

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, October 18 and 19, 1983, in lieu of the statutory date of October 11, 1983.

Place of Meeting: Meeting was convened in Room 116, State Capitol, Tuesday, October 18, at 9:07 a.m. with Vice Chairman Schroeder in the chair.

Members Present: Roll call was requested: Senators Donald Doyle, Dale Tieden, Representatives Laverne Schroeder and James O'Kane were present. Members absent: Senator Berl Priebe, Chairman, having reported he would be on vacation; Representative Ned Chiodo, excused to attend another meeting; Senator Doyle was excused after convening to attend subcommittee meeting on sentencing.

Vice Chairman Schroeder recessed the Committee and he reconvened it at 10:06 a.m.

HEALTH DEPARTMENT

Health Department representatives present were Peter Fox, Mark Wheeler, Hearing and Compliance Officers; Irene Howard, Director, Licensing; Carson E. Whitlow, Vital Records; Grace M. West and Nancy Welter, Cosmetology; John Fairweather, Liaison from Human Services Department was also in attendance.

The following agenda was reviewed:

Vital records, fees, 96.4	ARC 4039	.....	N	9/14/83
Physical and occupational therapists, fees, 137.6, 138.207	ARC 4038	.....	N	9/14/83
Podiatrists, examinations, fees, 139.14, 139.34, 139.35	ARC 4039	.....	N	9/14/83
Hearing aid dealers, license fees, 145.10	ARC 4040	.....	N	9/14/83
Board of optometry examiners, 143.10, 169.4	ARC 4082	.....	N	9/25/83
Hearing aid dealers, unethical practice, 145.215(S)	ARC 4081	.....	N	9/25/83
Speech pathologists and audiologists, license fees, 155.7	ARC 4011	.....	N	9/14/83
Cosmetologists, 160.7(1) to 160.7(4)	ARC 4042	.....	N	9/14/83

Vital Records

In the matter of vital records, Wheeler reported the public hearing would be held later today. The rule establishes policy that overpayments of less than two dollars for copies of or searches for vital records will not be refunded. Schroeder took the position that all refunds should be processed. Whitlow said that 7000 refunds are made annually. He spoke of the administrative cost involved in the 40 percent \$1 refunds for fiscal year '81. Refunds must be made by warrants. O'Kane viewed the matter as a classic case of "let the buyer beware." Department officials believe adequate information is provided but would welcome telephone calls.

137.6, 138.207

In re 137.6, 138.207, Fox indicated the Comptroller's office has directed that fees are to be revised to pay for all costs involved with licensing including indirect costs of staff, Auditor's and Governor's office.

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Health
Dept.
(cont.)

Fox agreed to reword 137.6(4) to avoid misinterpretation. As a result of comments from the Occupational Therapy Association, the initial and renewal fees have been tentatively reduced for occupational therapists and assistants. O'Kane was informed by Howard that nonrefunding of fees had been in the rules for years --138.207. Howard explained that if continuing education hours are completed prior to license lapse, the Department will not impose the reinstatement penalty -- she added that approximately six months completes the cycle. Schroeder suggested that 138.207(4) and (5) be combined.

Podiatrists
Ch 139

O'Kane pointed out that podiatrists' fees would be doubled within two years. Indirect cost was reviewed by Fox. Schroeder opined that indirect costs of the Governor's office were excessive and he suggested that Graf inquire into that part of the directive. Graf suspected they would be minuscule when spread among all state agencies.

Hearing
Aid
Dealers
Ch 145

Howard explained a temporary permit allows someone entering the field to practice as an apprentice for one year without requiring post-high school training. General discussion of "street corner sales" of hearing aids. No recommendations re 143.10, 160.4.

Fox noted that 145.212(8) was intended to address problems of unethical practice as grounds for disciplinary action. Upon recommendation by O'Kane, Fox was amenable to clarification of the subrule re advertising.

Cosmetology
155.7

In re 155.7, Tieden asked for explanation of what appeared to be double expense. West explained that the application fee is \$25 and the permanent license is \$80. A temporary license is \$40. West emphasized that an application does not necessarily result in licensing, thus the reason for the \$25 charge.

160.7(1)

There was discussion of license fee increases -- 160.7(1). Schroeder viewed 160.7(3) as a "flagrant restraint of trade". Welter contended that three inspections were needed prior to the opening of a school. Costs vary because of distance traveled -- up to \$600. West supported the increase and said the Board was self-supporting -- extra funds revert to the state's General Fund. Schroeder questioned Board as to available financial criteria for prospective school owners. West assured him that individuals who start schools were financially stable. Schroeder contended a beauty school license should be consistent, whether it be the first year or any year thereafter. At the recommendation of the Administrative Rules Review Committee, West and Welter agreed to reinstate the \$500 fee for license to conduct a cosmetology school--160.7(3). O'Kane recommended the Board prepare some pertinent figures on the issue for Committee perusal. The Board was requested to work with the Governor's Coordinator to arrive at an average cost for start up and continuation of the schools. No further discussion.

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ARTS
COUNCIL

Marilyn Parks represented Arts Council for review of:

ARTS COUNCIL[100]
Programs, grants-in-aid, 2.3(2) a", 2.3(6), 2.3(7) a", 2.3(10) a" ARC 4020 F 9/14/83
Youth arts alternative program, 2.3(18) ARC 4019 F 9/14/83
Programs, training grants, 2.3(1), 2.3(2), 2.3(3), 2.3(6), 2.3(8) ARC 4025 N 9/14/83

Parks assured Schroeder that only the for-profit sector was excluded from the programs. Those who are nonprofit and have not yet become tax exempt may apply through fiscal agent. O'Kane questioned 2.3(2)a(5) with respect to determining "legal residency." Parks admitted this area had created some difficulty since Iowa residency is not defined. The Council was trying to be territorial but wanted to direct the funds to people of Iowa. There was general discussion of residency. Graf agreed the definition was somewhat "loose." Royce called attention to an excellent rule on residency in Chapter 38 of the Revenue Department rules.

2.3(18) Parks informed Schroeder that "in-kind matching funds" must be documented in a final report. Discussion of training grants program. Tieden was advised that guidelines in 2.3(2)b(1) were changed for training grants. Re 2.3(3)c, Tieden was told the performer is responsible for booking the tour following rules set by Council. Payment of shipping costs has not been a problem.

IOWA
FAMILY
FARM
AUTHORITY

William Greiner, Director, was present to review the following:

IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]
Beginning farmer loan program, issuance of bond, 2.12 ARC 4016 F 9/14/83
Soil conservation loan program, issuance of bond, 4.4 ARC 4047 F 9/14/83

Greiner indicated loans were spread throughout the state but predominantly in Northwest Iowa. Tieden referred to 2.12(175), and inquired if a secretary could conduct a public hearing. Greiner replied in the affirmative if the person were qualified. Greiner briefly reviewed bond rates and pointed out some of the 230 loans have been made totaling approximately \$15 million -- some as low as \$7000.

CREDIT
UNION

Betty Minor appeared on behalf of the Credit Union Department for the following agenda:

CREDIT UNION DEPARTMENT[205]
Small employee groups, 5.1(2), 5.2, 5.5 ARC 4024 F 9/14/83
Credit union share drafts, ch 7 ARC 4025 F 9/14/83

Also present: Paddy Kalahar, Director, Public Relations, Iowa Credit Union League.

5.1(2)

5.1(2), 5.2, 5.5 ARC 4024 -- Minor reported that the exclusionary clause had been deleted as a result of the public hearing. Iowa Bankers Association had expressed opposition to the 750 employees being designated as a small employee group. Minor reviewed the application process time frame. There was brief discussion 1983 Acts, SF 90, which necessitated rescission of chapter 7 re share drafts.

REAL
ESTATE
COMMISSION

10/18/83

Gene Johnson, Director, and Ken Smith, Assistant, were present to discuss brokers and salespersons, renewal procedures, 1.7, ARC 4034, Filed, IAB 9/14/83 identical to that published under Notice. O'Kane in the chair. Johnson stated that the Board was trying to discourage late filing of renewal applications because of resulting legal complications. O'Kane referenced the fact that Senator Doyle considered increase in penalty from \$20 to \$90 to be excessive. Johnson had been on vacation when that question was before the Board. He reiterated his support for the change since brokers or salespersons would be unlicensed if they failed to renew within the time frame. Johnson estimated 165-170 out of approximately 19,000 licensees would be affected. It was anticipated that 5400 licenses would be renewed this year. Schroeder preferred a \$30 late fee. After 3 or 4 delinquent filings, the individual should be required to retake the examination. O'Kane reasoned the licensee should be responsible. No further questions.

Recess

Schroeder recessed the Committee for lunch at 11:45 a.m. and reconvened it at 1:40 p.m.

REVENUE
DEPT.

The Revenue Department was represented by Carl Castelda, Deputy, Michael Cox, Property Tax Division, Clair R. Cramer and Don Cooper. Also present: Jack Soner, Lobbyist.

Castelda reviewed the following:

REVENUE DEPARTMENT[730]

Sales and use tax, 12.9, 13.1, 13.2, 13.6, 13.7, 13.9 to 13.11, 13.13, 15.4(3), 15.12(4), 15.19(3), 18.4, 18.13, 19.12, 20.11, 21.3	
ARC 4095	F 9/28/83
Determination of taxable income, itemized deductions, 41.5(4) ARC 4028	F 9/14/83
Motor fuel, 61.3, 61.4(3), 61.4(4), 61.5, 61.15 ARC 4096	F 9/28/82
Real estate transfer tax and declarations of value, 79.1, 79.5(5) ARC 4029	F 9/14/83
Cigarettes and tobacco, 81.1, 82.4(1) "b", 82.5(2), 82.7, 81.2(1), 81.2(2) ARC 4097	F 9/28/83
Games of skill, chance, bingo and raffles, 91.1, 91.6(1), 94.1, 94.2(1), 91.3, 94.5 ARC 4098	F 9/28/83
Practice and procedure, contested case proceedings, 7.17(5) ARC 4091	N 9/28/83
Allocation or apportionment of investment income, 51.2 ARC 4027	N 9/14/83

Sales
Tax

Castelda commented that the Department was undergoing reorganization and he asked permission to highlight their legislative package for 1984 after rules were reviewed. Castelda noted that the \$1 sales tax permit fee had been eliminated. Schroeder brought up the matter of taxation of parts and labor on trucks. Castelda was aware of statutory exemptions in surrounding states, but added that the Department was consistent with the law. If there is concern about truck lines moving into Nebraska from Iowa, they would recommend some study be conducted of statutory structures. They were willing to assist the legislature in studying the matter. Tieden brought up the matter of colored fuel in Canada. Castelda suspected the U.S. fuel industry would resist the practice and it would be impossible to administer in Iowa. No questions were raised re chapter 79 amendments. Castelda advised O'Kane that the Director of Revenue has no authority over the marketing policies of the tobacco industry. As a result of new packaging, tobacco companies agreed to buy excess stamps held by the state.

Games of skill, chance, bingo and raffles rules were before the Committee. Castelda noted that problems still exist in the area of gambling and he would allude to that in the legislative proposal.

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Revenue
Dept.
(cont.)

In summarizing 54.2, Castelda said that Iowa Taxpayers Association and Iowa Manufacturers Association had expressed opposition to 54.2(2). The Department will be filing a compromise amended notice which will return an option approach. However, once selected, the option is fixed.

Proposed
Legisla-
tion

Castelda discussed their legislative package.
Bill re gambling:

Deletes concessionnaires quarterly report.

Provides statutory due dates of returns in order to determine delinquency.

Corrects legislative oversight dealing with limit on raffle tickets at fairs.

Expands list of qualified organizations to include such groups as Knights of Columbus, Jaycees, nonprofit country clubs and AMVETS, etc.

Provides authority for Director to revoke license for rule violation.

Castelda discussed some areas relative to gambling -- possible revocation of license for 3 years rather than forever. Discussion of possibility of ARRC sponsoring the bill. Castelda anticipated the package would be ready around November 1.

Another proposal dealt with tax on executive search agencies, a matter of interest to Representative Betty Clark. Castelda was requested to send that to Royce. Another issue would address penalties for late filing of income tax returns. Proposal A would eliminate penalties and impose a higher interest rate. The other proposal and one that the Department supports would provide a flat penalty of 5% - 10% and keep the interest. Schroeder thought an economic impact should be considered. Tieden interjected that kind of legislation should be referred to the Ways and Means Committee. Castelda briefly discussed the pending reorganization of the Department, where he will serve as Acting Director of Technical Services Division.

PLANNING
AND
PROGRAM-
MING

Dave Patton appeared to review the following:

PLANNING AND PROGRAMMING[630]

Iowa job training partnership Act program, complaint procedure, 19.21, ~~filed emergency after notice~~ ARC 4030 FFAN, 9/14/83

19.11(2)

O'Kane was informed by Patton that changes made had been requested by ARRC. Conflict of interest provision in 19.11(2) was dropped and will be printed in the 10/12/83 IAB. Schroeder raised question re 19.21(17). Consensus was that the role of the Governor was not very well defined. Court action could not be precluded. Patton informed Tieden that language in 19.21(3) was from CETA.

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OPP Court costs would be borne by whomever filed the complaint--
(cont.) OPP would not provide legal assistance.

PUBLIC Dewey Jontz, Highway Patrol, appeared on behalf of Public Safety
SAFETY Department to review accident reports, 1.4(5), ARC 4026, Notice,
IAB 9/14/83. Jontz assured Schroeder the legislative change was
1.4(5) included in the rule. Police agencies are allowed to sell reports
such as DOT has over the years, which provides another source
for insurance carriers and attorneys to seek reports. Graf
questioned fact that the \$4 fee must be paid by check or money
order. According to Jontz, checks are used in 99 percent of the
cases. Schroeder suggested substituting: "we prefer check or
money order". Jontz pointed out that cash is accepted presently
but it becomes an administrative problem. The patrol covers 6000
accidents in a year and handles 10,000 reports. There was considera-
tion on the part of the Committee as to acceptance of cash.
Schroeder recommended that the Notice be terminated. O'Kane
suggested eliminating any refunds. Royce advised that cash is
considered legal tender and would have to be accepted under the
law.

7.6(1) No questions were posed re the following: Devices and methods
to test blood for alcohol or drug content, preliminary breath
screening test, 7.6(1), filed emergency ARC 4058, 9/28/83.

Recess Vice Chairman Schroeder recessed the Committee for 5 minutes.

COLLEGE The College Aid Commission was represented by Gary W. Nichols,
AID who reviewed the following:

COMMISSION COLLEGE AID COMMISSION[245]

Scholarship program, restriction, 2.1(5)"b", 2.1(S)	ARC 4050, also filed emergency	ARC 4049	FE	9/14/83
Tuition grants, restriction, 4.1(S)	ARC 4052, also filed emergency	ARC 4051	FE	9/14/83
Vocational-technical tuition grants, restriction, 5.1(S)	ARC 4051, also filed emergency	ARC 4053	FE	9/14/83
National guard educational benefits, restriction, 9.1(1)	ARC 4056, also filed emergency	ARC 4055	FE	9/14/83
Iowa guaranteed student loan program, ch 10	ARC 4077		F	9/28/83

Nichols explained the justification for their emergency amendments. Discussion centered on the procedure for defaulted loans--about 12 have been identified. O'Kane was apprised that a student is in default when repayment has not been initiated within 6 months. Nichols continued that a 6-month grace period also exists. When loans are defaulted, the Commission relieves the lender of the obligation. Every effort is made to recover the public funds due. Schroeder reminded Nichols that the Commission had not complied with his request for a listing of those who were refused tuition grants in 1982. It was also noted that bankruptcy does not dismiss a loan obligation.

Ch 10 Chapter 10, which more clearly defines the Guaranteed Student Loan personal interview policy, was scanned. In response to Committee, Nichols took the position that a rule was not needed to implement the 2.8 budget reduction. Tieden suggested Nichols meet with Governor's coordinator to review the matter.

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TRANSPORTATION
DEPT.

The following agenda was before the Committee:

TRANSPORTATION, DEPARTMENT OF [§20]
Designated highway system, changes, (07,A) 1.6 ARC 4079 F 9/28/83
Safety requirements for the movement of implements of husbandry by retail sellers and manufacturers, (07,E) 1.6
ARC 4080 F 9/28/83
Interstate motor vehicle fuel permits and transport carrier registration, (07,F) 7.4(4)a(1), special review IAC

Tom Jackson, Ron Hughes, Carol Willard; Department of Transportation; Beverly Allen; Dan Franklin and Les Holland, Iowa Railway Finance Authority appeared on behalf of the Department. Also present: Ted Yanecek, Farm Bureau.

Jackson admitted to Schroeder that the Commission had partially denied ARRC request re designated highways. However, the Commission reviews the program on a continuing basis. According to Jackson, the 65-foot truck length was of less concern than the extra width and large mirrors. Responding to Schroeder, Hughes said it was their understanding that there was agreement from the industry with respect to these safety standards for implements of husbandry. Yanecek indicated that the Farm Bureau supports the rules. Hughes explained to Tieden that no combination of these implements should exceed 3 vehicles.

1.6(2)e

Schroeder could envision problems with enforcement of 1.6(2)e and recommended rewording. There was discussion of tires marked "unsafe for highway use." Yanecek recalled the original reason was to prohibit use of farm tires on autos at a time when shortage of tires existed. Schroeder preferred "tires used beyond their rate of capacity."

RAILWAY
FINANCE
AUTHORITY

Holland briefly explained the history of 4.3(3) which was identical to that published under Notice of Intended Action. It had received approval by the Rail Advisory Committee. No recommendations were offered.

TRANSPORTATION
Special
Review

The following persons were present for special review of transportation rule [07,F] 7.4(4)a(1), relating to interstate motor vehicle fuel permits and transport carrier registration:

7.4(4)a(1)

Senator Edgar Holden, former ARRC member; Don Breniman, Director, Audits, DOT; Charles W. Burke, Tri-state Transport, Inc.

Holden spoke of a problem which he discovered as a result of a complaint voiced by Burke. Holden considers the rulemaking and forms utilized by DOT to lack uniformity as to information exchanged among the various agencies. He addressed those areas, in particular, taxpayer Form 5 and those used by auditors. He alluded to motor carriers that operate interstate and prorate fuel tax and vehicle tax when all of the fuel is purchased in Iowa. In addition, confusion seemed to prevail with respect to computation of the Iowa and Illinois pumping credits. Holden

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Transport-
ation
(cont.)

contended that the auditor's form for the Iowa interstate fuel permittee lacked a category for fuel used in unloading. Also, he saw a problem with credit allowed for fuel used in off-loading in Illinois since that state uses a different formula. Hughes insisted this was a "narrow issue" since it involved only a few taxpayers out of 23,000 fuel tax quarterly reports filed. Hughes referred to Revenue rule 730--64.7(2) as their basis for administering pumping credits. He suggested that the DOT rule could be amended to reflect that pumping credits are figured according to Revenue rules. Also, the form could reflect information regarding this. Holden and Schroeder were unsure that this would be an acceptable solution. Holden expressed interest in reviewing any proposal by the Department and indicated he would seek corrective legislation, if necessary. It was noted a contested case hearing would be held. Burke thought it was regrettable that much time was wasted on an issue which should have been resolved without a hearing. No formal action.

Recessed

Vice Chairman Schroeder recessed the Committee at 5:00 p.m.

Continued)

10/19/83

RECESSED MEETING OF ADMINISTRATIVE RULES REVIEW COMMITTEE
RECONVENED

Vice Chairman Schroeder reconvened the Committee meeting at 8:50 a.m. Wednesday, October 19, 1983, in Committee Room 22.

Members present were Schroeder, Doyle, Tieden, Chiodo and O'Kane. Staff present: Royce, Graf, Haag, Dodge. William Armstrong, Legal Counsel, was present to review Beer and Liquor Control Department rule as follows:

BEER AND
LIQUOR

BEER AND LIQUOR CONTROL DEPARTMENT[150]

Verification of eligibility to purchase form, 4.32 ARC 3857 (Delay published IAB 8/17/83)F.....7/6/83

Armstrong recalled that ARRC had interest in disposition of the "Verification of Eligibility to Purchase Alcoholic Beverages in Iowa" form and that an Attorney General's opinion had been requested. Royce recapitulated the opinion, along with the history of the rule.

Doyle raised question re the length of time that records would be retained in the store. Several suggestions were offered: 30 days being one. The possibility of requesting legislation was mentioned. After further discussion, Armstrong asked that ARRC send a letter regarding time that forms should be held in liquor stores.

tion

Doyle moved that a letter be sent to the Governor's Open Records Committee, stating ARRC belief that forms should not be retained at the liquor stores for long periods of time. Motion carried. No further discussion.

ENGINEER-
ING
EXAMINERS

3.11

Board of Engineering Examiners was represented by Tom Hanson, Consulting Attorney, and Otto Tennant, Board member. Professional development, 3.1 to 3.14, ARC 4099, filed IAB 9/28/83 was before the Committee. In re 3.11, Continuing education, Tieden was told that health problems or being sent out of the country to work would be considered extenuating circumstances. The point was made that Iowa is the only state that requires CE for engineers. Schroeder recommended that requirement be modified in the future with perhaps a five-year limit. Tennant contended that engineers do not oppose the rule.

HEALTH
DEPT.

Board of
Medical
Examiners
135.110
135.204(10)

Mike Guely and James Krusor appeared for review of:

HEALTH DEPARTMENT[470]

Medical examiners, 135.110, 135.204(10), 135.301(23) ARC 4091F.....9/28/83
Temporary pilot program for an advanced EMT-D study, 122.12 ARC 4090N.....9/28/83

Guely reviewed the pilot program for advanced EMT-D study which, although filed emergency, had been filed under Notice.

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HEALTH
DEPT.
(cont.)

Tieden expressed concern that the program would become mandatory and that could result in loss of service for rural areas. Guely pointed out that prior to July 1978, there were 12 services operating at the advanced level. Guely assured Tieden that the decision to move into the advanced level of care is made by the community. Tieden was hopeful it would remain voluntary. There was discussion of proper course for Department to follow with the EMT-D study rule. Final agreement was that any further action on the Notice would be terminated and the filed emergency rule [ARC 4112 IAB 10/12/83] would stand. According to Krusor, amendments to Chapter 135 set out reinstatement procedures for physicians who have lapsed licenses.

BOARD OF
MEDICAL
EXAMINERS

The Committee took issue with the amendments, in particular 135.204(10). It was their opinion that a stay by a district court raises serious questions as to the validity of the original action. It was Committee consensus that a black mark should be expunged even in a confidential record if a court has overturned an administrative action. Krusor defended the language and declared that the Board does not go "head hunting." Doyle mentioned possible problems for physicians in his area and other border cities. Krusor responded "records of investigative nature are confidential." Doyle requested inclusion of "Upon reversal by the state, that record will be expunged." In his opinion, that would be a compromise. Krusor indicated the Board needs discretion and he was reluctant to amend further.

9:45 a.m.

O'Kane in chair. After further discussion, mention was made of possible objection.

Motion to
delay

Tieden moved to place a 70-day delay on subrule 135.204(10) beyond the scheduled effective date of November 2, 1982. The 135.204(10) motion carried. No further action.

CONSERVA-
TION
COMMISSION

Doyle D. Adams, Superintendent of Parks, Richard A. Bishop, Wildlife Section, Nancy Exline, Associate to Superintendent of Parks, Stanley Kuhn, Chief, Administration Division, Gregory Jones, and John Beamer appeared on behalf of the Conservation Commission to review:

CONSERVATION COMMISSION[290]		
Keg beer regulations, ch 42 ARC 4068	F	9/28/83
Public owned lakes program eligibility list, ch 76 ARC 4069	F	9/28/83
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 103.1 to 103.3 ARC 4070	F	9/28/83
Wildlife habitat stamp revenue cost-sharing with local entities, 23.4 to 23.7 ARC 4071	N	9/28/83
Park and preserves, camping fees, 45.2(4), 45.4 ARC 4075	N	9/28/83
Public employment programs, ch 71, filed emergency ARC 4066	FE	9/28/83
Waterfowl and coot hunting seasons, 107.1 to 107.4, filed emergency after notice ARC 4067	FEAN	9/28/83
Wild turkey spring hunting regulations, 111.1 to 111.4 ARC 4074	N	9/28/83

Exline reviewed changes made in Chapter 42, with respect to keg beer in state parks. Counties were polled; 23 have similar regulations -- two prohibit keg beer in their areas. She recalled that use of the word "kegger" had been opposed by the ARRC. However, Conservation Commission made the decision to use the term.

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Conservation
Commission
(cont.)

According to Exline, there had been few problems with other types of beer parties in parks. She spoke of problems faced by Story County parks since Iowa State University had banned keg beer. Doyle was told the penalty for failure to obtain a permit for the kegger would be a simple misdemeanor.

Schroeder resumed the chair.

Exline noted that no one attended the public hearings. Prior to drafting the rule, the Commission requested an Attorney General's opinion as to whether or not they would be discriminating and response was favorable.

Ch 76 Kuhn made brief comments regarding Ch 76 and noted that the Commission did not include names of the lakes as ARRC had recommended. Schroeder was told that the Commission was unaware of any opposition to the rules. No further comments. No questions were posed re Chapter 71 which was taken out of order to accommodate Mr. Kuhn.

Ch 103 Bishop indicated that no changes had been made to Chapter 103 amendments since the Notice. Bishop explained that I-80 was the dividing line because of low population south of it.

Ch 23 No recommendations were offered for Chapter 23.

Ch 45 Exline said the Notice to initiate camping fees was a followup of the Commission's budget request. The charge for electricity will be increased to \$2.00 per night.

In addition, the Commission also plans to impose a year-round camping fee of \$2.00 for senior citizens and a camping fee for extra vehicles. Tieden requested that these matters also be placed under Notice. Committee concurred.

Ch 107 Bishop reported a major change was that Iowa has been zoned for waterfowl hunting this year. The Commission had been urged to do so for the last two or three years.

Ch 111 No questions were raised re amendments to chapter 111.

Recess Vice Chairman Schroeder recessed the committee for five minutes at 10:25 a.m. Reconvened at 10:30 a.m.

HUMAN
SERVICES
DEPT.

The Department was represented by Mary Louise Filk, John Fairweather, Dan McKeever, Chris Ill, Norma L. Ryan, Stan Monroe, Gary Gesaman, Dan Gilbert, Kathi Kellen and Miriam Turnbull. Also present: Candy Morgan, Iowa Department of Justice; Lyle D. Middleton, Community Care Services, John Stone and Robert Baudino, Dan Schweigher, Iowa Council Health Care Centers; Mary O'Conner, House Democratic Caucus; Don Dunn, Iowa Hospital Association.

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HUMAN
SERVICES
DEPT.

HUMAN SERVICES DEPARTMENT[498]

ADC, granting assistance, 40.1(1), 40.1(18), 40.1(19), 40.4(1), 40.4(3), 40.7(1)"a" and "b", 40.7(4)"b", 40.7(5)"a", "b", "f" to "h",
41.7(1)"h", 41.7(2)"d"(2), 41.7(7)"f" and "s", 41.7(9)"e", 41.7(9)"j" ARC 4063 F 9/28/83
Food stamp program, 65.1(5), 65.20 ARC 4064 F 9/28/83
ADC, granting assistance, 41.7(7)"f" ARC 4059, also filed emergency ARC 4059 NY/FE 9/28/83
ADC, unemployed parent, 42.1(7), 42.4(1)"b" ARC 4062, also filed emergency ARC 4061 NY/FE 9/28/83
Medical assistance, conditions of eligibility, 75.1(6), 75.2, 75.4(2), 75.4(4) to 75.4(6) ARC 4043 N 9/14/83
Scope of medical and remedial services, community mental health centers, 78.16(1) ARC 4044 N 9/14/83
Support recovery, collections, 95.1, 95.6, 95.7 ARC 4083 N 9/28/83
Foster care services, eligibility, placement, 136.2(5), 136.6(4) ARC 4045 N 9/14/83
Intermediate Care Facilities, payment, 81.6(16)a, c and d SPECIAL REVIEW
See ARC 4156, IAB 10/12/83 444

In re ARC 4063, ADC, granting assistance, O'Kane recalled that ARRC had requested copies of the monthly reporting forms and noted they had not been received. Department officials assured the Committee they would hand deliver them today.

- 65.11(8) It was noted that food stamp amendments were identical to those
65.20 filed under Notice. No questions were posed re 41.7(7), ch 42,
75.1, 75.2 and 75.4.
- 78.16(1) Fairweather explained 78.16(1) allows Title XIX reimbursement
for preadmission evaluations of voluntary admissions to mental
health institutes. Also, staff members listed in subrule may be
reimbursed. Chiodo was informed that federal funds would be
received to allow more Title XIX coverage relieving county mental
health boards of some funding responsibility. Fairweather told
O'Kane that although social workers are not licensed, they are
listed in the subrule as mental health professionals. Fairweather
claimed the scope of coverage was not being extended and service
would not change. Vice Chairman Schroeder announced it would be
in order for anyone present to comment on the rules. Fairweather
noted that the Community Mental Health Center Association would
like the subrule to include the counselor and has asked that this
be reviewed again. Human Services does not want to respond
until their Medical Bureau has reviewed that under Title XIX.
- 95.7(8) There was brief discussion of amendments to chapter 95.
Under 95.7(8), the department will refund the incorrect portion
of a federal income tax setoff. Schroeder favored the present
30-day time frame over the proposed 45 days. Fairweather said
the proposal in ch 136 clarified participation on the foster care
review committee. No questions were forthcoming.
- 136.2(5)
136.6(4)
- Special Review
81.6(16)a, c, d Schroeder announced that the Committee would deviate from their
normal procedure and consider proposed amendment to Human
Services subrule 81.6(16)a, c and d, IAB 10/12/83. He stressed
that interested parties would be allowed comment today even
though there would be no formal action taken. The matter would
be included in the November agenda.

Morgan, speaking for the Department, gave an overview of the ramifications of the Executive Order which mandated 2.8 percent budget cut. The Department had examined the best method by which to implement the directive with minimum impact on services to clients. The decision was made to reduce provider reimbursement across the board to a variety of providers -- "including Medicaid and Social Services."

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According to Morgan, the Department utilized both Iowa Code sections 17A.4 and 17A.5 to implement the rules -- the filed emergency, with a November 1 effective date and an identical set of rules to become effective December 1 following Notice.

Morgan cautioned that litigation with nursing homes was in process in federal court. Nursing homes contend the rate was inadequate prior to this action -- based on use of 1981 cost report. Morgan maintained the Department, in making the reduction effective November 1, did nothing to change the allowable cost system for nursing homes. However, both the inflation and incentive factors were removed in determining the prospective payment rate. Chiodo questioned statutory authority and Morgan quoted from the Appropriations bill [H641, 83 Acts].

Schweigher read a statement expressing deep concern of care centers that the incentive replacement factor is being disregarded. It is their belief that it is noncompliance with federal law and neither fair nor equitable. He mentioned the federal Borne amendment as mandating a reasonable reimbursement rate adequate to meet costs of operating a facility. He contended elimination of the incentive factor served to widen an already growing gap between what is received and what is reasonable and adequate. Congress sought to avoid this with the Borne amendment.

He concluded, "Providers below the maximum reimbursement amount of \$28.10 are hit the hardest." Providers below that amount will experience a 6 to 7 percent reduction. Title XIX, outside the program, will have a 4.2 percent reduction. Schweigher urged ARRC to object to the adopted version.

Baudino distributed information packet to committee members and displayed a chart in support of the group's contention. He stated "The Department's finding is incorrect and public comment should be allowed. The November 1 emergency rules have not afforded that opportunity."

In response to Schroeder, Baudino declined to say that a formula should require the higher cost units to assume a larger cut than the lower cost per day units, adding that the issue is more complex than that.

Morgan interceded that choices available to Department were distasteful -- mentioned risk of losing cost allocation in court. In answer to Tieden, Morgan said Department believes they are following federal guidelines. Other options available were reviewed briefly. Several were not considered by the Council for lack of a second.

Chiodo wondered if cuts could have been made with the ICF sector as an exception. Morgan responded since this program funds \$129 million of Title XIX -- half being nursing homes --

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Department could not ignore problem of that magnitude. Priority system was used and the first four options of 19 were cut -- this being #4. It sustained a larger amount than items 5 through 19.

After further discussion, Baudino said his client's position deals with the fact that the state Medicaid system is a result of federal law -- commonly called the Borne amendment. These cuts have no findings -- only necessary because of the state's budgetary process.

Schroeder interpreted the Borne amendment to provide termination of programs should funds be lacking.

Morgan reminded those present that Human Services is in litigation on the advocacy of the Borne amendment and intends to comply.

Baudino said his clients had not directed him to file litigation on the subject but anticipated that would be done. In their opinion, the Department has deprived the ARRC of its rights and he urged objection.

O'Kane posed question as to the impact of appropriations bill language, ... "the current reimbursement methodologies under medical assistance program shall be retained..." Morgan replied that language was "solid at the time" but revenues have not been adequate to support it.

Royce advised that the Committee was empowered to object and to have special review. The adopted rule will be before the ARRC in November.

Dunn commented that the Iowa Hospital Association supports some of the Baudino presentation. The Association was concerned with payment of basic cost. Dunn pointed out that hospitals are no longer being paid cost under Title XIX; they will suffer the 4.2 reductions and the hospitals object to making the change arbitrarily. They consider it to be inappropriate and illegal. Dunn concluded "We strongly urge the General Assembly to take corrective action early in January."

Tieden commented if ARRC becomes involved, there was a state constitutional problem of being in conflict with federal.

Schweigher made the point that one of the most economically feasible programs in the state had become the "whipping post."

Vice Chairman Schroeder interceded and moved the discussion to Commerce Commission rules -- Human Services was deferred until 12:45 p.m. today.

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COMMERCE . Ray Vawter, Bill Haas, Dan Dana, David Jay Lynch, Diane Munns
COMMISSION and Susan Allender appeared on behalf of the Commerce Commission
to review:

COMMERCE COMMISSION[250]		
Investigations and hearings, briefs, 7.7(13)rd" ARC 4088	F	9/28/83
Telephone utilities, inside wiring, 16.5(5), 22.1(3), 22.11(1), 22.11(2) ARC 4085	F	9/28/83
Gas and electric utilities, pilot projects, 19.9(4), 20.10(9) ARC 4086	F	9/28/83
Gas and electric utilities, new structure energy conservation standards, 19.9(5), 20.12 ARC 4084	F	9/28/83
Contested cases, 7.7(1), notice ARC 3883 terminated ARC 4104	N	9/28/83
Civil penalties, ch 8 ARC 4100	N	9/28/83
Standards for public utility management efficiency ARC 4101	N	9/28/83
Gas utilities, procurement, 19.1(3), 19.10 ARC 4102	N	9/28/83
Gas and electric utilities, disconnect notices, 19.4(15)h(2) and (3), 20.4(15)h(2) and (3) ARC 4018	N	9/28/83
Electric utilities, residential service limiters, 20.1(3), 20.4(15), 20.4(22) ARC 4103	N	9/28/83

Also present: John M. Lewis, Iowa Utility Association, Rita Edwards, AIT, Cindy Soorholtz, Iowa Power, Cathy Schuster, Senate Democratic Caucus.

No questions were raised on amendments to rules pertaining to investigations and hearings briefs, telephone utilities inside wiring and pilot projects, gas and electric utilities.

19.9(5) In Schroeder's opinion, the language in 19.9(5) and 20.12 was
20.12 substantially different than when filed under Notice. He suggested Commerce Commission should renote and allow for public input.

Commerce official said the Commission was eager to implement the rules.

Schroeder raised question as to whether Commission could mandate the state building code. Tieden reiterated his concern that rules would be detrimental to the agricultural community.

Royce concurred there were serious procedural problems -- he referenced ARRC policy stating an adopted rule has to be rationally related to the noticed version. Graf concurred with ARRC request that the rules be renoticed.

Vawter assured Committee the Commerce Commission does not intend to enforce the state building code. The fact that Department does not plan to implement the rules until January 1, 1984 was pointed out. Schroeder recommended Commerce could renote and meet that deadline. Committee alternatives were reviewed. Commerce representatives agreed to convey ARRC request to the Commission.

O'Kane asked inclusion of "not" before "cooled", last sentences of 19.9(5) and 20.12.

Ch 8 No questions were raised with regard to chapter 8, civil penalties and standards for public utility management efficiency. Haas told Tieden that some comments re 19.1(3), 19.10 had been filed with the Commission. However, he had not read them as yet. Haas was requested to supply Royce with a copy of the information received so Royce could keep the ARRC cognizant of gas and electric disconnect notices.

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COMMERCE Chiodo asked the Commerce Commission to consider that when a
COMMISSION customer calls about complaint, disconnect, etc., many utilities
have a policy that employees will only give their first names.

One of the most prevalent comments made at the public hearing pertained to the fact that utility employees do not want to divulge their last names. In response to O'Kane, Commerce officials said utility companies and Legal Services Corporation had submitted most of the comments.

Proposed amendments to chapter 20 will allow utilities to adopt a policy for limiting service of residential customers before disconnection for nonpayment of bills. In Chiodo's opinion, the amendments should be explicit and possibly the subject should be renoticed. General discussion. Lewis interjected the industry believed new rulemaking procedures should be implemented on both chapter 20 and standards for public utility management. No further comments.

Recess Vice Chairman Schroeder recess committee at 12:12 p.m.

Reconvened at 1:05 p.m.

The Committee returned to consideration of Human Services Department rules on Intermediate Care Facilities. Schroeder opined that Committee should defer any action until November.

Human Services representatives contended adequate newspaper coverage existed; also, information was mailed to ICF providers.

Chiodo expressed anger at being placed in this kind of position and he favored an objection. Tieden noted the matter had been discussed by MAT Council and Council of Human Services and he opposed placing an objection. The Vice Chairman brought the discussion to a close.

WATER, AIR Mark Landa and Doug Foreman represented the Department of Water,
AND WASTE Air and Waste Management.
MANAGEMENT

The following was reviewed:

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[9001]N..... 9/14/83
Emission standards for contaminants, 23.1(2), 23.1(3) ARC 4021

Landa gave a brief overview of the emission standards for contaminants proposals.

There was brief discussion.

Landa noted the state is adopting federal rules.

INSURANCE Denise Horner, Tony Schrader, Kim O'Hara, Attorneys, Fred Haskins,
DEPARTMENT Assistant Attorney General, and Jon Vasey appeared on behalf of
Insurance Department.

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INSURANCE
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(cont.)

Also present: Brice Oakley, Blue Cross and Paul Brown, Bankers Life Insurance.

The following agenda was before the Committee:

INSURANCE DEPARTMENT[510]		
Replacement of life insurance and annuities, ch 16	ARC 4031	N 9/14/83
Deposits by a domestic life company in a custodian bank or clearing corporation, ch 32	ARC 4032	N 9/14/83
Nonprofit health service corporations, reports, 34.3, 34.5, <u>filed emergency</u>	ARC 4033	FE 9/14/83

O'Kane in chair.

Chapter 16 Schrader reviewed the fact that chapter 16 accomplished regulation of insurers and agents with respect to replacement of existing life insurance and annuities. Tieden questioned effectiveness of the proposal. Schrader was unsure but suspected consumer complaints would be curbed. He discussed the complaints received by the Insurance Department; about 5,000 written -- a total of 10,000 including phone inquiries. O'Kane requested more specific information before the rule is filed. Schrader was amenable.

16.9 In re 16.9, Doyle pointed out that language for penalties was very broad. Schrader indicated the intent was to have identical penalties as provided by the statute. Doyle reminded Schrader the statute read ... "any insurance law..." which could include contract law. Schrader said Insurance Department had Code Chapter 507B in mind -- Iowa Insurance Unfair Trade Practices Act. Doyle recommended addition of the penalties and Schrader was amenable.

Haskins explained that chapter 32 imposes safeguards upon the use of custodian banks and clearing corporations by a company and thereby serves to protect the policyholders. Regulations were modeled after New York law. O'Kane was told that the Life Insurance Industry had input.

32.4(4) In response to Tieden, Haskins said that the amounts in 32.4(4) were not statutory. Banks that would be performing custodian bank functions would have these assets. Haskins admitted the amounts were very high and Department was concerned. He offered to remove the provision. Haskins informed the Committee that, at the request of the Insurance industry, the rule would be filed emergency very soon.

There was general discussion.

Schroeder resumed the chair. Minimum capitalization for state banks was referenced.

Brown, insurance industry representative, arrived. He indicated the large banks operate as custodians of company's deposits. The size of the operation was such that the size of the bank was important. Brown concluded that most activity will be outside of Iowa. Chiodo commented "Maybe qualifications rather than institutions should be addressed."

No further questions.

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Horner explained that existing rules dealing with nonprofit health service corporations were being amended to require those corporations to submit annual report on the National Association of Insurance Commissioners' annual statement blank. Also, the requirement to file 69 days prior to effective date has been dropped.

Oakley made a brief statement.

ENERGY
POLICY
COUNCIL

James E. Smith, Director, Energy Assistance Director, Sue Downey, Program Planner, Dennis Guffey, Deputy Director, Roya Stanley, Program Planning, Building Program and Diane Storms represented Energy Policy Council.

The following was reviewed:

Chiodo questioned the fact that EPC had filed the rules emergency re chapter 14. Guffey cited time factors as reason. Chiodo spoke in opposition to emergency filed rules. Guffey contended they were unsure of the amount of funds to be received and were still in planning stages. Chiodo could foresee a problem every year unless public hearing times were changed.

The energy assistance and weatherization programs were discussed.

Smith reported about \$2 million less would be available in Iowa. It is anticipated that 110,000 household would participate.

Ch 17

Stanley gave a brief overview of the program to provide assistance to state agencies and local governments for upgrading their buildings. Chiodo was told that language referencing Board of Regents was statutory. Guffey reported that the staff will publicize the plan.

17.9(2)

Schroeder questioned conversion factors in 17.9(2) -- Stanley responded it would give more weight to institutions using oil.

No further discussion.

CORREC-
TIONS

Department of Corrections was represented by Hal Ferrier, Director, John Baldwin, Finance, John Mathes, Superintendent, Broxann Keigley, Administrative Assistant, Charles W. Lee, Paul Grossheim, Deputy Director of Institutions; Bud Kihnan, Deputy Director, Community Based Corrections. Also present: Don Mason, Executive Director, Iowa County Attorneys Association; Joseph P. Thornton, Attorney, Des Moines Register; Ray Cornell, Prison Ombudsman; Ed Conlow, House Democratic Caucus. Candy Morgan, Attorney General's office.

CORRECTIONS, DEPARTMENT OF[291]

Operational activities, chs 1, 4, 6, 10 to 12, 25, 26, 40 to 43 and rules 20.2, 20.11, 21.6(1)"f" and "i", 22.4, 22.5, 23.5, 23.5.

60.5(4) to 60.5(6) ARC 4088, also filed emergency ARC 4087.....N.Y.....F.E..... 9/28/83

Rules transferred, filed emergency ARC 4057.....F.E..... 9/14/83

CORRECTIONS
Cont'd

According to Ferrier, previous Human Services rules governing corrections institutions have been transferred to the new Department of Corrections. He continued that comments were being received and recommendations for revisions would be submitted at the next Board meeting. The rules will be divided into four Titles and furlough rules will be standardized to be identical for men and women. Ferrier spoke of their position in notifying local law enforcement authorities. Chiodo cautioned against a local "veto" over a state policy and Ferrier concurred.

- 10.2 Doyle recommended that 10.2, line 3, be amended by substituting the word "only" for "specifically"

Amendments to Chapter 20 were considered--specifically 20.11(7) which would allow the business office to deduct up to 75 percent of an inmate's allowance for restitution when the inmate is in lockup or other punitive status. Doyle recalled that the inmate's earnings average \$1.50 per day. He viewed the subrule as a method to preclude an inmate from having any money. Ferrier insisted that was not the intent but added that the inmate must be held accountable and responsible. Outside funds received by inmates would be called to the attention of the Clerk of Court. Ferrier concluded there was authority for the provision.

Chiodo could foresee an inmate shying away from work if gift money were free from restitution. He recommended the policy of informing the Court be included in the rules.

Sherzan expressed reservations about use of outside gifts for restitution or withholding restitution from Social Security or taxable income.

Cornell knew of incidents where gift money had been assessed. He said the average monthly salary for an inmate is \$38.

22.2

22.5(2)

Doyle was not convinced that the Department had statutory authority to require furloughed inmates to "check in with law enforcement personnel"--22.5(2)h.

No questions were posed with respect to the transition rules of the Department.

Brief discussion of Chapter 12--Contested Cases.

Doyle asked that internal memos on sentencing be sent to Royce.

In a matter not officially before the Committee, Thornton spoke of a problem in obtaining information which had been available previously, i.e., list of released prisoners. He maintained that the newspaper has a responsibility to "inform the public." There was apparent confusion as to whether an AG opinion had been rendered in support of the Corrections Department and Parole Board policies.

Schroeder pointed out that 25 persons could petition the Department for a rule change.

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MINUTES

Doyle moved to approve minutes of the September meeting.
Motion carried.

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Schroeder asked that the minutes reflect that the ARRC would have further discussion on the rules pertaining to Intermediate Care Facilities.

No recommendations were offered for the following rules which appeared on the "No Representative List."

No agency representative requested to appear:

COMPTROLLER, STATE[270]
Interest on claims, availability of rules, 1.1(2), 1.1(3) ARC 4037 F 9/14/83

MERIT EMPLOYMENT DEPARTMENT[570]
Confidential positions, 2.4 ARC 4036 F 9/14/83

IOWA DEVELOPMENT COMMISSION[520]
Declaratory rulings, ch 6 ARC 4078 N 9/28/83

CONSERVATION COMMISSION[290]
Fishing regulations, natural lakes, 108.2(1) ARC 4073 N 9/28/83
Commercial fishing, catfish length limits, 110.7 ARC 4072 N 9/28/83

ADJOURN-
MENT

Vice Chairman Schroeder adjourned the meeting at 2:40 p.m.
Next regular meeting was scheduled for November 8 and 9.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary

Vivian Haag and Loanne
Dodge, Assisting

Bud E. Riels