

MINUTES OF THE SPECIAL MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, June 2 and 3, 1981.

Place of Meeting: Senate Committee Room 116, Statehouse, Des Moines, Iowa.

Members Present: Representative Laverne Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar Holden and Dale Tieden; Representatives Betty J. Clark and Ned Chiodo. Also present: Joseph Royce, Committee Staff, and Brice Oakley, Rules Coordinator.

Convened Chairman Schroeder convened the meeting Tuesday at 10:12 a.m. Senators Priebe and Tieden were excused, having reported they would be on vacation.

CONSERVATION
COMMISSION

Dr. Allan Farris, Director, Fish and Wildlife, Robert Barrett, Superintendent, Wildlife; Roy Downing, Supervisor of Waters, and Nancy Exline, Associate Superintendent of Waters represented Conservation for review of the following rules:

CONSERVATION COMMISSION[290]
Wild turkey fall hunting regulations, ch 112 ARC 2060 F 5/27/81
Barge fishing, ch 51 ARC 2039 N 5/27/81

Ch 112
Wild Turkeys

Farris announced there would be two zones [SE and South Central--1000 licenses in each] for wild turkey hunting, which would be allowed October 21-November 1, 1981. Bow and arrow hunting would be November 2-December 4, 1981, concurrent with the major part of the deer hunting season. Licenses for bow and arrow would be unlimited.

Schroeder questioned the shooting hour variance between shotgun and bow and arrow. He preferred continuity in the hours for hunting.

Holden was of the opinion there could be enforcement problems in overlapping deer season with wild turkey.

Farris could foresee problems with having the hours concurrent for bow and arrow and shotgun, but was agreeable. Schroeder discussed Priebe's dissatisfaction with the rules, basically, his fear that the turkey population would be endangered. Schroeder suggested Conservation let the matter stand at this time.

Farris discussed the research project being conducted by Conservation and advised the Committee the season was designed around that project. They will monitor the hunting to avoid negative impact.

CONSERVATION
COMMISSION
Cont'd

Roger W. Raish, President, Iowa Wild Turkey Federation, provided ARRC members a letter outlining the Federation's approval of the proposed fall wild turkey hunting season. In the federation's opinion, Iowa has one of the most successful turkey restoration programs, which is highly respected by other states. Raish was confident that, should the fall season become a detriment to the total program, Conservation would curtail or eliminate it.

Barge
Fleeting
ch 54
ch 55

Downing distributed copies of changes and additions to ch 54 relating to barge fleeting. Reporting on the Davenport workshop, he said there had been some misunderstanding as to it being a formal hearing. There was considerable confusion regarding the ordinary high-water line and natural accretion laws--the difference between natural and man-made.

In review of ch 55, Conservation invited all interests to contact them about any problems. It was obvious that the fleeters still prefer no regulation. Fifty percent of the input was from fleeters whose operation is totally outside of Iowa.

The Committee was frustrated upon learning that no record or report had been made of the workshop. Downing recalled Conservation had been requested to hold an informal workshop to encourage people to fully express their views, both pro and con. Oakley supported the Commission and the workshop.

Downing noted the public hearing would be June 16, 1981. He was, however, willing to make a report of the workshop.

According to Downing, there were 8 charter cities along the Mississippi--Burlington, Camanche, Clinton, Davenport, Dubuque, Ft. Madison, Keokuk and Muscatine. It was the Committee's understanding that only Wapello, Camanche, Davenport and Muscatine were chartered. Downing responded the cities were either charter or operating under special Acts. Holden commented there would need to be a major change in 1982.

54.3(2)

There was discussion of the 5-year lease in 54.3(2), which was intended to protect fleeters.

Holden failed to understand why the state was becoming involved in negotiations for riparian rights. Clark made the point that Conservation's interest does not lie between the barge fleeter and property owner. Downing reminded ARRC that the Mississippi River is public and the Commission is charged with manning the resources of the river. They are trying to maintain proper balance among industry, recreation

CONSERVATION
COMMISSION
Cont'd

and environmental interests. Responding to Clark, Downing explained the ordinary high-water line is that point of demarcation between aquatic environment and upper vegetation, which is easily identified along the Mississippi River. Clark commented there was a great difference, in her mind, with the matter for private property as opposed to public. Downing opined the rule was the nearest acceptable solution to the problem. He contended many of the legitimate fleeters were already under contract and have no difficulty with the program.

54.7(2)i

In re 54.7(2)j, there was discussion of the time allowed for the riparian owner to place an objection against the issuance of a permit. After some discussion, members questioned whether two weeks would be ample time.

Oakley suggested a good approach would be for the Commission to delay further consideration of the rules until they know the results of the public hearing. Downing agreed to furnish complete reports of the hearing to both the Committee and Oakley. He opined the information could be ready before the July ARRC meeting.

54.14

Schroeder could foresee problems with the time frame in 54.14 with respect to permit lease revocation and was concerned there might be a need for duplication of facilities.

54.3(2)

Holden thought there should be a date certain in the reference to 290-chapter 54 in 54.3(2). After discussion, it was decided that, in this instance, the date was unnecessary.

54.15

Clark questioned the need for the severability rule and Royce pointed out the language appears in §4.12, The Code.

EMPLOYMENT
SECURITY
(job service)

The following Employment Security rules were before the Committee:

Employer's contribution and charges, 3.17(11), 3.70(12), 3.74	ARC 2030	F
see filed emergency rules ARC 2068 (IAB 5/27/81)		5/13/81
Employer's contribution and charges, 3.17(11), 3.70(12), 3.74, filed emergency	ARC 2068	
see filed rules ARC 2030 (IAB 5/13/80)		5/27/81
Appeals and procedures, 6.3(2) ARC 2017, also filed emergency	ARC 2016 (IAB 1/14/83)	5/13/81
Employers contribution	ARC 1950	

Joseph Bervid, Counsel, and Paul Moran appeared on behalf of Employment Security.

According to Bervid, amendments to 3.17(11), 3.70(12) provide political subdivisions their "black balance" when they switch from contributory to reimbursable taxing status. The amendments were prematurely adopted and ARC 2068 rescinds that adoption and restores the former language. The notice will continue to allow for public comment. No formal action by the Committee.

ATHLETICS
COMMISSIONER

Allen J. Meier, Director, Bureau of Labor, was present for review of elimination tournaments, ch 3, filed emergency, ARC 2050, IAB 5/27/81.

Ch 3

Meier explained that injury to an individual in a recent "toughman" contest prompted the adoption of the emergency rules. He discussed the Ad Hoc Committee which was created, by Executive Order, several years ago. Although lacking funds, the Committee has met. In Meier's opinion, the rules should be updated, particularly those pertaining to women. Chiodo queried about the fact that a physical exam was not required for men. Meier assured the Committee that all contestants are required to take a physical exam or provide a doctor's statement. [Chapter 110] He encouraged Committee members to attend a contest.

Chiodo favored requiring fighters to wear protective headgear. Meier spoke of pros and cons in the matter. He agreed headgear does eliminate headcuts.

Meier has requested an appropriation. Responding to Schroeder, he indicated these emergency rules would be inserted into the regular rules.

3.2

In re 3.2(99C), Chiodo questioned the three-bout limit. According to Meier, the Commission followed Golden Glove rules. Chiodo thought 3.1, purpose and scope, was channeled toward single-type elimination and wondered if there would be a way promoters could "get around" the rule by making a double elimination. Meier said weight restrictions would answer that problem. Chiodo requested Meier to pursue the possibility of double elimination as a loophole. Meier was amenable.

The Committee requested Meier to prepare rules and follow the public hearing procedure. Oakley commented he had no problem with these rules. Holden did not want "Departments getting the impression they can bring rules through filed emergency."

Meier assured ARRC that although there was no appropriation, he planned to review all of the Athletics Commissioner's rules and make necessary changes. Meier concluded there were hazards in all sports and rules would not preclude injuries.

The ARRC favored placing the emergency rules under notice to ensure against a precedent of sidestepping public input.

Committee

Oakley commented, as a matter of record, that legislation had been introduced re the matter of placing licensed professions under the supervision of one board [see p. 1443, April minutes] and no action was taken. General discussion.

COLLEGE AID
COMMISSION

Robert W. Paton, Associate Director, Student Loan Division, was present for review of ch 10, guaranteed student loan program, filed emergency, ARC 2015, IAB 5/13/81.

Ch 10

According to Paton, the rules were an update of the 1980 higher education amendments, which took effect January 1, 1981. Committee requested Paton to include date certain for the manual containing the education amendments. There was discussion concerning the availability of funds for student loans. Paton indicated funds would be available, however, criteria for loans would be decided by the federal government.

Schroeder suggested the date certain be included in the manual as well as the rules.

Employment
Security

Clark requested Barry contact Job Service to correct language in 6.3(2)d.

Recess

Schroeder recessed the Committee at 12:00 noon to be reconvened at 1:30 p.m.

Reconvened

The meeting was reconvened at 1:35 p.m. Orrin Nearhoof represented Public Instruction for review of endorsements for teachers, handicapped children, 15.44, 15.45, ARC 2067, IAB 5/27/81.

PUBLIC
INSTRUCTION

Nearhoof announced there would be a public hearing June 17. He said the rules are two endorsements of the term DPI uses for authorization of personnel to work with handicapped children.

15.45

At Clark's request, Nearhoof explained that "approval 81" in 15.45 referred to a certificate number for teachers. Clark preferred clarification and Nearhoof was amenable.

COMMERCE
COMMISSION
19.9
Ch 20

Commerce Commission was represented by Andrew Varley, Commissioner, Robert Osborn, Michael May, Arthur Zahller, Utilities Division, and Alice Hyde, Assistant Counsel. Also present were Robert Haack and James Morrissey, Iowa-Illinois and Gas. Purchased gas adjustment, 19.9, ARC 2049, Notice, IAB 5/27/81 and chapter 20, electric utilities, special review, were before the Committee.

According to Hyde, the rules, responding to petition, were developed by staff. Written comments are due June 26 and oral proceedings are scheduled for July 13.

In response to Chiodo, Hyde explained that, presently, there were no rules for purchased adjustment.

COMMERCE
COMMISSION
Cont'd

Schroeder asked if the federal Act authorized automatic "pass-on" in the absence of state rules on purchased gas adjustment. Hyde referred to chapter 476 and doubted "pass on" could be prohibited.

Osborn reasoned the whole process should be relatively easy by use of the sliding scale. Commerce intends to return to the basics of a "true purchased gas adjustment cost." Companies have converted to a policy of purchased sales cost or the cost of their sales, not the cost of their gas. Iowa Power and Iowa-Illinois are the two leaders in this respect and others are following suit.

Osborn continued the cost of gas is no longer measured at the town border station--it is measured at the customer's meter. There was discussion of cycle billing and other problems--an administrative nightmare.

In response to Schroeder as to the percentage difference on \$1000, Osborn indicated companies were concerned as to increased cost of inventory losses. Osborn concluded the cost would ultimately pass to the customer.

Varley interjected that, until the present system, the utility companies have had no incentive to control leakage. Chiodo concurred and added that reports on gas leaks reveal that an exorbitant number are never repaired.

There was discussion of the base cost formula, wholesalers' involvement and the process of refunding to the customer. Osborn pointed out that Commerce prefers that a utility will not suffer loss or realize a "windfall."

Osborn reported that some companies refund the same day they file with ICC pre-empting the Commerce Commission's review process. ICC prefers review of the refund before it is distributed.

19.9(3)a

Holden questioned use of language "to the extent such account exists" in 19.9(3)a. ICC was willing to review the matter.

Special
Review
Utilities --
Billing

As requested by the ARRC, May and Varley were willing to review concerns re billing dates set out in ch 20 of their rules. Varley reviewed provisions of the rules which provide that a utility should consider any written request for change in the billing date. ICC has initiated a hearing on the matter for August. Varley agreed, that in certain instances, billing dates could create hardships.

COMMERCE
COMMISSION
Cont'd

For example, those on fixed income, which would not be available until after billing date, would receive a late payment charge every month. It was noted that all Social Security checks arrive on the third day of the month--the post office does not deliver prior to that day.

Haack spoke of their primary concern that the practice would be limited to residential budget customers and they opposed allowing this extension of time to affect the next billing cycle. Schroeder could see no justification for limiting the practice to residential customers.

Morrissey could foresee that if the late payment were added to the next bill, it would be an administrative nightmare. Varley admitted this was a valid point.

Cash flow problems for utilities were discussed. Chiodo and Oakley could not envision a problem for utilities since there is a continual billing cycle.

General discussion as to legislative intent re a late charge, discount or penalty. Zahller indicated they were attempting to establish minimum standards. Discussion of equipment and control of meters. Varley took the position responsibility for metering power should rest with the utility.

Haack discussed budget billing and customers who desire intermittent participation in the plan. Utilities supported the concept of applying the credit to the customers at the end of the year. Under the rule, they would be required to disburse the credit over the year. Discussion of operating costs incurred to mail refunds, which would be added to rates.

Haack was hopeful that electric and gas rules could be implemented simultaneously to avoid duplication of effort in changing the billing systems. Varley concurred the point was well taken.

Recess

Schroeder recessed the Committee at 2:50 p.m. and reconvened at 3:20 p.m.

ENGINEERING
EXAMINERS
BOARD

Francis Holland, Board Member, and Bonnie Fagerstrom, Executive Secretary, were present for review of amendments to rules of Engineering Examiners re plats, ARC 2006, IAB 4/29/81. Also present: Gary Gill, Legal Counsel to the Board.

Holden inquired if the Board planned to adopt the rule in its present form. Holland referred to the rule as revised following the hearing on May 20. Discussion of a possible written exclusionary agreement between property owners and clients. Schroeder declared they had gained nothing.

ENGINEERING Re 2.1(2), line 1, Schroeder preferred substituting "or" for
EXAMINERS "and". Holden viewed the provision as being designed to make
Cont'd it difficult to avoid paying for a plat. Holland had never
2.1(2) heard of a client requesting that a plat not be drawn.

Schroeder contended the ordinary citizen was not familiar with the Code sections which had been waived. Holden thought, in order to be consistent, the surveyor should be required to sign the agreement provided for in 2.1(2). In addition, he stressed the importance of including the Code sections which were being waived.

The Committee favored a simple format -- Holland concurred but pointed out Engineering would not have a simple format, but surveyors could have.

According to Holden, in nearly every instance, plats would be required and that had been the point of contention from the very beginning. Holland contended the plat protects the public and the Board is charged with this responsibility.

Holden reiterated his opinion that licensing professions "protect their own"--a practice he vehemently opposes. Holland had not had one single complaint and he pressed for specifics. He continued there was much more to land survey than meets the eye, and concluded that "one land surveyor" had created the furor because he did not want to furnish the plats.

Gill spoke in support of the exception since the plat requirement is a minimum standard and could be signed by agreement. Schroeder observed there was no "cry from the general public for this." Gill discussed standards for determining incompetency.

There was disagreement between Schroeder and Gill regarding requirements of the rule. Gill opined minimum standards were needed to protect the farmer. He would have no chance to recover if there were a suit. He quoted from Ch 258A and §114.6 as their authority. The legislature left the minimum standard determination to each individual board.

In response to Clark, Holland noted the plat statute was enacted in 1977. Clark was interested in the chronology of the matter.

Schroeder and Holden declared the public had not generated the contemplated rule change.

Gill reiterated the rule was designed to protect the client. Schroeder and Holden said consumers were unaware of the option for a plat.

ENGINEERING Holden added, "Obviously, there is something we have not been
EXAMINERS able to find out, but there has to be a reason why Tunnickliff
Cont'd thinks this is unreasonable while the rest of you think it
is not."

Gill suspected Tunnickliff was anxious to protect himself from other competition in Scott County. Holden saw no wrong in that. He pondered, "What obligation should there be for an engineer to provide his competitor with data he has developed?" Holland pointed out "a professional obligation." Gill maintained that availability was very important since recorders' records could be lost.

4:10 p.m. Chiodo excused.

Clark thought the records should be public. General discussion of problems created by incorrectly drawn plats.

In response to Holden, Holland explained the rule would not allow others to use Tunnickliff's old records, since they are private property.

Holden argued the rule did not clearly advise the client of his rights.

Schroeder suggested a standardized form for the waiver. Holland was not opposed. Gill discussed supreme court decisions which affected availability of documents. Gill commented that land surveying is not a perfect science but there should be a minimum standard.

Schroeder suggested the Board return to the "drawing boards." Holland claimed the Board had removed the mandatory feature as recommended by the Committee. No formal action taken.

Recess Chairman Schroeder recessed the Committee at 4:45 p.m. to be reconvened at 9:00 a.m. June 3, 1981.

Reconvened The Administrative Rules Review Committee was reconvened at June 3, 1981 9:05 a.m. All members were present.

ARTS Sam Grabarski, Director, Arts Council, was present for review
COUNCIL of the following:

ARTS COUNCIL [100]		
Programs 2.1(5) "a" to "f" 2.2(8) to 2.3(15)	ARC 2051	N.....N..... 5/27/81
Forms 3.2 to 3.9	ARC 2052	.....N..... 5/27/81
Programs 2.1(5) "a" 2.3	ARC 2053	F.....F..... 5/27/81
Grants-in-aid forms 3.1	ARC 2054	.....F..... 5/27/81

Grabarski explained that the Council is charged with developing arts throughout Iowa. Thus, there are a number of specialty programs designed for certain clientele. Their rules are being updated to reflect current practice. Pertinent forms required of the public for applications and reports are also described.

June 3, 1981

ARTS
COUNCIL
Cont'd

Schroeder questioned the five-mile radius minimum in 2.3(11) a(11). According to Grabarski, the Council is trying to provide an arts program to a single elderly group or consortium of community-based groups, which program must be open to the public. Committee members suggested removal of "within a five-mile radius (minimum) of the site."

2.3(8)

With respect to completion of an evaluation-budget form for each program, Clark viewed 2.3(8)a(6) as "an invitation to procrastination." She favored applying for an extension of time, if necessary. Clark pointed out the word "date" in 2.3(10)c should read "dated". Also, the word "of" should be substituted for "or" in the last line of 2.3(12)a(6).

2.3(12)a

Clark suggested deletion of the following sentence in 2.3(12)a: "The following information includes the guidelines and description of the program." Further, in the last line of 2.3(13), substitute "per" for the last "a". In line 6 of 2.3(14)b, strike "once a" and insert "one". In response to Clark, Grabarski said the intent of 2.3(14)c(6) was to stop careless cancellation of exhibits.

General discussion of method used and costs for transporting exhibits to various communities. In response to Priebe, Grabarski said 8 to 10 grants are made each year to art centers around the state. In the current fiscal year, exhibits were enjoyed at 75 sites in 50 different communities. Artifacts from the historical museum are not toured.

Tieden inquired if every county took advantage of the opportunity and Grabarski indicated they only serve upon request, but programs are well dispersed.

Clark complimented the Council for their efforts.

No questions or comments were forthcoming regarding 3.2 to 3.9, 2.1(5)a, 2.3 or 3.1.

Archi-
tectural
Examiners

There was no review of the following rules of Architectural Examiners due to sudden illness of the agency representative:

ARCHITECTURAL EXAMINERS[80]
Organization, ch 1: Examinations, 2.1 to 2.3 ARC 2061..... 5/27/81

ENVIRON-
MENTAL
QUALITY

The following rules of Environmental Quality were before the Committee:

ENVIRONMENTAL QUALITY[400]
Co-ordinating amendments to chs 3, 4, 8, 9, 12, 14, 15, 22, 23, 25 to 27, 34, 50 to 55 ARC 2048..... F..... 5/13/81
Hazardous waste, 45.1(1), 45.2 to 45.6, 45.9(2)"a", 45.9(5) ARC 2023..... F..... 5/13/81
Emission standards for contaminants, ARC 1895 terminated. ARC 2025..... 5/13/81
Emission standards for contaminants, 4.3(2)"b"(5) amended notice. ARC 2024..... N..... 5/13/81
Wastewater, construction grants, 19.2(12)"b" ARC 2017..... N..... 5/13/81

ENVIRONMENTAL Odell McGhee, Michael Murphy, Joe Obr and Ronald Kalpa
 QUALITY represented the Department.
 Cont'd

50.3(3)e(2)

Schroeder expressed opposition to substituting "advice" for "legal counsel" in 50.3(3)e(2). Royce interjected the term "legal counsel" conveys something more formal than advice. Murphy added the AG, not staff attorneys, would provide counsel in litigation.

Discussion of legislation which resulted in substitution of "executive director" for "commission".

Priebe indicated he had received complaints from Commission members re the change. They questioned need for a Commission if the executive director can override their action.

Tieden wanted assurance that right of appeal notice was easily understood.

Further discussion of final authority in the Department. Schroeder thought the Council could override the Director. Oakley said all authority rests with the Commission. Priebe asked where, in the rules, that was stated. Noting it was not in the rules, Schroeder recommended addition of a paragraph to that effect. Murphy referred to chapter 55 of their rules but McGhee was amenable to addition of another paragraph.

ch 45

Kalpa reported that Codes of Federal Regulation were being adopted in ch 45 amendments re hazardous waste. He pointed out DEQ had chosen to identify, in sequence, all of the federal register activities regarding specific issues.

45.9(5)

Amendment to 45.9(5) re filing of application for a permit for existing hazardous waste management facilities was added because of rapid increase in these wastes. Schroeder questioned feasibility of listing any.

Murphy, responding to Tieden, said part of the program was to provide an awareness of the regulations.

4.3

Discussion of 4.3(2)b(5). Responding to Holden, McGhee said the rules would have no adverse effect on Iowa industries.

19.2(12)b

The matter of wastewater construction grants was being studied at the federal level.

Tieden discussed a contract where Crane had agreed to review and survey projects and procedures by EPA.

ENVIRONMENTAL Kapla reported notices had been mailed to all affected
QUALITY communities of the June 15 hearing re construction grant
Cont'd program.

Recess Schroeder recessed the Committee for ten minutes.

Reconvened The meeting was reconvened to consider the following Revenue

rules: Organization, 6.1(2), 6.1(3)" ARC 2026.....F..... 5/13/81
Administration, 11.1, 38.3, 51.3, 57.3, 63.3(5) to 63.3(8), 81.4(11) to 81.4(13) ARC 2064.....F..... 5/27/81
Assessment practices and equalization, 71.1(3), 71.1(4), 71.11, 71.12(2), 71.12(3) ARC 2065.....F..... 5/27/81
Iowa estate tax, ch 87 ARC 2027.....F..... 5/13/81
Generation skipping transfer tax, ch 88 ARC 2066.....F..... 5/27/81
Assessor education courses, 124.3 ARC 2028.....F..... 5/13/81
Bonding procedure, 11.10(1)"b", "c" and "d" ARC 2063.....N..... 5/27/81

Appearing on behalf of the agency were:

Carl Castelda, Deputy Director, Ben Brown, Trusts and Estates,
Cynthia Eisenhauer, Director, Exise Tax Division, and
Michael Cox, Director, Property Tax Division.

Administra- Castelda informed the Committee that the Revenue Department
tion has been undergoing a change in the last few years and,
recently, two divisions had merged. Also, there is a stand-
ing committee to study major reorganization which will proba-
bly take effect in the fall. Castelda spoke of problems
resulting from understaffing.

ch 87 Brief discussion of inheritance tax and new legislation--
SF 555. Brown pointed out the Act made no provision to
change the filing period from 12 to 9 months. Schroeder
asked Brown to contact the appropriate committee next year
as to legislative intent on the matter.

63.3(6) New subrule, 63.3(6), was adopted in response to suggestion
from John Deere re microfilm reproductions. If approval
has been given from the Internal Revenue Service to keep
microfilm copies of original books and entries, Revenue
would accept the microfilm copies.

Amendments Cox explained the grammatical changes in chapter 71.
to ch 71 Priebe questioned removal of "in excess of ten acres" in
71.1(3). Cox indicated there were some "gray" areas.
71.1(3) General discussion. In response to Holden, Cox said the
rule was intended to prevent one acre, primarily in the city,
from being assessed as agricultural land.

ch 88 No recommendations were offered for chapter 88 re generation
skipping.

11.10(1)b Discussion of amendments to chapter 11. Schroeder questioned
Bonding change of policy without change of statute. However, Castelda
Procedure did not view it as a reinterpretation.

REVENUE
Cont'd

Priebe requested Castelda to provide a complete breakdown of collections and delinquencies in the Department. Castelda said that the Department generates, through audits and collections, "X" number of dollars a year. For this year, they have projected approximately \$42.3 million.

Priebe had difficulty understanding the source of revenue since economy was unchanged in his county.

SF 519
Gambling
Legisla-
tion

At the request of the agency, Chairman Schroeder called on Castelda to review their progress in drafting rules to implement SF 519 [69GA] enacted this year. Castelda deferred to Eisenhaur who indicated the Department would probably file emergency rules because of their importance. Under the law, the Department is allowed discretion in the issuance of gambling licenses. She emphasized that application requirements were not limited to bingo but would apply to all types of gambling licensees.

Castelda recalled problems in interpreting residency standards; in particular, application to corporations. AG's office advised that standards would apply to partnerships, joint ventures, etc. Now, Revenue has to supply a standard for someone who is "doing business."

Replying to Chiodo, Castelda commented, based on the present statute, an individual can be a "qualified organization." Castelda said that, in order to qualify to operate a bingo parlor, the person must have a qualified organization license.

In defining good reputation, Eisenhaur noted the applicant can have no more than two convictions or guilty pleas of misdemeanors in the last year; no more than two delinquent quarterly gambling reports in the last two years. Responding to Royce, the class of misdemeanors is not restricted. Discussion as to whether speeding tickets were misdemeanors.

Castelda was hopeful of a process where application could be made to the local police or sheriff and that law enforcement agencies would investigate and verify the person's reputation. In order to obtain a gambling license, the individual cannot have been convicted of a felony during the previous 5 years. Also, the governor must have reinstated their citizenship rights. Chiodo wanted assurance that a person who receives two speeding tickets would not lose a gambling license. Eisenhaur saw no problem. The citizenship requirement is very clear. They have defined it to accommodate carnival employees who work in conjunction with fairs and celebrations.

A licensee cannot have a gambling or liquor license revoked within the last year. Location for which bingo will be con-

REVENUE
Cont'd

ducted cannot have had a revocation within the last two years as provided in the statute. With respect to federal tax exemption under 501C status, the Department favored requiring the applicant to attach to their application their letter of determination from the Federal government for that tax exempt status or another alternative would be to allow Revenue up to 18 months to verify eligibility. There would be no provision for temporary operation.

Chiodo questioned definition of "building" and wanted to know if there could be one license per one building.

Mention was made of the possibility of more than one bingo game being played in the same building. There were varying interpretations as to intent. Schroeder thought location would be the described premises on the bingo permit.

Castelda opined the statute was written in terms of both building and location. The matter had been discussed with Public Safety attorneys. Under the liquor laws, a floor plan must be filed. However, the attorneys did not interpret gambling statute to require this. Schroeder could envision problems.

In reply to Chiodo, Eisenhaur said the criteria for licensing would apply to individuals who apply for licenses after July 1.

Tieden took the position that intent was to tighten bingo operations. If bingo is allowed in individual rooms in the same building, it would destroy that intent.

AUDITOR
OF STATE
Ch 11

John Pringle, Director of Savings and Loan Division, represented the Auditor for consideration of proposed rules 11.1 to 11.6 pertaining to adjustable mortgage loans, ARC 2058, IAB 5/27/81. Pringle presented a brief background of the rules and explained that Savings and Loan Associations have experienced a significant rise in their "cost and money." Primarily, they make mortgage loans and increased interest rates have reduced demand. He distributed a graph depicting yields on mortgage loans over the past 3 to 4 years.

Pringle discussed money market certificates and interest rates. The majority of S and L portfolios are still at the fixed rate, fixed term instrument which does not react to interest variables. He continued S and L's were suffering the worst year of operation since the Great Depression.

The Federal Home Loan Bank board has pre-empted all state laws and has given federal associations the ability to offer mortgage instruments -- beginning as early as April 29. Federal associations in Iowa comprise about 65% of the assets. There is a need to create parity for the associations and to provide fair competition with other financial institutions.

AUDITOR
Cont'd

Discussion of dual system of state charters and federal charters and the responsibility to uphold the system. According to Pringle, an adjustable mortgage loan is one in which the payment amount, the loan term, principal balance or combination may change periodically to reflect current interest rates. At the time of the loan, this is determined by an agreed upon index rate between borrower and lender. Certain statutes, in the past, have required that state and federal associations have the same type of mortgage instrument. Legislation was not enacted this year so the department is relying on §534.21 which permits the supervisor to authorize loan plan deemed desirable. Pringle stressed it was the Iowa League, not the Department, that had sought additional legislation. Schroeder raised question as to this approach.

Tieden pondered the legality of "bailing out a business."

Royce said, essentially, all rules must be based on statutory authority--rules implement statutes. Section 534.21 sets out the parameters for loan requirements for S and L's. He referred to an amendment which allowed the Auditor's office to also follow all federal legislation in that same area. State law can be superseded by regulations based on federal law. However, it was his judgment the rules exceeded both state and federal law.

Pringle referred to sections 534.41 and 534.42 and took the position they could promulgate rules to aid in the business of the organization.

Holden was unsure the function of the agency was to "aid in the business." Although the statute was broad, he did not necessarily interpret it to mean that the agency should find a solution for a "sick industry" and then pass a rule. He wondered why something wasn't adopted a couple of years ago when they were in a bind on the usury limits. Holden declared, "You have, in effect, determined that this is the role of the agency--to preserve the S and L's." Pringle did see his role as trying to preserve the S and L's. The Department had grave concern for possible "runs" on institutions. He said it is their responsibility to examine books, policies and procedures to ensure that the institution is a safe place to invest. There are two choices for S and L's--merger or liquidation.

Tieden wondered about the impact on the other financial institutions of the state. Pringle responded that national and federal banks have similar authority to the federal associations. He was unsure about state banks, but knew they had the authority to "balloon" loans. S and L's will have "ballooning" authority starting July 1.

AUDITOR The concept of Renegotiable Rate Mortgages was discussed.
Cont'd Chiodo and Pringle differed in interpretation of "dual system"

ch 6 Clark was of the opinion that chapter 6 of auditor rules should be rescinded. Pringle agreed that those rules could probably be eliminated after July 29 when state associations could no longer offer RRM's. In response to Tieden, Pringle had visited with the AG and received no adverse comments.

Richard Thornton, on behalf of the Iowa Bankers Association, observed that problems experienced by S and L's did not differ greatly from those of banks--profits are dwindling, but they are not losing money. He opposed a built-in advantage for one group of institutions. He discussed pending legislation, and noted "balloon provisions" would not begin until July 1. The same competitive advantage should apply to all lending institutions. In response to Tieden and Holden, Thornton did not believe there was authority to allow the banks to be included at this time. Schroeder reasoned there was nothing to prevent the state from being more restrictive than the federal government.

Responding to Chiodo, Thornton said the interpretation was a fair estimate of how the language should be interpreted. The S and L system is very flexible compared to banks.

Time frame for implementing the rule was discussed. Royce said the rule would be eligible for adoption before the ARRC August or September meetings.

Pringle, responding to Thornton, said the Auditor promotes parity for everyone--S and L's have 85 percent of the mortgage portfolio in mortgage loans.

Recess- Priebe in the chair -- recessed the Committee for lunch at 12:10
Lunch p.m. to be reconvened at 1:30 p.m.

Recon- Chairman Schroeder reconvened the Committee at 1:45 p.m.
vened The following rules of the Social Services Department were before the Committee:

Records, ch 9	ARC 2034	.....	F	.....	5/13/81
ADC, eligibility, 41.1(5) "a", 11.7(9) "c" (7)	ARC 2035	.....	F	.....	5/13/81
ADC, recoupment, ch 16	ARC 2036	.....	F	.....	5/13/81
Supplementary assistance, 50.3(3)	ARC 2037	.....	F	.....	5/13/81
Work and training programs, 55.2(3), 55.2(5), 55.2(11), 55.2(18), 55.2(19), 55.4(4) "c", 55.9(4) "d"	ARC 2038	.....	F	.....	5/13/81
Child foster care facilities, ch 112	ARC 2039	.....	F	.....	5/13/81
Eligibility for services, 130.2(1) "c"	ARC 2040	.....	F	.....	5/13/81
Medical assistance, rescinds 79.8, final emergency	ARC 2041	.....	F	.....	5/13/81
Intermediate care facilities, 81.6(1) "a"	ARC 2056	.....	N	.....	5/27/81
Foster family homes, 113.18, 113.19	ARC 2057	.....	N	.....	5/27/81
Child day care, fee schedule, 130.3(2), 130.1(3)	ARC 2031	.....	N	.....	5/13/81

Day care centers, personnel, 109.4 Special review

Appearing on behalf of the Department were Judith Welp, Rules and Manual Specialist, Marian Turnbull, Shelter Detention, Harold Poore, Children's Services and Cynthia Applegate, Policy Specialist.

SOCIAL According to Welp, chapter 9 was completely revised to be more
SERVICES specific. State and federal requirements were blended. There
Cont'd was discussion of 9.4(1) and Schroeder wondered if a juvenile
could demand release of their record. He asked Welp to compare
the rule language with that of the Juvenile Code.

Priebe reiterated his continuing concern over handling of confidential information in mental health and mental retardation records. He wanted assurance that appropriate information would be available to county supervisors or county attorneys to ensure correct billing.

41.1(5)a Welp explained that 41.1(5)a was federally mandated. No recom-
ch 46 mendations were made for chapter 46 and subrule 50.3(3).

50.3(3)

Amend- Welp advised the ARRC that amendments to chapter 55 add provisions
ments to for prerequisite courses, high school equivalency and work and
ch 55 training programs. In 55.2(5), Priebe questioned whether individuals could remain in school until age 22 and receive assistance. Welp replied in the affirmative. She said a person would not be on ADC past the time the last dependent child reaches 18. Priebe commented it was not the intent of the Appropriations Committee to allow clients to "remain in school forever."

Clark preferred setting a particular length of time in which individuals could receive assistance. Welp said clients are required to maintain a minimum of 15 hours per quarter or semester or participate in training on a full-time basis. Poore pointed to existing 55.2(10) to answer Committee concerns.

ch 112 Welp commented that chapter 112 contains general requirements for all foster care facilities, both family home and group re application, issuance of license, denial, etc.

112.4(2) Schroeder suggested 112.4(2) should read "A new license shall be obtained when the number of children exceeds that for which the license was granted." DSS officials were unsure that would address his concerns in the matter. General discussion. Clark suggested "A new license shall be obtained when a change in the number of children, for which the license was granted, is desired." Department officials were willing to study the matter further.

130.3(1)c Subrule 130.3(1), paragraph c increased the income standards for services from 30 to 41.2 percent of median income individuals. The figures are same as last year prior to the governor's budget reduction.

No recommendations were made for 79.8 or 81.6(11).

Amend- Department officials reported that rules 113.18 and .19, foster
ments to family home licensing, pertain to reference checks, policies and
chap. 113 unannounced visits to homes. In 113.18(4), with respect to ref-

SOCIAL
SERVICES
Cont'd

erence checks, Clark asked if there were verboten areas. She was interested in protection to the foster home and favored input from the Foster Parents Association or Council on Children. Turnbull was agreeable to adding restriction, if so requested. Clark viewed the language "but are not limited to" to be wide open. She recalled much criticism of inspectors in the Health Department. In re the written report deadline, 113.19(4), Schroeder saw no need to wait thirty days. Discussion of "right to entry" and unannounced visits. Turnbull reminded the ARRC that the law mandated unannounced visits in order to observe the true picture of the home life. Clark supported the concept of unannounced visits since foster children were in a vulnerable position. Schroeder was told the visits would be made once each year. He wanted to avoid "harassment" by DSS.

130.4(2) Welp said no comments had been received on the proposed revisions of the fee schedule for child day care.

109.4 In a special review of 109.4--Day Care Centers--Clark questioned the requirement of one additional person over the required staff ratio when a child care center sponsors preschool program activity away from the licensed facility. According to Clark, much criticism has been generated because of not being able to walk around the block with children without having an additional person along.

Poore emphasized the extra adult would lessen the danger to children. Ratios were discussed. Poore said the day care centers did not have the same ratio requirement. Poore pointed out volunteer mothers could be counted as staff persons in the situation cited by Clark. Discussion re Social Services Rules was concluded.

HEALTH
DEPT.

The following rules of the Health Department were before the Committee:

HEALTH DEPARTMENT 14701

Physical therapy and occupational therapy, 137.4(3), 137.6, 138.2(6) to 138.2(14) 138.6, 160.3 ARC 2046.....F..... 5/13/81
Occupational therapists, 138.200 to 138.208 ARC 2043F..... 5/13/81
Mortuary science examiners, 147.98, 147.101, 160.5 ARC 2044F..... 5/13/81

Licensing of mobile home parks, 71.12(1), ARC 1113 terminated ARC 2013 5/13/81
Advanced emergency medical care, 132.12, ARC 1915 terminated ARC 2010 5/13/81

Peter Fox, Licensing Division, and Jean Linder, Occupational Therapy, were in attendance. It was Priebe's understanding the occupational therapists were unhappy with the rules even though Fox had not received written opposition.

147.101 Holden declared 147.101(6) to be ridiculous. It set out new language on CE requirements for mortuary science. General discussion of continuing education and its ramifications. Holden also questioned 147.101(1). Fox, re 147.101(6), said if individuals are licensed during the first year, they will be required to complete twelve hours--not twenty-four. If licensed during the second year, CE is not required.

HEALTH
DEPT.
Cont'd

Schroeder questioned statutory authority. Fox said it was intended to alleviate a burden for the new licensee.

Holden thought the burden placed on the occupational professionals to be a more serious matter. Fox agreed to convey Holden's concern about CE to the Board.

Clark pondered the advisability of requiring CE one year after graduation. Discussion of possible legislation. Chiodo viewed the Continuing Education process as "charade." In his opinion, re-examination periodically would be preferable.

Oakley offered a solution of "either putting the state in the business of running the course or more closely monitoring it, therefore beefing up licensing boards to re-examine every 3 or 5 years." He concurred with Holden's idea for a licensing department and some educational standards.

Proposed rulemaking dealing with separation of mobile homes was terminated to allow time to consult with local boards of health.

Brief discussion of advanced emergency medical care. Oakley indicated a study was conducted by U of I and comments had been received on the pilot program in rural Iowa.

Recess Chairman Schroeder called a 5 minute recess.

BOARD OF NURSING Nursing practice for registered nurses/licensed practical nurses, ch 6, ARC 1908, IAB 4/1/81[effective date delayed 70 days at 4/15/81 meeting] was before the Committee. Lynne Illes, Executive Secretary, Board of Nursing, introduced Steve Norby, Assistant Attorney General, Legal Counsel to the Board. Also present for the discussion were Richard Berglund, Iowa Hospital Association, and James West, Iowa Medical Society.

Illes reviewed the complex history of the rules and was unsure of protocol for this meeting. She informed the ARRC that the Board again returned to session 4/24/81 and they reviewed position papers, etc. Their formal motion was that there would be no change in the minimum standards of nursing practice as adopted with the exception of 6.1(9) and 6.4(1), which were rescinded by the Governor.

The Board, in response to request by two rural nurses who appeared before the ARRC, did appoint the professional staff to conduct an intensive study of the problem raised in regard to rural nursing being excessively restricted by having an RN or physician supervisor in the immediate area of the LPN. A survey to gather data as to whether or not that problem actually exists has been sent. If data comes back in the affirmative, the Board

BOARD OF
NURSING
Cont'd

would propose an additional rule--possibly an emergency filing. Schroeder asked if the rule had any application to the nursing home problem. Illes replied that was still under study and would be a separate rule.

Berglund and West summarized their comments made at the April meeting where they urged further clarification. In their opinion, action should be delayed until the next Committee meeting. They thought dispensing rules would cause confusion. Illes stressed that the majority of nurses and the task forces support the rules as written. She continued the various categories are not "broken down" in the nursing licensing standards, thus the broad rules. Schroeder asked, "How do you broaden rules beyond that which the statute requires?"

Chiodo indicated he would move an objection if a compromise were not reached before next month. Oakley asked Illes if she were aware of the specific concerns of the ARRC. Illes responded in the negative. Oakley reasoned it would be rather difficult to undertake the process mentioned by Chiodo unless it is known what the Committee wants.

Holden recalled his motion at the April meeting [p. 1443] to apprise the Legislature of serious jurisdictional problems in health care fields. Oakley pointed out, with the Governor's veto, dispensing was no longer an issue.

Tieden had contacted nursing homes, various doctors and learned the same conflict existed as that presented to ARRC--LPN vs RN. He had not found the answer.

Schroeder thought the Committee had stated emphatically that the rules should provide a "middle ground." Chiodo saw the whole point of the controversy was that the rules did not reflect current practices. Oakley interjected one of the problems is that parts of the present practice are illegal. A number of professions are trying to "conform their practices to past practices." Others are starting to change rules to conform with what "it ought to be."

Illes recognized the biggest problem was putting a practice setting into writing. She hoped the rules were reflective of current practice.

Chairman Schroeder deferred action until July 14, 1981, 3:30 p.m. and urged both factions to compromise.

Priebe thought a decision should be made one way or the other. Clark viewed the situation as being one of "physicians controlling nurses and wishing to retain that control."

BOARD OF NURSING Cont'd Illes agreed to supply Committee members with results of the survey. Priebe wanted to know the grounds on which the ARRC might object. Royce supposed an argument could be made on one of two grounds--they exceed their statutory authority. Although he questioned whether that would be valid. Objecting on the grounds the rules were unreasonable would require an in-depth analysis.

Priebe in chair.

RAILWAY FINANCE AUTHORITY Dan Franklin, DOT, was present for review of projects, chapter 3, ARC 2014, Filed, IAB 5/13/81. Franklin informed the Committee that chapter 3 provides basic framework for receipt and action on applications for financial assistance through the Authority. He discussed the application process. No adverse comments were received on the rules which are similar to the branch line rules of DOT. Franklin said that no applications were pending.

TRANS-PORTATION Harold Shiel, Office of Urban Systems, and Bill Kendall, Motor Vehicle Licensing, represented DOT for review of the following:

Federal-aid urban systems, (06.F) ch 2 ARC 2011.....F..... 5/13/81
 Chauffeur's license, (07.C) 13.5(5)h ARC 2012.....F..... 5/13/81
 Motorcycle and motorized bicycle courses, (07.C) 13.12 ARC 2013.....F..... 5/13/81
 Moving of houses over the highway, Special review

Changes requested by ARRC had been made. No recommendations were offered to chapter 2, 13.5(5)h and 13.12.

Special Review Moving of houses over the highway was deferred until July.
 Rule 18.7 of Agriculture was deferred until July.

No repre-senta-tives Agency representatives were not requested for the following:

ENERGY POLICY COUNCIL[350]
 Declaratory rulings, 9.1 to 9.9 ARC 2062.....F..... 5/27/81

MERIT EMPLOYMENT[570]
 Intermittent appointment, 8.5 ARC 2042.....F..... 5/13/81

PHARMACY EXAMINERS, BOARD OF[620]
 Controlled substances, records for a, 8.15 ARC 2020..... 5/13/81

PLANNING AND PROGRAMMING[630]
 Census data center, ch 22, ARC 1050 terminated ARC 2021..... 5/13/81
 Home energy assistance program, ARC 1176 terminated ARC 2022..... 5/13/81

REGENTS, BOARD OF[720]
 Traffic and parking at universities, 4.25(12), 4.29(2)c", 4.31(1), 4.32(5) to 4.32(7), 4.33(13), 4.33(14),
 4.34(9), 4.35(1), 4.35(2), 4.35(4), 4.36(2)b", 4.37(1)a", 4.38(4), 4.39(1), 4.39(2), 4.40(6)c", 4.42(2)b",
 4.43(1) to 4.43(3), 4.50(2), 4.50(7), 4.50(10) ARC 2055.....F..... 5/27/81
 Committees, 11.1(s) ARC 2029.....N..... 5/13/81

LIVESTOCK HEALTH ADVISORY COUNCIL[565]
 Regappendations, ch 1 ARC 2018..... 5/13/81

HEALTH
 Chiropractic examiners, 141.13(1)a", 141.61(5), 141.64(1), (2) and (3) ARC 2019.....N..... 5/13/81

Regents Discussion of parking fines imposed by state universities with Schroeder expressing opposition. In re 4.33(14), Priebe opposed the word "New". The Committee preferred equal application for all faculty.

Pharmacy It was agreed that pharmacy rule 8.15 would be placed on the agenda when it becomes an adopted rule.

6-3-81

No Reps Priebe moved objection to 4.33(14) which can be remedied by
Cont'd striking the word. The following language was prepared by Royce:

Regents
Objection
to 4.33(14)

Pursuant to the provisions of §17A.4, the Code, the administrative rules review committee objects to subrule 720 IAC 4.33(14), on the grounds the subrule is unreasonable. The subrule appears as part of ARC 2055 in III Iowa Administrative Bulletin 24 (5-27-81).
Subrule 4.33(14) establishes parking fee schedules for new faculty or staff members of Iowa State University, who begin employment after the start of the academic year. It is the feeling of the committee this provision should be available to all faculty members. This objection may be overcome by striking the word "new" from the subrule.

Vote Motion carried viva voce.

Conser- The subject of wild turkey hunting was brought up again. Priebe
vation moved to object to chapter 112 of Conservation rules on the
basis they are unreasonable. Discussion followed.

Vote Roll call on the motion to object showed a tie vote -- Schroeder,
Priebe and Tieden voting "aye" and Holden, Clark and Chiodo
voting "no". Motion lost.

Committee At Committee request, Royce advised them re the pending litiga-
Business tion challenging Committee objection to Pharmacy rule 6.5(3).
He said the AG, in defense of the Pharmacy Board, has made four
allegations:

- (1) The objection voted by ARRC [4/16/80] against pharmacy rule was based on erroneous criteria--incorrect grounds were used;
- (2) Arguing that the Committee objection was grounded on unlawful procedure, i.e., that the Committee is an agency under 17A and has not adopted rules under 17A;
- (3) The Committee objection is unconstitutional in that it violates the separation of power doctrine -- the old idea that rulemaking is an executive function and that the objection encroaches upon that function;
- (4) The objection encroaches upon the judicial branch of government's right to determine the burden of proof -- a little more complex than that, but that it encroaches upon the right of the judiciary to interpret the laws.

Royce offered options for the Committee: (1) Do nothing since the court suit will not bind the Committee. The Committee is not a party and will not be definitely bound by the result of the court case. However, if that court case is decided in favor of the agency, what they have established is precedent for any other party wanting to challenge an objection.

Committee (2) Fully intervene into the court suit with a real and direct Business interest in protecting Committee power. The Committee would Cont'd be subject to the jurisdiction of the court and would be bound Pharmacy by the decision, but would also have the advantage of participating in litigation. It would be very expensive and time consuming to hire outside counsel.

An alternative, suggested by Oakley, was to file an amicus curiae brief (not joining the law suit but simply saying we have an interest in this case and we have prepared a brief for you, the court, to read). A disadvantage would be that you do not become a party to the suit and you have little control over it.

If the Committee does not intervene now, they cannot enter the court case as a party later on. However, the brief could be filed at any time--possibly even in District Court. Discussion of waiting until July to make a decision on the course to follow.

Royce said Professor Bonfield had verbally committed his support to the Committee.

Motion Priebe felt strongly that the Committee should defend itself and he moved that Royce contact some lawyers to determine cost involved.

It was pointed out Pharmacy did not feel strongly about this case. Royce was bothered by the fact that one branch of government was "attacking" another. There was general agreement that previous lawyer members of the Committee should not be asked to serve as counsel. Priebe was hopeful Bonfield would recommend someone.

Vote Motion by Priebe carried viva voce.

Committee requested that the following letter be published in the Iowa Administrative Bulletin and the Iowa Administrative Code.

TO: All State Agencies

FROM: Administrative Rules Review Committee

Since the inception of the Administrative Procedure Act, rulemaking by state agencies has mushroomed. The Administrative Rules Review Committee is required, by Section 17A.8(5), The Code, to meet the second Tuesday of each month to review rules published the previous month. During the Legislative Session, the Committee has found it increasingly difficult to devote the necessary time for thorough study.

We request, whenever possible, that you plan rulemaking so that the majority of Administrative Rules will be before us sometime other than the months of February through May.

Your co-operation will be greatly appreciated.

6-3-81

Adjournment Chairman Schroeder adjourned the meeting at 4:15 p.m.
Next regular meeting was scheduled for Tuesday and
Wednesday, July 14 and 15, 1981.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary

APPROVED

Lavene Schroeder
Chairman

Date _____