising in newspapers or customer newsletters. No questions by ARRC.

PLANNING &  
PROGRAMMING

Suzanne Barr appeared for OPP to discuss the Iowa community development loan program, ch 25, ARC 5503, Notice, IAB 5-8-85. Barr said changes were made for clarification. Examples of local cash resources and administrative expenses were added. Also, project costs could be incurred on the contract effective date, rather than after execution of it--the contract process is lengthy. Barr continued, "A city pays 6/10ths of one per cent of the origination fee"--that will now be nonrefundable.

O'Kane noted that the statute did not speak to the refund and Barr admitted that was true and the rule was really clarifying.

Parker took the position that 25 points awarded to cities or counties for unemployment rate was somewhat low--25.5(4)d. Priebe agreed and thought the intent was for additional jobs. Barr said that would be implemented under the need and impact area which considers number of jobs created and the number needed in a city or county. O'Kane was doubtful the statute gave that much authority. Committee consensus was that language should be changed to coincide with the statute.

Clark recommended that OPP be defined in the rule so the acronym could be used. Barr was amenable.

CORRECTIONS  
DEPARTMENT

Broxann Keigley was present for consideration of furloughs, home work release, jail facilities, 20.12, 44.9, 50.2(2), 50.9(2), ARC 5501, Filed, IAB 5-8-85. Keigley noted two changes since the Notice. In response to the Ombudsman's Office, 20.12(1)a was clarified.

Doyle raised question as to use of "dismissal" and Keigley informed him that the federal system follows the procedure as written in the rule. Clark wondered, from the legal standpoint, how can you say, "Any inmate having committed 'these things'" and use "dismissal"? Keigley responded that the Attorney General indicated that the federal system will use that kind of background information. The other change in the rules pertained to fire marshal standards and it has been approved by all concerned. No other questions.

AGRICULTURE  
DEPARTMENT  
ch 14

John Hinshaw appeared on behalf of Agriculture to review registration of Iowa-foaled horses and Iowa-whelped dogs, 14.15(4), 14.40, 14.41, ARC 5489, filed, IAB 5-8-85. He stated that interested parties were satisfied with the rules with the exception of the Racing Commission. The Commission opposed the two-year residency requirement. Priebe had a problem re length of time to receive registration forms after filing but Hinshaw said that would be within two weeks at the most. Hinshaw explained that the fifteen-day requirement in 14.41 would be fifteen days after the owner receives the registration.

Recess

Chairman Priebe recessed the Committee at 3:35 p.m.

Wednesday  
June 12

Committee was reconvened at 9:05 a.m. in Committee Room 24 with Chairman Priebe presiding. A quorum and staff were present.

FAIR BOARD

The Fair Board was represented by James Taylor, Secretary, Jerry Coughlon, William Riley, Board Member, William Fisher, and William Nielsen, State Director of Employment Relations. Also present: David Parker, Joseph Crook, Alan Soroka, and other Fair Patrol personnel. The following rules were considered:

Admissions; traffic, parking and public safety; campgrounds; concessions; admittance and use of fairgrounds.  
1.4(1)a." ch 2, 3.4, 4.28(3), ch 8 ARC 5513 ... 5/22/85

1.4(1)

No recommendations were offered for 1.4(1). Discussion centered on amendments addressing traffic and parking. Taylor said that existing rules indicate their patrol Department has law enforcement responsibility granted in Code chapter 173. It is the intent of the Board to remove this responsibility from that Department. Taylor provided background. For the past seven or eight years, the Board has employed Security Guards I authorized by Merit Employment. Twenty to thirty part-time employees worked intermittently during off-season events and the State Fair. Salaries have progressed from \$2.50 to \$5.00 hourly. Taylor continued that this practice may not have been in the best interest of the state. They have negotiated and agreed that those performing Security Guard I work will be classified and entered in that position. Taylor continued that if the part-time patrol officers are considered as Security Guards I, the Board will be required to provide 30 hours of on-the-job training to ensure qualification as reserve officers. Likewise, if they carry weapons, another 30 hours of training will be required.

With an entry level of \$5.60 hourly, there would be a budget impact of \$8,400--ammunition and instructors would cost \$1500 and \$700, respectively. Taylor stressed that any required equipment must be furnished by the Board at an estimated cost of \$15,000--previously, employees furnished their own. He projected a cost of \$54,000 for four full-time nonfair positions with benefits of \$9,000 for sick leave, vacation, etc., and a draw of \$3,000. The budget would be increased from \$70,000 to approximately \$91,000.



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FAIR  
BOARD  
Continued

Taylor indicated the Board was aware of their vicarious liability when they authorize carrying of weapons. Taylor reviewed duties of patrol officers as set out in the Merit classification. It was his understanding that the Fair Board is unique in requiring Law Enforcement responsibilities under Security Guard I positions. He had surveyed nine state fairs and learned that city and state police provide the law enforcement. According to Taylor, the Commissioner of Public Safety, Des Moines Chief of Police and the Polk County Sheriff approve the changes.

Taylor pointed out that reference to Code chapter 262 would be deleted in 2.3(1). Responding to question by Parker, Taylor stated that if a car race or rock concert were in process, Des Moines Police would probably be utilized. Police protection at special events is included as a part of the contract for the promoter. State troopers who work at the Fair are paid from the highway patrol budget. The State Fair pays lodging and transportation expense. Parker asked if there were incidents to confirm that liability exposure is greater now. Taylor spoke of general awareness today for the liability of a person who carries a gun. Annually, it is addressed in the Legislature and the Courts. Judgment being made is that there is less risk with the professional law officer.

On behalf of the Iowa state fair patrol, Soroka had questions as a result of the public hearing held Tuesday. He contended that the budget was actually lowered as a result of their training. Eleven officers have been certified through the Law Enforcement Academy. Soroka maintained that the Board would still be liable for the security guards, law enforcement officers and contracted off-duty officers. He challenged the inconsistency of the Board in hiring armed security guards for pari-mutuel races.

Prior to this morning, Soroka's group had been unaware of budgetary figures, facts, or other evidence to support the Board's contention of a problem. The officers see the problem as one of a "personality conflict." Soroka pointed out that whenever a local officer is called to the fairgrounds, it will be unfair to those left unprotected. According to Soroka, his group had purchased 99 per cent of their equipment and uniforms. Officers also carry \$2000 radios. He recalled the Secretary confirmed yesterday that there was "bad blood between management and certain members of the patrol." He cited handicap of sworn officers who cannot faithfully execute the office when "ordered to look the other way" for certain offenders. Soroka reasoned that indiscriminate application of the law will inevitably create problems. He had several letters asking that the action be reconsidered. A letter from Councilman George Flagg expressed opposition to the proposed use of Des Moines officers at the fair. A 1973 AG opinion held that the "best way to avoid problems in this

FAIR  
BOARD

area would be to place the responsibility for enforcing laws and state fair rules with the designated special police." Soroka envisioned a three-way liability with the change and urged further study of the matter.

Nielsen offered background on how the security guard classification was created. An agreement was made with AFCSME that Security Guards I would be so classified under their contract. Parker and Nielsen discussed chapter 20 on representation.

Doyle asked if these problems surfaced at the joint committee meeting during session. Taylor replied in the negative. He then explained that the Board does not operate under total budget of the legislative process. They generate funds and pay their own bills. Basically, there was no tax dollar support other than \$29,000 this year from the appropriated budget.

Priebe was informed that 15 officers carry weapons. In response to Clark as to whether the classification prohibited some from carrying weapons, Taylor said the Fair Board makes that decision. Clark supported the concept of the Board having authority to make decisions.

- 3.4(3) Priebe voiced opposition to rescission of 3.4(3). He contended some control was needed. After further discussion, Taylor was requested to reinstate the language in 3.4(3) and to include exceptions. Doyle observed that
- 3.4(4) 3.4(4) prohibited operation of generators after 10:00 p.m. He asked for inclusion of a time when operation could resume.
- 2.5 Doyle interpreted 2.5 as precluding concessionaires from selling or giving away knives at the fairgrounds. He suggested inclusion of the word "concealed" before "hunting knives."

Priebe suggested emergency adoption of the rules to allow implementation by August 15--State Fair. In response to Priebe, Taylor said charge for concessionaire has changed from front footage to percentage of gross. In Taylor's judgment, the system is working very well.

EXECUTIVE  
COUNCIL

Doyle in the chair. Eldon Sperry was present for discussion of chapter 6, Health Maintenance Organizations, filed as ARC 5420 in 4-10-85 IAB. The rules had been delayed for 70 days to allow time to research whether specific dates certain should be included in federal references. Royce reviewed the policy followed by agencies in using a date certain in CFR citations. It was his opinion that, when federal law or regulations pre-empts state law, no date would be necessary. Priebe resumed the chair.

After further discussion, Sperry agreed to include a date in subrule 6.3(1). Final action deferred. See page 3133.

6-12-85

ENGINEERING  
EXAMINERS &  
LAND SURVEYORS

Patricia Peters, Executive Secretary, and Cheryl Richardson, Board Member, and Tom Hanson, Attorney, appeared on behalf of the Board to review administration, amendments to chapter 1, ARC 5522, Notice, IAB 5-22-85.

The Committee was informed that amendments were intended to economize the hearing process. Clark called attention to grammatical errors. She preferred that 1.10(1) be shortened and she opposed use of the expression "complained of" in 1.10(3), line 7. Clark wondered if "or quorum thereof" were needed in 1.24(1). She preferred specifics. In re 1.25, notice for rehearing, Royce advised Clark that a notice of denial was not needed. Hanson was willing to delete the "s" from "facts" in 1.28(4).

Discussion of quorum provisions. It was consensus that rule 1.21 needed clarification because five votes are required but nothing is said that a vote of four constitutes a quorum needed for a decision.

MERIT EMPLOY-  
MENT DEPT

Clint Davis, Acting Director, Merit Employment Department, presented the following:

Definitions, overtime, performance planning and evaluation, emergency leave, compensatory leave. 1.1. 4.6. ch 13.  
14.4. 14.9 ARC 5532 ..... N ..... 5/22/85  
Classification plan. 3.1(6). filed emergency ARC 5510 ..... FA ..... 5/8/85

When explaining pay plan amendments, Davis pointed out that the clerical unit will be under collective bargaining July 1 and the number who are overtime eligible for premium pay will be reduced. The Department has attempted to equalize contractual and noncontractual personnel. Maximum accrual of compensatory time was reduced from 90 to 80 hours. Doyle and Davis discussed the Garcia case--federal. The Bureau of Labor in Washington, D. C. is taking the new rules under advisement. Davis informed Clark that definition of "immediate family" was commensurate with that for contractual employees.

In response to Royce as to possible problem with waiver of 40-hour restriction for emergency leave, Davis thought it unlikely that a supervisor would deny the legitimate use of emergency leave. Discussion of statutory right for performance evaluation at least annually and the difficulty in getting management to cooperate. No questions on 3.1(6).

Motion- 70-day  
delay lifted

Clark moved to lift the 70-day delay imposed on chapter 6 of Executive Council rules. Motion carried.

REVENUE  
DEPARTMENT

Carl Castelda, Deputy Director, and Michael Cox were present to review:

Determination of net income, nonresidents and part-year residents. 40.18(8) ARC 5528 ..... F ..... 5/22/85  
Semiannual mobile home tax. 74.1 to 74.7 ARC 5529 ..... N ..... 5/22/85  
Cigarettes and tobacco, taxation, administration. 81.1. 81.4(11) "e." 81.4(12) "d." 81.8(1) "a." 81.14. 81.15. 82.2(3).  
82.10(1) "c." 82.10(2). 82.10(3) "a." ARC 5492 ..... N ..... 5/8/85  
Cigarette tax, retailer's permit. 82.1(7) "a." ARC 5530 ..... N ..... 5/22/85  
Hotel and motel tax, administration, amendments to chs 103, 104 and 105 ARC 5531 ..... N ..... 5/22/85

REVENUE  
DEPARTMENT  
Continued

No questions re 40.18(8) or 74.1 to 74.7. According to Castelda, changes in chapters 81 and 82 were basically cleanup and gender modifications. No questions.

In re 82.1(7)a, the Department worked with county treasurers and municipalities in formulating a renewal sticker to be issued in lieu of a new permit. No questions. Amendments to the hotel and motel tax rules, chapters 103 to 105 are part of the Department's continuing effort to bring rules up to standard. Priebe expressed his continuing dissatisfaction with this tax. As a point of information, Castelda said that local option sales tax would result in three taxes being imposed on a motel room. No action taken on Revenue rules.

SOIL CONSER- The following rules were presented by Kenneth Tow on  
VATION DEPT. behalf of Soil Conservation:

Surface coal mining and reclamation operations, 4.6(8)b, 4.61 ARC 5545 *FE*..... 5/22/85  
Surface coal mining and reclamation operations, amendments to ch 4 ARC 5542 *N*..... 5/22/85  
Iowa financial incentives program for soil erosion control, 5.20(20), 5.20(25), 5.31, 5.32(3)c, 5.32(4), 5.32(6)c, 5.53,  
5.54, 5.60(5), 5.60(7), 5.60(8)d to "f", 5.70, 5.71, 5.72(3), 5.74(1), 5.74(3), 5.74(4), 5.74(5)c, 5.74(6),  
5.81, 5.83, 5.84, 5.91, 5.92, 5.95(1), 5.95(2) ARC 5543 *N*..... 5/22/85  
Iowa financial incentives program for soil erosion control, conservation practices revolving loan fund, 5.41, 5.55(4)b,  
9.10, 9.22(3), 9.23(1) ARC 5544 *N*..... 5/22/85

Subrule 4.6(8)b and rule 4.61 provide a point schedule similar to federal regulations for assessment of penalties in the regulatory side of the coal program. The rules implement HF 531[1984].

ch 4 According to Tow, amendments to chapter 4 will comply with federal standards. Tow noted that remedial changes were made throughout Incentives Program rules. With  
ch 5 respect to rule 5.41 et al, Tow said that General Assembly funding for the cost-share program and revolving no-interest loan program is incorporated into the existing program. Because of the fall construction season, the Department intends to seek emergency implementation of these amendments after a hearing is held. In conclusion, Tow explained that 5.41(8) allocates funds for implementing nonpoint source pollution control efforts in the Big Springs Basin, Clayton County, and limestone area in northeast Iowa. No questions.

REAL ESTATE  
COMMISSION

Kenneth Smith and Jenny Netcott were present on behalf of the Real Estate Commission for consideration of:

Brokers and salespersons, offering of prizes, 1.20, filed emergency after notice ARC 5521 *FEAN*..... 5/22/85  
Accreditation of real estate schools, 3.3(2), 3.4(1) to 3.4(3), 3.5, 3.8(2)c, filed emergency ARC 5525 *FE*..... 5/22/85

Also present: Bud Ewell, Iowa Association of Realtors.

With respect to rescission of rule 1.20, Smith reminded ARRC members that emergency action was necessary. Brokers will no longer be restricted from offering monetary inducements to buy or sell real estate. Priebe was assured that Iowa would have been in violation of federal law and the Constitutions. Priebe saw an advantage for the larger real estate companies. No questions on 3.3(2) et al.

6-12-85

WATER, AIR &  
WASTE MANAGE-  
MENT DEPT.

Michael Murphy presented the following rules for Water, Air and Waste Management:

Administrative penalties, ch 10 ARC 5507 .....N..... 5/8/85  
Certification of operators of water and wastewater systems, 81.5(4), 81.6(1) ARC 5508 .N..... 5/8/85

ch 10

In presenting chapter 10, Murphy recalled that the AG's office had opposed a previous proposal of a general enforcement policy. The AG wanted to avoid additional elements which would have to be defended in court. The new version describes the screening process and criteria for assessing administrative penalties.

Repetitious language in 10.3(2) was noted. Subrule 81.5(4) implements 1984 Iowa Acts, chapter 1099, §2, and will reduce qualifications for licensure of small water distribution systems that have no water treatment.

Parker was interested in information relative to disposal of dry cleaning fluid by a dry cleaner's shop. Murphy asked Parker to send him a memorandum and he would pursue the matter.

ENERGY POLICY  
COUNCIL

Jim Smith, Director, Energy Assistance, and Sue Downey, Coordinator, Energy Assistance, were present to review:

Low-income home energy assistance program, ch 14 ARC 5515. A..... 5/22/85

No recommendations were offered.

IOWA HOUSING  
FINANCE  
AUTHORITY

Larry Tuel, General Counsel, was present for the Housing Finance Authority to consider small business loan program, professionals, 5.22(4), ARC 5534, filed, IAB 5-22-85.

According to Tuel, subrule 5.22(4) will clarify the degree of involvement by professionals in projects funded through the small business loan program. The Department looked at state law, federal statute governing use of industrial development bonds and revenue rulings from IRS which limited to 50 per cent the amount the professional could own and use.

Tuel responded to question by Clark that historically recognized professions were law, medicine, farming and clergy. Clark inquired if most small business loans were made to retail establishments. Tuel indicated a "pretty good mix." Tuel emphasized that the developer cannot own more than 50 per cent and also occupy more than 50 per cent, if a professional, e.g., a doctor could own 100 per cent of the commercial building and occupy 25 per cent as a tenant. Tuel continued that the problem arises when the professional meets both of the tests; he owns 100 per cent and occupies 100 per cent, which in the Department's judgment, was not legislative intent. There was general discussion of application forms and the process.

ATTORNEY  
GENERAL

Linda Thomas Lowe, Iowa Consumer Protection Division, Attorney General's Office, reviewed the proposed procedural rules for the administrator of the Consumer Credit Code, being chapters 10-12, IAB 5/8/85. The rules also set out procedures for declaratory rulings and actual rulemaking.

In response to Doyle, Lowe said the Code provides that the AG or a designee shall serve as the administrator. In response to Royce, Lowe said declaratory rulings would be issued on the meaning of the Consumer Credit Code itself. Royce saw that as discouraging court action. She did not disagree. No action taken.

No Agency  
Reps

No agency representatives were requested to appear for the following:

CHILDREN, YOUTH AND FAMILIES, COMMISSION ON[205]  
Organization, ch 1 ARC 5505.....N.....5/8/85

LABOR. BUREAU OF[530]  
Occupational safety and health standards. 10.20 ARC 5502. ~ 5/8/85

NURSING. BOARD OF [590]  
 Licensure to practice - RN/LPN. 3.1(6)r." 3.4(3)rC73). 3.4(4)rB73). 3.4(5)rB73). 3.4(6)rB73). ABC 5312 ..A..... 5/22/85

TRANSPORTATION, DEPARTMENT OF [820]  
Financial assistance, urban transit system. (09 B) 13274. ARC 5405 F 5/8/85

Committee Royce was directed to research as to agencies which are  
Business not in compliance with chapter 17A. Doyle inquired as to  
whether or not a solution was reached re use of "warehouse-  
man." Barry responded that information from the Grain  
Division revealed that Iowa and Minnesota were the only  
states to attempt gender changes in uniform Acts.

July & August Meetings      The July meeting was scheduled for July 8 and 9, 1985. There was discussion as to possible meeting outside the Capitol Complex. A suggestion was made to meet in Dubuque in conjunction with "Dubuque Days." The August meeting was tentatively set for August 15 and 16, 1985.

Adjourned Chairman Priebe adjourned the meeting at 12:20 p.m.

Respectfully submitted,

*Phyllis Barry*  
Phyllis Barry, Secretary  
Assisted by Vivian Haag

**APPROVED:**

**CHATRMAN**