

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, September 13 and 14, 1983.

Place of Meeting: Senate Committee Room 22, State Capitol, Des Moines, Iowa.

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

Meeting Convened Vice Chairman Schroeder convened the meeting in Room 22 at 10:00 a.m. Wednesday, September 13, 1983.

CONSERVATION COMMISSION Ross Harrison, Julius Satre and Bob Fagerlan appeared on behalf of the Conservation Commission to review:

CONSERVATION COMMISSION(290)
Hunter safety education and ethics. ch 75 ARC 4004 .*F*..... 8/31/83
Regulated harvest and sale of American ginseng. 21.2. filed emergency. ARC 4001...*FE*..... 8/31/83

Royce called attention to the fact that 21.2 was filed emergency and follows a direct statutory mandate regulating harvest and sale of American ginseng. He had informed the Commission it would be unnecessary to send a representative to the meeting. Under the legislation, harvest would be delayed one month from September to October.

ch 75 Discussion of chapter 75 and the manual pertaining to hunter safety education was referenced. Fagerlan pointed out that other states, as well as Iowa, preclude children under 12 from being certified to hunt. General discussion. Priebe interjected the matter should be referred to the appropriate legislative committees. Tieden expressed concern that there was unawareness of the program. However, Department contended it had been well publicized. Satre added that 3000 children had gone through the program since July 1. No formal action taken.

Priebe took the chair.

CIVIL RIGHTS COMMISSION Tay-Yu Yang represented Civil Rights Commission for review of affirmative action, chapter 12, ARC 3904, Notice, IAB 7/20/83. Yang presented a brief review of the program and pointed out the previous rules of state agencies did not provide standards for uniform affirmative action. Executive order 46 directed this action.

CIVIL RIGHTS
COMMISSION
Continued.

Tieden inquired about the public hearing and Yang indicated comments were received from 50 different sources -- mostly from state agencies. Yang assured Tieden that affirmative action would not create problems for the Merit System-- agencies do the hiring and they should recruit to create balance.

12.3(3)d

Yang explained the primary reason for 12.3(3)d was that some state agencies receive federal funding where requirements may vary.

12.4

In re 12.4(601A), affirmative action for nonpermanently authorized positions, Schroeder was told it would be applicable for agencies such as DOT who hire hundreds of summer employees. Schroeder favored a specific minimum. Yang said the point was well taken, but pointed out possible statistical problems. O'Kane was reluctant to support Schroeder's suggestion. The impact of the Executive Order was discussed. Yang indicated affirmative action generally deals with race, sex and disability -- age factor will be considered on an individual basis.

Doyle inquired about the category of "cabinet official" in 12.3(2)a(2) and was informed that language was taken from federal guidelines. He thought the provision should be reworded.

Executive Order 15 by former Governor Ray was referenced as the original affirmative action program. Royce questioned need for the second one. According to Yang, the latest order was more specific, and gave state government a "new slate." No other questions.

COMMERCE
COMMISSION

The following agenda was before the Committee:

COMMERCE COMMISSION(250)	
Renames the office of commerce counsel and establishes new offices, also technical revisions, amendments to chs 1, 3, 6, 7, 16, 19 and 20, 22.4(3) "c" to "f" ARC 4015.....	N..... 8/31/83
Standards for public utility management efficiency ARC 3997.....	N..... 8/17/83
Reminder assessment for utilities exempt from rate regulation, 17.1, 17.2, 17.4, 17.7 ARC 3994.....	N..... 8/17/83
Utility extensions for new service, 19.3(10), 20.3(13), 21.3(12) ARC 3995.....	N..... 8/17/83
Telephone utilities, basic local service, 22.1(3), 22.2(5), 22.3(14) ARC 3996.....	N..... 8/17/83
Interest rate on gas refunds, 19.10(3)d", filed emergency ARC 3993.....	FE..... 8/17/83

Bill Haas, Commerce counsel, represented the Commission. Also present: Don Williams, Northwestern Bell Telephone; Gus Skovgard, Iowa Public Service; J. Kent Kerome, Iowa Telephone Association; Dan Leihbrecht, United Telephone; John M. Lewis, Iowa Utility Association; and Dave Long, League of Municipalities.

There was brief discussion of ARC 3997, the public hearing statement. Several comments were made by industry representatives relative to the establishment of methodology for analysis of management efficiency. Chiodo commented, "The message ought to be clear to the industry to come up with something workable."

ch 17

Amendments to chapter 17 establish that public utilities exempt from rate regulation shall not be assessed for remainder expenses incurred during review of rate-regulated public utilities.

COMMERCE
COMMISSION
Continued

Haas said that expenses incurred by the Office of Consumer Advocate will be charged to the public utility [1983 Iowa Acts, HF 312, §28].

Responding to O'Kane, Haas noted that nonrate-regulated utilities can be assessed when the Commission reviews their tariffs.

chs 19-21

Schroeder viewed utility extensions for new service as "a homebuilders rule." He envisioned problems with the requirement that the applicant "contribute in aid of construction" which exceeds fifty feet. Haas said that the fifty-foot standard had been in the rule for over a year. Schroeder also envisioned problems with 20.3(13)b(1) re plant additions-- Haas agreed to review that area.

20.3(13)b(4)

In re 20.3(13)b(4), Priebe asked for reconsideration of requirement that the applicant provide a contribution in aid of construction within 30 days after completion.

ch 22

In reviewing telephone utility amendments, Chiodo was informed that basic local service would not allow for incoming long distance calls. These calls would be through "extended service area." Technology of the service was discussed by Jerome. Haas indicated it was the intent that the rule should be applicable to everybody to ensure basic telephone service at the lowest possible cost. Brief discussion of 19.10(3)d re interest rate on gas refunds. Lewis agreed to pursue the question of whether interest would be paid to the company on the refund they get.

ENERGY POLICY
COUNCIL

Dennis Guffey, Deputy Director, and Mike Carleton, Program Planner, appeared on behalf of Energy Policy Council for review of solar energy and energy conservation bank, chapter 16, ARC 3992, also filed emergency, ARC 3991, IAB 8/17/83.

Carleton, in his overview of chapter 16, said the EPC was awarded \$780,000 by HUD to provide loan assistance for energy conservation measures and passive solar energy measures for medium to low income individuals. Iowa's program provides eligibility for energy conservation measures only on the basis of the application made by EPC last November. Carleton reviewed specifics as to eligibility which included anyone with an income of 150 percent below median income for each county. A 7-year pay back is determined by energy audit.

Carleton reported there was little interest in becoming a "lead lender" and the Department was considering opening it up to all banks in the state. Utilities can be lenders also.

16.1(15)f(2)

O'Kane raised question re 16.1(15)f(2) and asked, "What would fall into the category 'not subject to inspection and supervision of a governmental agency?'" Carleton advised him that banks and savings and loans would be examples. O'Kane made the point that those instructions were subject to regulations. Tieden noted inconsistency in dates.

9/13/83:

ENERGY POLICY
COUNCIL
16.2

Royce suggested that the matter could be addressed in the definitions by listing all federal Acts and the enactment dates. Schroeder referred to rule 16.2 and questioned whether it circumvented the 17A process. Upon question by Schroeder as to waiver provisions in 16.127, Carleton admitted it might need clarification.

Graf requested that income eligibility information be moved to the beginning of chapter 16. Doyle was advised that language in 16.45 re manufacturers warranties was derived from the federal guidelines but will be amended.

SOIL CONSER-
VATION DEPT.

Ken Tow and James Gulliford were present for Soil Conservation to review:

SOIL CONSERVATION DEPARTMENT[780]
Iowa financial incentives program for soil erosion control, 5.20(17), 5.42, 5.55(2), 5.60(S)*e" ARC 4007..F..... 8/31/83
Iowa financial incentives program for soil erosion control, 5.41, 5.51(1)*c", 5.51(2), 5.73(6), filed emergency after notice
ARC 3937 ..FEAN.....8/3/83
Conservation practices revolving loan fund, ch 9, filed emergency after notice ARC 4006..FEAN..... 8/31/83

Tow explained the amendments incorporated into the wind erosion control program. Schroeder suggested possible 45-day delay into the General Assembly. He argued that the County and Engineering Association should be involved in determining worthiness of a project.

Gulliford referred to rule 750--5.55(3) which requires a local soil conservation district to involve the county or city engineer, district engineer and soil conservation technician in determination of eligible road segments. After the last ARRC meeting, Soil Conservation asked districts to document as to when the eligibility map was established and who was involved.

Priebe asked that the record show that if this procedure does not work to Committee satisfaction, they will ask for additional review. Department officials were amenable.

In answer to Schroeder, Gulliford said emphasis would be on tillage. Farmers make a 5-year agreement and they can be trained to farm with residue management which would effectively protect roadsides. Schroeder opined there was no long-term benefit. Gulliford pointed out that shelter belts were not being emphasized by their Department since funds were appropriated to DOT to cover that area.

5.41, 5.51
and 5.73
ch 9

Amendments to 5.41, 5.51 and 5.73 were acceptable as submitted. Gulliford explained that chapter 9 provides a method for allocating available loan funds to soil conservation districts--patterned after the cost-share program.

In response to O'Kane, Gulliford said the 1978 survey was a Field Survey performed by the Soil Conservation Service.

9.20(3)

Discussion of 9.20(3) with Department officials advising Tieden that the definition of "total assets" was the same as that used by Iowa Family Farm Development Authority.

SOIL CONSER-
VATION DEPT.
Concluded

Gulliford pointed out that the statute provides that loans made under this program shall come due for payment upon sale of the land in the program.

Recess.

Committee was recessed at 1:30 p.m. Reconvened, 1:35 p.m. Chairman Priebe in the chair.

HUMAN
SERVICES

Judy Welp, Mary Louise Filk, Jim Krogman, Paul Frederick, Bob Lipman, Joe E. Smitt, William Stansberg, Will Miller, Kathi Kellen and Jane Jorgenson appeared on behalf of the Department of Human Services to review:

HUMAN SERVICES DEPARTMENT(498)
Food stamp program. 65.1(4) to 65.1(7), 65.2, 65.19 ARC 3979 .F..... 8/17/83
Medical and remedial services, hospitals. 78.3(16) ARC 3980F..... 8/17/83
County and multicounty juvenile detention and shelter care homes. 105.1(4), 105.1(8), 105.1(9), 105.2(S)"b"72), 105.2(12)"f".
105.3(3)"c" to "j" and "o", 105.10(1), 105.12, 105.13, 105.16(1), 105.16(5), 105.19, 105.20 to 105.22 ARC 3981 .F..... 8/17/83
Organization and procedures. 1.1, 1.2, 1.2(S), 1.3, 1.4(3) ARC 3978 .N..... 8/17/83
Fair hearings and appeals, food stamps. 7.21(1) to 7.21(4) ARC 3966N..... 8/17/83
Community mental health center standards, amendments to ch 33 ARC 4005 .N..... 8/31/83
Unemployed parent workfare program. 59.10(2)"j". filed emergency ARC 3982N..... 8/17/83
Medical and remedial services, nutritional supplements, skilled nursing facilities. 78.1(2), 78.12(16) ARC 4018 .N..... 8/31/83
Medical and remedial services, skilled nursing facilities. 78.12(13), filed emergency ARC 3983 .N..... 8/17/83
Medical and remedial services, hearing aids. 78.14(7), filed emergency ARC 3984 .N..... 8/17/83
Adoption services. 139.1 ARC 3968N..... 8/17/83

ch 65

Chapter 65 amendments were before the Committee. O'Kane referenced the monthly report form which will reflect the change from prospective to retrospective budgeting and Jorgenson agreed to send him a copy of the form when it is returned from the printer.

78.3(16)

Schroeder called attention to the lack of date certain in reference to federal laws. Welp agreed to include information in chapter 65. Doyle raised question re 65.19(12) and inquired if there were a method to save postage and avoid mailing notices separately from food stamps. Doyle was informed that food stamps are machine stuffed and notices could not be included. No questions were posed re 78.3(16).

ch 105

According to Welp, standards were updated with amendments to chapter 105. Priebe was interested in whether or not costs would be increased as a result of the changes. Krogman said that 5 facilities utilize mechanical restraints but only on rare occasions. Priebe was advised that all seven facilities could utilize the "prime programming" referenced in 105.1(4).

105.19(2)c

Schroeder pointed out that a "designated person" might not be readily available at the time of need--105.21(1). Krogman claimed they were on call and usually a supervisor or staff member would be in the community. He added that the shelter detention association supports the rule. Children who are restrained have committed serious crimes.

In re 105.19(2)c, Priebe pointed out use of "will" and recommended that be changed to "shall" or "may". Welp and Filk agreed "shall" would be preferable.

There was brief discussion of hot water temperature requirement in 105.2(8)b.

HUMAN
SERVICES
DEPARTMENT
Continued

Tieden raised question with respect to the new language in 105.13 and Royce responded that in-house, on strictly personnel matters, would be more in the line of policy. Welp explained that "substantiated instance" would be a complete investigation of an alleged child abuse and then, the abuse is verified.

ch 1 Schroeder could foresee difficulties with 105.21 for police officers who might need to use mace. No questions were raised re amendments to chapter 1.

105.3(3) Doyle referred to 105.3(3) and wondered why assault was not included. It was Krogman's understanding that only child abuse information could be released. Priebe questioned removal of "fraud" in 7.21(2) but Welp noted that was necessary for compliance. Welp told Tieden that the District Benefit Payments Administrator supervised maintenance programs at the district level. Tieden called attention to incorrect outline structure in 7.21(4) and the Department will revise it. 7.21(2) O'Kane failed to see the need for the waiver in 7.21(3)a which, in his opinion, could be susceptible to abuse. Further, he could not understand why anyone would be willing to sign a waiver. Welp responded that it would preclude going through the fair hearing process. Department has learned that 40 to 50 percent of people failed to attend board hearings.

Department officials defended the process and Welp explained the first notice to be received would be cancellation of food stamps or reduction in benefits--or some action would be taken on unreported income. Welp indicated there were two separate items -- the waiver of the rights to the hearing; and deferred adjudication [7.21(4)] which provides opportunity to forego a fraud trial by being disqualified and agreeing to repay. Welp concluded that the actual effect of the waiver was consent to disqualification.

7.21(3)b In re 7.21(3)b, Doyle called attention to possible problem which might exist for a 17½-year old living in the home but Jorgenson responded that federal regulations allow no leeway. Doyle was informed that the requirement in 7.21(2)b was also federal. Welp reminded the ARRC that the Department had adopted federal regulations by reference.

O'Kane reiterated his dissatisfaction with the food stamp program and noted he planned to review the federal amendments. Royce requested a packet of the forms which are sent to the client.

ch 33 No questions were raised with respect to chapter 33 amendments.

59.16 In re 59.16(2)j, Lipman described a workfare site for Tieden O'Kane recalled that the legislature had some specific differences with the Department on the rule. Welp pointed out that occurred after the rule was filed--the entire chapter

HUMAN
SERVICES
Continued

would be placed under Notice. Schroeder expressed an opinion that 78.1(2) should be clarified as to use of "legend....or nonlegend..." Tieden inquired if the changes in 78.12(13) would generate additional cost. Welp responded that for fiscal year 1984, it should not exceed a total of \$365,000.00 which would include \$170,000.00 in state costs. Chairman Priebe posed the possibility of requesting that the emergency rules also be submitted under Notice. O'Kane had no problems with the rule but saw a possibility of Iowa not developing the skilled facilities they need.

No questions were posed re 78.14(7). Welp said that revised rule 139.1 limits the number of applications any district may accept. There are so few easy-to-place children (less than 50 per year) that large numbers of applications have accumulated. Committee members expressed concern that the rule would be discriminatory. Department officials emphasized that the home situation would be studied, but placement of the child would be dependent upon needs of the child.

Definition of "easy-to-place" and "hard-to-place" children was reviewed. Attention was called to the fact that there are insufficient minority applicants. Doyle was interested in knowing the reaction of the Civil Rights Commission with respect to the rule. He thought the word "Caucasian" should be deleted from 139.1(1). Schroeder reasoned that lack of children to place did not justify limiting the number of applicants on the waiting list. No further comments.

BOARD OF
NURSING

Ann Mowery, Executive Director, Board of Nursing, and LuRae Fischer, school nurse practitioner, appeared on behalf of the Board of Nursing to review:

NURSING, BOARD OF(590)

Certified school nurse practitioner. 7.1(10), 7.2(1)"e" ARC 3974 .F..... 8/17/83

Specific nursing practice for licensed practical nurses, 6.6 ARC 3573, also filed emergency ARC 3972 .N.S.F.E... 8/17/83

Mowery informed the Committee that the Board was not eliminating School Nurses--a category of advanced practice for school nurse practitioners was being added. Iowa has no school nurse practitioner advanced training programs. Schroeder expressed opposition to the additional category.

Mowery introduced Fischer who explained the two different levels of nursing for schools. The School Nurse Practitioner performs physical assessments for well children which practice is supported by the Medical Society. Fischer continued that additional training is required for this preventive type of service.

Fischer insisted their purpose was not to diagnose -- but to identify a problem and steer the child into medical care. Chiodo inquired as to the Code definition of school nurse practitioner. Mowery responded it was not defined by law or rule. Royce reminded Mowery that the Board was empowered to define "certified school nurse practitioner." Mowery told Chiodo that, at this time, the basic registered nurse lacks the physical assessment skills of a school nurse practitioner. In response to Chiodo, Mowery took the position that the Board had authority to implement a different level of nursing care. There was lengthy discussion with respect to the philosophy expounded by the rule.

BOARD OF
NURSING

On Priebe's question as to whether or not the Board of Nursing had statutory authority, Royce cited chapter 152. However, he preferred explicit definition of the duties of advanced practitioners. In addition, the rules should clarify that RN's would not be precluded from performing those services allowed in the past.

Schroeder took the position that "the rule was arbitrary and capricious." Priebe interpreted the rule as creating "a new group" or "another category." Committee options with respect to the rule were considered.

Chiodo concurred with Royce as to the Board's authority and the need for definitions.

Motion -
Refer to
Legislature

Schroeder moved that Royce notify the appropriate legislative committees concerning the six categories of specialized nursing practitioners which have been implemented by the Board of Nursing. Motion was adopted.

6.6

Schroeder requested Mowery to provide him an outline of the requirements of rule 6.6. Mowery was amenable. No further comments.

PLANNING &
PROGRAMMING

Layne Palmer, Jim Lynch and JoAnn Callison represented Planning and Programming. The following agenda was before the Committee:

PLANNING AND PROGRAMMING[630]
Iowa community cultural grants program, ch 18, filed emergency ARC 3986 *FE* 8/17/83
Community development block grant nonentitlement program, 23.4, 23.6 to 23.9 ARC 3975 *N* 8/17/83

18.6

Royce commented on the vagueness of the point system in 18.6. Callison admitted the Commission had a difficult time with the nebulous area. An advisory committee selected from state agencies and five voting members of the Iowa Jobs Commission will be reviewing the matter.

18.7

Doyle referred to 18.7 -- administration of grants -- and wanted assurance that small communities could participate. According to Callison, arts festivals, historical and tourist activities will be allotted \$900,000.00. An estimated 200 to 300 grants could be made under this program--50-50 federal and state match. Priebe spoke of the time frame and expressed preference for projects to be completed before communities would receive the funds. Doyle was informed that Senators Slater and Connelly serve on the Commission.

ch 23

Palmer reviewed minor changes to chapter 23. In the third year of the community development block grant program, \$25 million will be available for 1984. Scheduling had been modified to coincide with construction seasons. Palmer said the proposal to preclude residential care facilities from the program generated the most controversy and it will be changed before the rules are adopted. A suggestion by the Iowa Development Commission for an economic development set aside has not been addressed as yet. The funds would be earmarked for economic development projects.

9/14³/83

PLANNING &
PROGRAMMING
Continued

O'Kane requested to be on the OPP mailing list and asked that the material be sent to his home address. Schroeder asked that all ARRC members be included.

Royce suggested that OPP should expand their statement in the Notice by specifying the issue which would be discussed at the hearing. He recommended the method utilized by Commerce Commission. Population limitations were discussed-- the nine largest cities in the state are ineligible. Priebe asked if OPP planned to renotece the rules and Palmer indicated they would not. He added that all cities and counties had been apprised that OPP was proposing to delete 23.4(3)g. They received 30 comments from those not wanting the change to be implemented.

23.4(3)g

Discussion ensued as to proper course to follow. Chiodo and Priebe preferred that the rules be renoteiced without the residential care facility language. Priebe insisted that deletion, when the rule is filed, would preclude any input from opponents. No other questions.

PUBLIC
INSTRUCTION

Larry Bartlett, Administrative Consultant, Ray Morley, Special Needs, Carl Smith, Consultant, Special Education, and Gayle Obrecht, Finances, appeared on behalf of the Department of Public Instruction to review:

PUBLIC INSTRUCTION DEPARTMENT(G70)
Special education, 12.3(4)c and "F", 12.19(3) ARC 4014 N 8/31/83
Schools, programs and support services for dropouts and dropout prevention, ch 58 ARC 4013, also filed emergency
ARC 4012 N. S. F. E. 8/31/83

ch 12

Smith explained that amendment to chapter 12 consolidates the special education definition of "emotional disabilities" and "chronically disruptive" into one definition of "behaviorally disordered" as mandated by 1983 GA, HF 133. Clinical consultation provisions would also be deleted under the proposed rules. DPI favors an educational decision with education factors being considered.

12.2(4)c(3)

Schroeder questioned use of "pupil's personal feelings" in the last paragraph of 12.3(4)c(3). Smith emphasized they were not advocating a real clinical in-depth analysis, but wanted to provide more information to practitioners. Smith thought the term was less negative and professionally, the intent was to move practices to a comprehensive evaluation. Schroeder insisted students have enough problems without adding more comments to their records. Smith did not foresee additional costs as a result of the change. Morley reviewed Chapter 58 and explained that the emergency implementation was necessary since schools must submit plans by November 1. Morley disagreed with Tieden's contention that additional funds would be needed. DPI estimated costs of \$1.5 million statewide. Priebe suspected the burden would ultimately shift to local property taxes. DPI anticipated that approximately 2500 additional dropouts would be served by existing department staff who would administer the program through guidance services division.

Chapter 58

9/13/83

PUBLIC INSTRUCTION

General discussion. Morley said that many schools have sought federal grants in order to support their programs. Tieden envisioned problems since most districts have not budgeted for the program. Morley reminded ARRC that once a dropout student returns to school, state aid would be generated. Obrecht reviewed the budgeting process for the program, which is not mandatory.

58.2(9) (10)

Motion Economic Impact

Schroeder was skeptical of definitions "withdraw" and "dropout" in 58.2(9) and (10). Smith said some students are counted in September and then they drop out. The Department is attempting to point out the two possibilities to help track state aid. Schroeder indicated ARRC could request fiscal impact (economic) statement as to cost of the program and Doyle so moved. Seconded by O'Kane. Motion carried. Definition of "dropout" was discussed at length and Priebe took the position it was too broad.

Graf raised question as to what constituted "withdrawal" from school. According to Morley, students will start withdrawing while in school, quit participating in activities, academic performance decreases, and finally, they quit coming to school. Morley advised Priebe that the five percent in 58.5(10) would cover the highest dropout rate in the state-- never has exceeded that figure. Doyle was told that ill or injured students are not considered as dropouts.

Tieden noted the Department had not exceeded their statutory authority. No other action.

TRANSPORTATION DEPARTMENT

Julie Fitzgerald, Executive Assistant; Carol Coates, Director, Vehicle Registration; and V.R. Raymond, Purchasing/Inventory Director, Department of Transportation were present. The following was before the Committee:

TRANSPORTATION, DEPARTMENT OF[820]	
Procurement of equipment, materials, supplies and services. [01.B] amendments to ch 2	ARC 3969 .F..... 8/17/83
Vehicle registration and certificate of title. [07.D] amendments to ch 11	ARC 3999 8/31/83
Interstate motor vehicle fuel permits and transport carrier registration. [07.F] 7441(5), special review IAC

01B, Ch 2

In re 2.3(3), Schroeder questioned d(9) and Fitzgerald indicated it was from the federal law. Schroeder also raised question re 2.4(1)b. Raymond assured Schroeder that competitive bidding would be considered for architects. Fitzgerald commented that, in some areas, DOT's goal is to move toward bids--weather consultants, for instance. Priebe supported the bidding process. Fitzgerald, responded in the negative to question posed at the last meeting with respect to reciprocity for engineers and architects (landscape). Coates advised Priebe that receipts from staggered registration of vehicles would be less than the original estimate of \$16 million. Priebe requested specific figures.

Doyle had been asked by his county treasurer if there would be changes in the method of calculating credits on small vehicles and motorcycles. Coates admitted that the fee credit law, while very helpful for Iowans, will be very difficult to administer. The computer will be utilized.

TRANSPORTA-
TION DEPT.
Continued

There was discussion of fees and temporary use of vehicles without plates. Coates explained there was no differentiation in registration between special use and regular trucks. No other questions.

Deferred

Special review of interstate motor vehicle fuel permits and transport carrier registration was deferred until October.

Recess

Meeting was recessed at 5:00 p.m.

Chairman Priebe reconvened the meeting Wednesday, September 14, at 9:00 a.m. in Committee Room 116. All members and staff were present.

HEALTH
DEPARTMENT

Health Department representatives were: Gina Ries, Nutrition Director, WIC program; Mark Wheeler, Hearing Officer, and Peter Fox, Licensing. The following rules were considered:

HEALTH DEPARTMENT(470)	
Optometrists, licensure, display certificate, 143.9, 144.112(15) ARC 3967	8/17/83
Acquired immune deficiency syndrome, 1.2(1) ARC 4016	8/31/83
Rules updated, 3.1, 3.1(6), 17.1, 18.1, 18.1(4), 18.1(5), ch 126, 173.8, filed emergency ARC 3967	8/17/83
Special supplemental food program for women, infants and children, 73.5 to 73.23 ARC 3989	8/17/83
Optometry examiners, 143.3(1), 143.3(2) ARC 3988	8/17/83
Barber examiners, 152.105, 152.106, 152.109(2)"b", 152.201, 152.203 ARC 3990	8/17/83

1.2(1)

Misc.

18.1(135)

Ch 73

Fox briefly reviewed amendments re licensure, display certificate for optometrists. No questions. According to Wheeler, amendment to 1.2(1) would add acquired immune deficiency syndrome to the list of reportable diseases. Three cases have been reported in Iowa. Miscellaneous cleanup amendments were considered. In re 18.1(135), Priebe questioned exclusion of mobile home parks. Wheeler stated that mobile home parks and tourist camps are now regulated under two sets of rules. Some changes will be made in Chapter 73 as a result of the September 6 hearing. Schroeder interjected that CFR references should contain dates certain.

O'Kane pointed out that 73.18 did not accommodate an appeal process, but Wheeler replied that the rights of appeal exist in different rules. O'Kane suggested addition of "which is subject to appeal under their vendor rights".

In response to O'Kane, Ries answered that 73.5(5), to some extent, would provide control over staffing patterns of local WIC programs. Ries emphasized that federal regulations are detailed. Tieden brought up the matter of nutrition guidelines. He reported that the Dairy industry of Iowa opposes the limitations with respect to 2 percent milk. Priebe declared that Department was "getting a little carried away" in 73.8(2). He preferred that "skim" milk not be specified. Ries indicated that normally, the recipient has a choice of milk if there is no obesity problem. Ries continued that federal regulations provide authority to tailor a food package. The standards were advisory, not mandatory. The program was intended to help improve the individual's diet. Wheeler was willing to address the specific concerns individually if Royce provided them.

9/14/83

HEALTH
DEPT.
Cont'd

Schroeder envisioned problems for vendors in 73.11. Tieden learned there were 29,000 participants in the WIC program and 1,000 WIC stores. He suspected the beef, pork, and egg producers, etc. would also be interested in the rules. Schroeder in the chair.

OPTOMETRY
143.3(1)

Fox explained proposed optometry rules. Schroeder observed that 143.3(1) lacked information as to when the meeting would be held. Fox commented, as a matter of practice, boards have elections as soon as possible after May 1. Fox suggested it could read "first meeting after May 30."

BARBERS
ch 152

Fox stated that amendments to Ch 152 were corrective except for 152.109(2)b, which reduces hours from eight to six for continuing education. General discussion of the different requirements for cosmetologists and barbers. No other questions.

Committee was recessed at 9:45 a.m. to move to Room 22. Reconvened at 9:55 a.m.

Priebe took the chair.

EMPLOYMENT
SECURITY

Paul H. Moran and Joseph Bervid appeared on behalf of Employment Security to review:

EMPLOYMENT SECURITY[370]	
Iowa public employees retirement system, 8.6(9), 8.11(8), 9.13(9) ARC 4000 E	8/31/83
Employer records and reports, employer's contribution and charges, claims and benefits, 2.16(1)"a", and "c"; 3.2(1)"b"; 3.12(2); 3.27(7)"b", "c" and "d"; 3.49(1)"b"; 4.2(2)"a"; 4.23(41); 4.24(3); 4.35(14) ARC 4011. N	8/31/83
Job insurance benefit rights under workers' compensation, workers' compensation information form, 4.7(2), 10.4. <u>filed</u> emergency ARC 3998. N	8/31/83

Ch 8

No questions re amendments to chapter 8.

Chs. 2-4

Amendments to rules pertaining to employer records and reports, contribution and charges and claims and benefits rules were as a result of a court case. Bervid drew attention to the requirement that individuals or businesses with postage meters will be required to have the notice to department on due date--3.8(1)b. Doyle pointed out the rule, technically, might not be within the statutory authority of 622.105. Bervid agreed to research the matter.

3.8(1)b

4.7,
10.4

Discussion moved to job insurance benefit rights under workers' compensation. It was Bervid's understanding the noncontroversial amendments would not be submitted under Notice. Royce saw no problem. O'Kane realized the complexity of the rulemaking, but thought with a bit more effort, the Notice process could have been utilized. After discussion, consensus was that the emergency coercion would suffice unless unforeseen problems arise. In response to Schroeder, it was Bervid's opinion that the law passed last year will "cost employers a great deal of money." Moran said employer response has been negative on the retroactive tax.

Schroeder took the chair.

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IOWA
DEVELOPMENT
COMMISSION

Dale Braynard was present for review of the Iowa industrial new jobs training program, chapter 5, ARC 4003, Notice, IAB 8/31/83, also filed emergency, ARC 4002, IAB 8/31/83.

Responding to Schroeder, Braynard said the Commission selected the meat packing industry as a readily identifiable example-- 5.3(1). Braynard said a comment had been received that possibly the requirement for two newspaper publications may exceed the law. He added that one contract has been signed and others are in process of negotiation. No other comments.

PUBLIC
SAFETY

Connie White, Manager, Program and Policy and Greg Thomas, Administrator, Crime Victim Reparation, were present for review of crime victim reparation, hearings, 17.16, ARC 3977, Notice, IAB 8/17/83.

Priebe resumed chair. Department officials stated that time frame for protest on victim reparation rules which had been omitted were now being added in 17.16. Doyle called attention to incorrect use of "program." White agreed to correct and resubmit.

O'Kane questioned use of the term "protest." White explained the term was used in chapter 10 of their rules which outlines types of forms and procedures to be followed. No other comments.

Recess
Reconvened

Chairman Priebe recessed the Committee at 10:23 a.m.
Reconvened - 10:30 a.m.

REAL ESTATE
COMMISSION

Kenneth L. Smith, Administration Officer and Frank Thomas, Attorney General Assistant, appeared on behalf of Real Estate Commission for review of discipline and hearing procedures, 4.18, 4.30(1), ARC 3971, Notice, IAB 8/17/83.

Thomas stated that the Commission had amended 4.30(1) to conform with ARRC recommendations. In addition, 4.18 was clarified to provide time for the respondent to answer and to request continuance. Thomas reviewed Committee concerns as to whether Commission would make a decision without a majority being present. Rule change reflects that action.

Doyle raised question with respect to 4.30(1) and referred to Code sections 117.29 and 117.41. There was discussion of the relationship between those statutes and subrule 4.30(1). Thomas emphasized that this provision addressed the matter of guilt, not penalty. He reiterated that this amendment was made in response to ARRC suggestion. Doyle opined that a second step was needed. Thomas respectfully disagreed with ARRC in regard to decision for penalty and pointed out the Commission had won in court on less than majority vote of the whole commission for penalty. He agreed with the majority vote requirement for guilt or innocence. Doyle asked Thomas to send the court case to Royce. Doyle and Thomas disagreed on interpretation of Code §117.41.

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REAL ESTATE
COMMISSION
Concluded

Royce interjected that the ARRC has taken the position that any formal action taken by an agency should be accomplished by a majority of the entire body. That becomes important even in contested case matters. Mention was made of referring the matter to the respective legislative committees.

The Committee urged Thomas to discuss the matter with the Real Estate Commission. Thomas indicated that he would still recommend that, as far as penalty is concerned, to remain silent would be preferable. Thomas concluded that the words "or penalty" could be added to the subrule. The Committee was amenable to having the change inserted, without additional Notice, when the rules are adopted.

Defer

College Aid Commission and Department of Water, Air and Waste Management rules were deferred until 1:30 p.m.

REVENUE
DEPARTMENT

Carl Castelda, Deputy Director and Gene Eich, Deputy, were present for review of:

REVENUE DEPARTMENT[730]
Organization, public inspection, copies of proposed rules, 6.3, 6.4 ARC 4017 .F..... 8/31/83
Sales or use tax on newsprint and ink, 18.42(2), filed emergency ARC 3976: .F.E..... 8/17/83

EVALUATION of Railroad property, Ch ~~76~~ 76 IAC

Rule 6.4(17A) was in response to 1983 Iowa Acts, SF 369, pertaining to availability of rules to trade or occupational associations. It was noted that Revenue was the first agency to implement the legislation and Royce was directed to remind other agencies that they should act accordingly.

18.42

Castelda provided basic information pertaining to the subrule 18.42(2) which was intended to implement an opinion of the attorney general. Sixty-two claims amounting to \$7,079,643.60 have been filed. Officially, forty-two claims have been denied.

ch 76

Chairman Priebe called up for discussion the 70-day delay to Revenue rules, chapter 76, imposed at the July 14 ARRC meeting. Committee consensus was to take no further action.

ENGINEERING
EXAMINERS

The following agenda was before the Committee:

ENGINEERING EXAMINERS, BOARD OF[390]
Administration, 1.2 ARC 4003 .F..... 8/31/83
Minimum standards for property surveyor, 2.1(2), 2.3, 2.5 ARC 4009 ..F..... 8/31/83

The Board of Engineering Examiners was represented by Tom Hanson and Otto A. Tennant, Board Member.

1.1

Schroeder quoted from Code Chapter 114 and envisioned problems with new language in 1.2(3). Hanson said that would need perusal. Tennant pointed out that the same test is used by all states, except one. The Board works with the National Council of Engineering Examiners and comity, as opposed to reciprocity, was discussed. Graf asked, "Why prohibit that out-of-state person from taking the examination?" Hanson cited the expense of administering the test. Also, they want to discourage taking the test in Iowa and seeking employment in another state.

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ENGINEERING
EXAMINERS
Continued

At the suggestion of Priebe, officials agreed to peruse the possibility of increased fees. Tennant indicated 350 licensed graduate engineers left the state to find jobs elsewhere.

CH 2

Changes in 2.1(2), 2.3 and 2.5 had been made as requested by the ARRC. No formal action.

Committee
Business

Committee discussed time for October meeting and it was agreed to change from the statutory date of October 11 to October 18 and 19. Schroeder so moved and motion carried.

November meeting was scheduled for statutory date of 8th to be continued on the 9th.

ch 17A

Royce distributed a packet to members for reference purposes re statutes and legislation relative to Administrative Procedures.

Minutes

Doyle moved approval of the minutes of the August meeting. Carried.

Recess

Meeting was recessed for lunch at 11:52 a.m. Reconvened at 1:30 p.m. with Priebe in the Chair.

WATER, AIR
& WASTE
MANAGEMENT

John Seyb and Mark Landa were present for review of emission standards for contaminants, open burning, 23.2(4), ARC 3970, IAB 8/17/83, filed.

Under new subrule 23.2(4), Clive would be added to the list of cities precluded from burning of landscape waste. Responding to Priebe, Seyb mentioned Ankeny, Bondurant, Saylorville, Polk City, Johnson and others as being excluded from the ban. Schroeder failed to understand how Johnston could be a non-attainment area since it is located in such close proximity to all other communities.

Landa spoke of EPA criteria for designating nonattainment areas based on monitored data. The Commission had directed the Department to confine this to the smallest possible area. In 1975, the area was much larger but it has been reduced to region around the city of Des Moines.

Schroeder took the position there was not uniform application of this rule. Chiodo pointed out unincorporated areas exist between Clive and Windsor Heights and Des Moines which could provide "pockets of burning." General discussion. Chiodo questioned department officials at length with respect to the facts and location of monitors. Chiodo and department officials differed as to particulates created by leaf burning. Code section 455B.133 was reviewed.

Schroeder interpreted the statute to require uniform application in a given class. Department official agreed to research that issue. Committee members reiterated their concern for pocket areas.

WATER, AIR & WASTE MANAGMENT Motion to Delay

Schroeder moved that a 70-day delay be placed on 900--23.2(4) of Water, Air and Waste Management Department rules. Discussion followed. Schroeder informed the Department that information was needed as to how much the ban lowered the particulate count vs. previous count.

For the record, Landa explained that after viewing the area to be covered by the rule, Department attempted to define "urbanized area." This created problems in defining "particulate cities" and naming the cities seemed to be the best approach. He was doubtful that the Department was aware of the area alluded to by Chiodo.

Priebe suggested as an alternative that if the Department locates the unincorporated areas, an emergency amendment could be filed.

The Schroeder motion to delay carried unanimously.

CAMPAIGN FINANCE DISCLOSURE

Priebe referred to page 2008 of the ARRC minutes wherein the Campaign Finance Disclosure Commission was requested to drop the phrase "timely filing..." from amendments under Notice in 8/3/83 IAB. He had been informed that the Commission had decided not to act on the ARRC recommendation. Also, after discussion, Royce was directed to notify the Commission that the ARRC will insist on reducing from \$200 to \$100 the fine for late reports.

COLLEGE AID COMMISSION

Gary Nichols appeared on behalf of the College Aid Commission to review:

COLLEGE AID COMMISSION[245]
Iowa guaranteed student loan program, amendments to ch 10 ARC 3935...F..... 8/17/83

He briefly reviewed the changes which impact the federally funded Iowa Guaranteed Student Loan Program. No questions were posed.

Adjourned

Chairman Priebe adjourned the meeting at 2:10 p.m

Respectfully submitted,

Phyllis Barry
Phyllis Barry
Assisted by Vivian Haag

APPROVED:

Beal G. Priebe
CHAIRMAN