

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The regular meeting of the Administrative Rules Review Committee was held Tuesday and Wednesday, September 8 and 9, 1987, State Capitol, Des Moines, Iowa.

Members Present

Senator Berl E. Priebe, Chairman; Representative Edward G. Parker, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representative Betty Jean Clark. Representative David M. Tabor, excused both days, and Senator Priebe, excused Wednesday. Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Deputy Code Editor; Vivian Haag, Executive Administrator. Also present: Barbara Booker Burnett, Governor's Administrative Rules Coordinator.

Convened

Chairman Priebe convened the September 8 meeting at 10:05 a.m. and first order of business was Personnel Department agenda submitted by Clint Davis as follows:

PERSONNEL
DEPARTMENT

Miscellaneous amendments to chs 1 to 8, 10 to 12, 14, 15, 19, 20; amend and transfer 270—ch 2 to 581—ch 23, transfer 690—ch 1 to 581—ch 24 ARC 7833 8/12/87

Davis reviewed changes from the Notice which included a definition of "Career Executive Program." Tieden was told that 3.1(3) provides method by which the Department determines proper classification of positions. It is an ongoing process and adjustments are made as duties change. No other comments.

NATURAL
RESOURCE
COMMISSION

Representatives present for the following agenda were Mike Murphy, Bureau Chief, Marion Conover, Fisheries Section Supervisor, Michael Carrier, Division Administrator, Pete Hamlin, Steve Schmitz, and Vic Kennedy:

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Recreation/tourism grants to county conservation boards, 2645 ARC 7880 8:24:47
Water recreation access cost share program, 30.2(10), and "14," 30.7, 30.8, rescind 30.9 and renumber remaining rules, amend renumbered 30.9, 30.11
30.12(1) ARC 7877 8:26:07
State parks and recreation areas, 61.2, 61.3(1) 61.3(2), 61.3(3), 61.3(5), 61.4(1) ARC 7878 8:26:07
State park user fees 65.2, 65.3 65.4(1) 65.4(5), 65.4(6), 65.5 ARC 7876 8:26:07
Fishing regulations, 81.1, 81.2(1), 81.2(4) ARC 7878 8:26:07
Groundwater hazard documentation, 9.1, 9.2, filed emergency ARC 7847 8:26:07
Maximum contaminant levels for used or recycled oils, 143.6 ARC 7837 8:26:07
ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Effluent and pretreatment standards: other effluent limitations or prohibitions, 62.4, 62.4(3), 62.4(5) to 62.4(9), 62.4(11) to 62.4(13), 62.4(14), 62.4(19),
62.4(21), 62.4(22), 62.4(24), 62.4(26), 62.4(30) to 62.4(33), 62.4(39), 62.4(55), 62.4(61), 62.5, filed without Notice ARC 7827 8:12:07

24.8

In re amendment to 571--24.8, Priebe failed to understand why the Commission would need to state reasons for alteration of rankings if the staff did not. Murphy commented that the Committee was comprised of representatives of county boards as well as Staff who follow criteria in the rules.

Ch 30

Carrier recalled that a formal cost-share program had been established two years ago for marine fuel tax funds granted to local entities for water access development. Minor changes in application and project review procedures were proposed for clarification.

NATURAL
RESOURCE
COMMISSION
Continued
30.9

Priebe questioned deletion of "28E" in 30.9 and was told that management agreements are made with County Conservation Boards which are executed under Iowa Code chapter 111C. Carrier informed Parker that, for the last two years, the \$400,000 annual budget had been adequate. Carrier stated that rule 30.9(324) reflects four state districts and the supervisors submit priority lists.

30.11

Tieden raised question as to deletion of the 25-year minimum in 30.11. Carrier replied that there were some projects under shorter leases and it would be unreasonable for the Department to execute a 25-year lease. Tieden viewed that as a "dangerous precedent." It was his opinion that projects should be as permanent as possible. Priebe concurred. Carrier assured the ARRC that the Department was concerned about accountability and wanted to avoid projects being converted to some other use. Carrier explained that if a truly competitive funding situation were to exist, the priority system would provide guidance. He emphasized that the staff is professionally trained.

30.9

Priebe observed that the Director still has discretion and suggested that 30.9, third exception, be amended by substituting "committee" or "commission" for "director." He reiterated his position that the funding level should not be altered by "an appointed individual." No action.

Ch 61

According to Carrier, amendments to Chapter 61 include removal of exemption to park user fees for handicapped, blind, and senior citizens. Four letters had been received concerning the proposed changes. Carrier offered statistics to support the Commission's position that no economic justification exists for awarding discount to senior citizens. He continued that a large percentage of the camping public was young families with just as many expenses as senior citizens. Carrier cited basic justification for changes was that projected revenues had fallen short. Budgetary needs were \$80,000 short this year. He pointed out that rates would be competitive with other states.

Discussion of the fact that those holding federal duck stamps would not be required to pay park user fees at the Sullivan Wildlife Refuge, which is federally managed.

Ch 65

Carrier gave a brief overview of the amendments to Chapter 65. Parker asked for explanation of policy with respect to special permits for lodge users. Carrier responded that a \$20 fee would be imposed for fifty or less persons and a blanket permit would be issued with colored stickers for guests. Priebe did not disagree with the concept but questioned statutory authority.

NATURAL
RESOURCE
COMMISSION
Continued

Carrier assured ARRC that the AG had been contacted. He added that the park user permit requirement impacted use of state parks, especially lodge rentals where there has been a 50 per cent decrease. Tieden asked Carrier to seek resolution of the matter before the next camping season. Teresa Kehoe, Senate Democratic Caucus, shared her experience with rental of a lodge at Walnut Woods State Park.

65.4(4)

Royce referred to 65.4(4)c and asked if the \$2 charge would be imposed and Carrier replied in the negative. Royce suggested inclusion of "at no fee" for clarification. Discussion of 65.4(4)a which would limit issuance of replacement permits to the Department or to the Park Rangers. They reasoned that the Wallace building would be as accessible as offices of County Recorders. Parker in the Chair.

Ch 81

Conover reviewed amendments to chapter 81. Tieden questioned need for variable length limits on black bass in 81.2. Conover cited difference in fish population in the various lakes. Tieden was surprised to see license requirements for taking of frogs. Conover referred to Iowa Code chapter 109 [109.84] which addresses bull frogs. He also pointed out that many people favor limits. Priebe resumed the Chair.

Ch 9

Kennedy explained amendments to Chapter 9 which made substantial modifications in the rules originally filed emergency on July 1. Kennedy advised Doyle that a groundwater hazard statement would be required when a declaration of value is submitted. He noted that there were no enforcement or penalty provisions in the statute. Kennedy assured the Committee that County Recorders were aware of this provision and supportive comments have been received. He viewed the legislation as "informational" and commented that 9.2(1) would be amended in the September 9 Iowa Administrative Bulletin [ARC 7919].

Parker interpreted deletion of subrules 9.2(5) to 9.2(7) as being contrary to the new language in the rules and creating broad leeway. Kennedy admitted that the deleted subrules may have exceeded the statute and that revision would be more "representative of the statute." No action.

143.6

Hamlin gave brief overview of the Notice re maximum contaminant levels for recycled oil. No questions.

62.4

No questions re 62.4.

COLLEGE AID
COMMISSION

Gary Nichols appeared on behalf of the Commission for the following:

Guaranteed student loans - interest subsidy 10.23 ARC 7820
Guaranteed student loans - delinquent accounts, 10.33 to 10.35 ARC 7819
Variable interest specifications for PLUS loans, 10.59 ARC 7816, also filed emergency ARC 7818

There were no questions.

9-8-87

CIVIL RIGHTS
COMMISSION

Inga Bumbarly-Langston, Director, Civil Rights Commission, and Rick Autry, Assistant Attorney General, were present for review of:

Rescind 240 - chs 1 to 7 and 9 to 11, adopt 161 - chs 1 to 4, 6, 8, 10, 16 ARRC 7842 ... IV 8/12/87

According to Bumbarly-Langston, their rules were renumbered and amended to comply with government reorganization. She assured the Committee that major changes had not been made.

During discussion of 8.54 relative to terms and conditions of employment, Clark pointed out that many households are headed by women. Langston thought the perception still existed that "head of household" would be male.

Previous
Objections

Chairman Priebe recognized Barry who pointed out that objections which had been imposed against some of the former rules would not be carried forward since Civil Rights had rescinded and redrafted their rules. General discussion. Royce brought up the matter of "reasonable accommodation" and asked if case law had modified that in any way. It was Langston's position that Civil Rights rules did not conflict with the Iowa Supreme Court reading and definition of reasonable accommodation. Royce wanted to peruse the cases.

Bumbarly-Langston concurred that Education rules should contain civil rights language and she was willing to cooperate with Department of Education in this endeavor.

ALCOHOLIC
BEVERAGES
DIVISION

Janet Bryan-Galloway, Licensing Bureau Chief, and Richard L. Morrell, Administrator, appeared for the following:

Beverages defined, advertisements, solicitation of orders prohibited, 4.1(7), 6 (19), 7 (25), ARRC 7835 8/12/87

Bryan-Galloway provided overview of the subrules and there were no questions.

HUMAN RIGHTS
DEPARTMENT
Community
Action
Agencies

The following agenda was before ARRC:

Community services block grant, 22.1(1), 22.2, 22.3(1), 22.3(2), 22.4(2), 22.4(5), 22.6(2), 22.9(3), 22.11(5), 22.12(1), 22.14(6), filed without notice
ARRC 7816 FWN 8/12/87

Maggie Itrich appeared as representative for Rod Huenemann. She provided brief explanation of changes intended to implement current statute. No action.

Committee
Business

There was discussion of whether additional hearings on educational standards should be scheduled by the ARRC for the purpose of allowing public participation in different areas of the state. [Chapter 4, Accredited Schools and School Districts, IAB 7/15/87].

Motion

Doyle moved that four meetings be held, if so desired, in four areas of the state. Tieden suggested that hearings be held after the Department files their adopted version of rules. Clark expressed support for delay into the next General Assembly and Priebe

Committee Business Continued preferred that additional hearings be held prior to the Department's final action. Doyle amended his motion to provide that the ARRC chair will designate the time and place for the hearings; Committee members attending will receive expenses and per diem; and staff will receive expenses. The motion, as amended, carried.

Vote

Committee Rules of Procedure Barry called attention to Rule 15 of Committee Rules of Procedure which required updating to conform with current statute relative to delay of rules.

Motion Doyle moved that Barry be authorized to publish a corrected version of Rule 15. Carried.

ATTORNEY GENERAL Linda Thomas Lowe and Susan Barnes, Assistant Attorneys General, represented the Attorney General for the following:

Consumer rental purchase agreement forms, ch 19 ARC 7869.../V..... 8-26-87
 Regulation of membership campground operators, ch 25 ARC 7868.../N..... 8-26-87

ch 19 Lowe briefed ARRC with respect to Chapter 19 which provides model forms for consumer rental purchase agreements, implemented by 1987 Iowa Acts, HF 585, §5. Priebe envisioned problems with the requirement that all terms must be written in "plain English." Doyle challenged use of pronouns "you" and "we" in the forms. He preferred "lessor" or "lessee."

Parker in the Chair. Clark spoke in support of "plain English." Lowe advised that Chapter 19 was a product of compromise.

ch 25 Barnes apprised ARRC that Chapter 25 requires registration of membership campground operators prior to sale of contracts. Tieden viewed 25.3(1) as confusing with respect to registration and expressed his opinion that a \$200 annual fee was quite high. According to Barnes, estimated cost for paperwork generated that figure. She added that the statute sets out broad criteria and no comments had been received on the rules. Royce recommended that a procedure for processing of applications be included. No other comments.

REAL ESTATE EXAMINING BOARD K. Marie Thayer and Kenneth Smith were present for Real Estate rules and the agenda follows:

Brokers and salespersons, 1.8, 1.9, 1.2(1), 1.21, 1.26, 1.27, 1.27(1), 1.27(6), 1.31, 1.34, rescind 1.1 to 1.7, 1.19 to 1.19, 1.17, 1.25, 1.30, 1.32, 1.33
 ARC 7851.../N..... 8-26-87
 Administrative procedure, ch 2 ARC 7852.../N..... 8-26-87

Smith noted that amendments to chapter 1 separate administrative procedure from regulation of licenses. Tieden and Smith discussed multiple trust accounts in 1.27, paragraph 5.

ch 2 According to Smith, Chapter 2 included rules transferred from Chapter 1 as well as a mission statement for statutory compliance. General discussion of interpretation of "during business hours" in 2.14(1). Smith noted that 2.1(3) set office hours from 8 a.m. to 4:30 p.m. The

REAL ESTATE
EXAMING
BOARD -
cont'd

Committee could foresee problems for a one-broker operation. Clark suggested use of "during posted business hours" but Royce was doubtful that would solve the problem. He suggested adding "or by appointment." No formal action.

ENGINEERING
AND LAND
SURVEYING
EXAMINING
BOARD

The Engineering Examiners Board was represented by K. Marie Thayer, Administrator, Professional Licensing and Regulation Division, Pat Peters, Executive Secretary of the Board, and Kevin Kelly, Attorney. Also present: Senator Edgar Holden, Davenport.

2.1, 2.2

In re proposed minimum standards for property survey, 2.1, 2.2, ARC 7853, IAB 8/26/87, Peters said that the words, "surveyor and client could agree to exclude from a survey things not specifically called for by statute" were deleted since the language had created confusion among surveyors. Tieden and Kelly discussed legislative background of the subject.

Holden commented that two years ago, the statute was clearly written to limit the requirement for plats and it was his contention that should not change.

Royce clarified that the current language resulted in compromise between the Board and the ARRC. Initially, in the late 1970s, the Board attempted to modify the rule as set out in ARC 7853. It was unacceptable to the Committee and language, which the Board is now proposing to rescind, was added. Peters cited complaints from people who should have had a plat but did not receive one. Royce was directed to work with the Board on a resolution to avoid possible objection by the Committee.

INSPECTIONS
AND APPEALS
DEPARTMENT

Xenda Lindel-Prine represented the Department for the following:

Field survey administration, food establishment inspections, food service establishment inspections, food and beverage vending machine inspections, hotel and motel inspections, rescind 7.4 and chs 21 to 25, new chs 30 to 33, 37	ARC 7860	8/26/87
Real estate broker, trust account audits, residential care facility audits, chs 21 and 22	ARC 7876	8/12/87
Intermediate care facilities, skilled nursing facilities - examination for aides and orderlies from other states, for 111173, 111174, 111175	ARC 7853	8/26/87

chs 30 to 33,
ch 37

She explained that rules governing inspections of food establishments were transferred from the Agriculture Department and rewritten to conform to government re-organization.

chs 21, 22

In response to Parker, Prine said that federal standards are being adopted and owners of establishments are cognizant of those standards. No comments had been received. No questions re Chapters 21 and 22.

58.11(1)k

Prine reported that amendment to 58.11(1) will allow managers of nursing homes to test potential employees as to their knowledge and skills to work in care facilities rather than depend upon documents. The Committee concurred that a substitute for "challenge" examination should be considered in 58.11(1)k.

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INSPECTIONS
AND APPEALS
Continued

Tieden had no knowledge of an Iowa state-approved program. Royce was requested to research an accreditation program and Prine agreed to review the matter with the Health Department.

PHARMACY
EXAMINERS
BOARD

Norman Johnson, Executive Secretary, briefed ARRC re the agenda as follows:

Licensure -- fees for candidates who are required to retake exam. 1.5 ARC 7859 *✓* 8/25/87
Controlled substances -- refilling of prescriptions. 8.13(9) ARC 7858 *✓* 8/26/87
Controlled substances, 8.20, filed emergency ARC 7838 *✓* 8/12/87

According to Johnson, the applicant pays directly for the federal NABPLEX (\$125) and FDLE (\$25) examinations. The administration fees set out in 1.5 cover the Board's cost for administering the examinations.

8.13

No questions re 8.13(a) and 8.20(1).

BOARD OF
REGENTS

Don Volm represented the Board for review of personnel administration, 3.26, 3.39(4), 3.67(2), 3.82, 3.83, 3.104(4)d, ARC 7850, Notice, IAB 8/26/87.

Parker inquired as to what control, if any, the state Department of Personnel had over Regents. Volm replied that faculty and professional scientific positions are under the Board and nonprofessionals are centralized under a Regents Merit System.

3.82

Doyle questioned change in 3.82--temporary appointment--from a 12-month period to a fiscal year. Volm reported that their Personnel Department operated on a fiscal year basis with most Regents institutions following suit.

3.26

He continued that employees referenced in 720--3.26(19A) were in the statewide collective bargaining units. However, Regents Merit System employees--blue collar, technical, security and clerical, are not. Tieden expressed concern that 3.26 would delegate employees down a step in the process. Volm viewed it as broadening the area and employees have accepted the language.

AGRICULTURE
AND LAND
STEWARDSHIP
ch 14

John D. Hinshaw and Dr. Walter Felder appeared for:

Registration of Iowa foaled horses and Iowa whelped dogs. 14.6(3)(a), 14.25(3)(a), 14.35(3)(a) ARC 7857 *✓* 8/26/87
Livestock movement. 18.11 ARC 7856 *✓* 8/26/87

No questions re amendments to chapter 14.

18.11

In re 30--18.11(163,172B), Felker gave brief comment. Priebe was told if cattle were moved from southern to northern Iowa, a transportation certificate would be needed, but no identification. Priebe questioned the statutory authority and suspected the rule "could create much anger around the state." Felker pointed out the rule was not new but admitted it had not been enforced. General discussion. No action taken.

DEPARTMENT OF
EDUCATION

The following agenda was discussed by Orrin Nearhoof. Also present: Steve Manthey, Sherie Surbaugh, of the Department and Janet Kinney, P.U.R.E.

Phase III, education excellence program ch 80, filed emergency ARC 7817 *✓* 8/12/87

EDUCATION
DEPARTMENT
Phase III

Nearhoof said the Department tried to build from the legislative intent. He continued that indirect costs were aspects of funding which derive from purchase of paper, printing costs, indirect services such as heating; a formula on federal and state provides a limit.

Tieden had received comments with respect to the Phase III program. He preferred availability of specific information. Nearhoof had met with several districts, some of whom had already studied Phase III and said, "The process is one of trust building."

Tieden was interested in differences between "performance pay plans and merit pay." Nearhoof said, "Merit pay has a negative connotation--law provides for tricks on this one." Tieden urged caution in the implementation of the program. Parker and Nearhoof discussed their interpretations of statutory intent for a performance-based pay plan. Parker was uncomfortable with the rules with respect to legislative considerations and took the position there should be close scrutiny by the ARRC. Tieden preferred more definitive language and Clark suspected that the legislation was flawed. Nearhoof reasoned that, "It might have been an easier process if the first Phase III plans were due in 1988."

Parker recognized Earl Bridgewater, Assistant Superintendent, Des Moines School System, and Chair of that system's Planning Committee. He apprised the ARRC of the action being taken by their Planning Committee and referenced the fact that there will be \$10 million available over a three-year period. The Planning Committee had been working for two years and Bridgewater reviewed the history of those sessions. A public report will be made to the Des Moines School Board on October 1.

Recess

Vice Chairman Parker recessed the Committee at 3:35 p.m.

Wednesday
September 9

Vice Chairman Parker reconvened the Committee at 9:07 a.m., Wednesday, September 9, Senate Committee Room 24. Four members were present. Senator Priebe and Representative Tabor, excused. All staff present.

HUMAN
SERVICES
DEPARTMENT

The Human Services Department representatives present were Mary Ann Walker, Dan Gilbert, Cindy Dobson, Anita Smith, Cynthia Tracy, Mary Nelson, Nancy Trotter, Jane Jorgenson, Gloria Conrad, C. S. Ballinger, Alice Fisher, and Marg Corkery. The agenda follows:

Agency procedure for rule making, 1.5, ch 3	ARC 7825	✓	8:12:57
Food stamp program - administration, homeless meal providers, 65.3, 65.31	ARC 7824	✓	8:12:57
Amount, duration and scope of medical and remedial services, other policies relating to providers of medical and remedial care, 78.3, 78.3(1), 78.3(5), 78.3(6), 79.1(2), 79.1(5)	ARC 7823	✓	8:12:57
Application for aid, administration, application and investigation, 19.7(1)(d), 65.22, 65.24, 76.8	ARC 7821	✓	8:12:57
Aid to dependent children - pregnant women, 76.1(14)	ARC 7806	✓	8:12:57
Conditions of eligibility - verification of date of birth of newborn, 75.1(20)	ARC 7808	✓	8:12:57
Direct payment to provider of transportation, 78.13(19)	ARC 7807	✓	8:12:57
Election of officers for medical assistance advisory council, 79.7(1)(a)	ARC 7808	✓	8:12:57
Foster care services, 202.3(3)	ARC 7822	✓	8:12:57
Iowa adoption exchange, ch 203	ARC 7808	✓	8:12:57

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HUMAN
SERVICES
DEPARTMENT
Continued

No questions re amendments to 1.5, 65.3, 65.31. Walker stated that amendments to 78.3 et al change reimbursement method for inpatient hospital services. She discussed the transfer policy and it was noted that 78.13(9) was omitted--limit on treatment of substance abuse.

Parker recommended that the Department explore this area and Clark asked the Department to consider some limitation for the substance abuse treatment.

75.1(14)

No recommendations re 40.7(4)d et al. Department officials pointed out that 75.1(14) provides that unborn children be considered as household members as mandated by federal requirements. Tieden was interested in cost to the state and Walker recalled there was an average of 227 pregnant women per month in December, January and February of 1986-87. They are already receiving assistance and there will be no financial impact. Further discussion with it being pointed out that the state does not pay for abortions.

No recommendations re 78.13(10), 79.7(1)a, 75.1(20) or 202.3(3).

ch 203

Corkery explained that Chapter 203 was intended to implement 1987 Acts, House File 567, as to the operation of the Iowa Adoption Exchange. Approximately 60 adoption agencies exist in Iowa and there are not enough children to fill requests. No public comment had been received. No other comments.

INSURANCE
DIVISION
Commerce
Department

Fred Haskins, Kevin F. Howe, Craig O. Goettsch, Dennis N. Britson and Tony Schrader were in attendance for the following:

Continuation rights under group accident and health insurance policies, ch 29	ARC 7809	N	8/12/87
Affidavit requirement, 15.11	ARC 7874	N	
Replacement of life insurance and annuities, 16.7(1)(b)(2)	ARC 7872	N	8/26/87
Forms, revised 19.1, filed emergency	ARC 7870	N	8/26/87
Prearranged funeral contracts, ch 19	ARC 7875	N	8/26/87
Transitional rule, 19.60, filed emergency	ARC 7871	N	8/26/87
Review of certificates issued under group policies, 35.21	ARC 7810	N	8/26/87
Accident and health minimum standards, 36.6(10)	ARC 7873	N	8/26/87
Uniform limited offering exemption, 60.16(2)(c)	ARC 7811	N	8/26/87
Iowa business opportunity sales Act, 55.3, 55.4(2), 55.6(2), 55.9	ARC 7812	N	8/12/87

Ch 29

Parker was told that COBRA did not supersede any of the state's prerogative and the state can be more generous. Haskins took the position that all requirements of Code chapter 509B had been met.

Haskins thought question could be raised as to the premium level--that, to the employee is smaller under 509B which is broader than COBRA. He pointed out that the exact nature of COBRA was being examined by the Federal government and there is continuous interpretation of it. Question was raised as to whether a date certain should be included with references to COBRA.

Royce viewed the issue as one of "no choice but to go with the Federal law.

INSURANCE
Continued

Doyle observed inclusion of "annulment" in 29.2(4) and asked if that were included in the federal provisions. Haskins was uncertain but added that 29.2 would apply to a business with fewer than 20 employees.

15.11 Howe stated that rule 15.11 evolved from the Commissioner's Task Force on Health Insurance for Older Iowans. Royce advised that affidavits provided for in the rule should be notarized and Doyle suggested substituting "certification" or "acknowledgment" for "affidavit."

16.7, 19.1 No questions re 16.7(1)b(2) or 19.1.

Ch 19 Discussion of Chapter 19 which was intended to implement 1987 Acts, HF 614. Royce referred to 19.22 and recommended that any special procedures for contested case hearings should be set out in that rule. Goettsch was willing to reference the Division's broad contested case provisions.

19.33(2) Doyle questioned the \$10 filing fee in 19.33(2) which appeared to shift the cost to the small seller. Department officials cited benefit from the regulation to pay the cost of enforcement. The Iowa Funeral Directors were asked to conduct a survey on the issue.

19.60 Goettsch described emergency rule 19.60 as a transitional provision to authorize permits to be issued for beginning of business on January 1, 1988. It was noted that the fee schedule was included in the Noticed version 19.16. Eighty per cent of the money raised by the industry will be placed in trust.

Responding to question by Parker, Division officials indicated that it would be necessary to purchase an establishment permit fee. A permit would be required for each location, a sales permit fee for each salesman, and a filing fee would be incurred annually for the report.

19.60(2) In discussion of the fee for an interpretative opinion in the fifth item of 19.60(2), Royce opined that \$50 was being charged for an opinion that is required under Code chapter 17A--there is no charge for declaratory rulings under 17A.9. Goettsch said that, essentially, industry wants to avoid services of a lawyer.

Goettsch contended that costs must be built in but agreed that it was a difficult issue. He continued that the Securities Division had ceased providing interpretative opinions. Royce maintained that the Division had a statutory obligation to respond to petition for declaratory ruling.

Motion Doyle moved to object to 19.60(2), item 5., relative to the fee for an interpretative opinion. The following was drafted by Royce:

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INSURANCE
Continued
Objection
19.60(2)

At its September 9 meeting, the Administrative Rules Review Committee voted to object to the fifty-dollar fee for interpretative opinions, appearing in 191 IAC 19.60(2). It was the opinion of the Committee that this charge is beyond the authority of the bureau. This provision appears as part of ARC 7871, in X IAB 5 (8-26-87).

Iowa Code section 17A.9 requires every agency to provide a method allowing the public to obtain the agency's formal opinion or interpretation on questions relating to the agency statutes, rules or policy. These statements are called declaratory rulings. They appear to be identical to the "interpretative opinion" established in the subrule. The statute makes no provision for the assessment of a fee nor has any agency attempted to impose one; to do so would run contrary to the purpose of section 17A.9.

Declaratory rulings are essential to allow the public an opportunity to clarify questions and uncertainties about agency law or policy. They provide a service which is intended to encourage the public to request advice and interpretations from government agencies. A fee for this service would discourage its use and could lead to needless violations of law or policy through misinterpretation or misinformation. It is the opinion of the Committee that the "interpretative opinion" is a form of declaratory ruling and that section 17A.9 precludes the imposition of a fee for this service.

Carried

The Doyle motion to object carried.

Doyle was willing to consider any additional information on the matter at the next ARRC meeting. Parker suggested possible increase in other fees to compensate for loss of the interpretative fee.

35.21

According to Haskins, rule 35.21 will implement 1987 Acts, HF 610, relative to review of "discretionary group" insurance policies. No recommendations were offered for 35.21, 36.6(10), or 50.16(2)c.

Goettsch advised that fees in 55.3 et al would be increased for the first time since 1981. Department officials were hopeful of encouraging registrations by reducing the minimum for surety bonds, trust account, and letter of credit requirement. No action.

IOWA
FINANCE
AUTHORITY

Ted R. Chapler and Linda Kniep represented the Authority for private activity bond allocation, chapter 8, ARC 7836, Notice, IAB 8-12-87.

Kniep indicated the rules implement 1987 Acts, HF 658, for compliance with the Tax Reform Act of 1986. No questions.

Recess

Committee was in recess for 10 minutes.

NURSING
BOARD,
Public Health
Department

Doyle took the Chair and called on Ann Mowery, Executive Director, Nursing Board, for consideration of the following rules:

Administrative and regulatory authority, 11, 1201, 1301	ARC 7844	Y	P 26 87
Nursing education, 2.6(2)c(3)	ARC 7845	Y	4 26 87
Petitions for rule making, declaratory rulings, rule making, chs 8, 9, 10	ARC 7846	Y	P 26 87
Transfer 590--chs 1 to 7 to 656--chs 1 to 7, filed emergency	ARC 7848	J. E.	9 26 87

Mowery summarized the purpose of the rule-making. A mission statement and the uniform rules developed by the Governor's Task Force were included.

2.6(2)c(3)

Mowery noted that 2.6(2)c(3) was part of a previous compromise relative to requirements of faculty members

NURSING
BOARD
Continued

who teach nursing. Discussion of technicalities in view of the fact that the existing rule was under an ARRC delay.

Mowery discussed the Board's policy on declaratory rulings which they consider to be a public service. There has been no charge. However, because of the large volume of requests, it is often difficult to comply within the 30-day time frame. Mowery wondered whether rules should be written on every nursing procedure since this is the type of question they are faced with in declaratory rulings. Doyle asked Royce to consult with Professor Bonfield on the matter.

REVENUE AND
FINANCE
DEPARTMENT

Carl Castelda, Deputy Director, presented the following:

Sales and use tax on services — bank service charges. 26.8. ARC 7830.	8/12/87
Receipts exempt from use tax — vehicles used in interstate commerce. 32.4. ARC 7829.	8/12/87
Organization, public inspection, 6.1, amend and transfer 730—ch 6 to 701—ch 6. ARC 7828.	8/12/87
Filing returns, payment of tax, penalty and interest. 30.10(3), 62.1(1)(a). ARC 7831.	8/12/87
Assessment practices and equalization, semiannual mobile home tax, property tax exemptions, real estate transfer tax and declarations of value, property tax credits and exemptions, certification. 71.20(2)(a), 71.20(4)(c), 74.4(1), 74.4(4), 78.2(1), 79.5(1), 79.5(4), 80.1(1)(a), 80.1(4)(a).	8/12/87

Castelda reported on the processing of household hazardous waste applications. Castelda also informed the Committee that a public hearing was held re withholding for pari-mutuel betting. However, the rules would not be adopted until a concise statement was completed. Castelda indicated that they were working with staff from the Administrative Offices of the Supreme Court on the complex matter.

26.8

No recommendations were offered for 26.8, 32.4, Chapter 6, or 30.10 et al. Discussion of amendments to 71.20(2)a et al. No action.

TRANSPORTA-
TION
DEPARTMENT

The following rules were considered without an agency representative in attendance:

Regulations applicable to carriers. 520.1(1)(a). ARC 7840. <u>also filed emergency</u> . ARC 7841.	8/12/87
Carriers subject to regulations, declaration of knowledge of regulations. 520.1(2), 520.1(3). ARC 7839.	8/12/87

520.1(1)

AG op
Request

Doyle observed that adoption of federal regulation in 520.1(1)a would essentially create a criminal law by reference and he questioned the legality of such a practice. He then asked unanimous consent for Royce, on behalf of the Committee, to request an AG opinion as to whether the entire text of a rule must be set out if violation of the rule carries a criminal penalty. In addition, Doyle asked that the AG be requested to issue the opinion by the October meeting of the ARRC, when they would review the rules again.

Royce brought up another issue raised by Gary Kaufman, Legislative Service Bureau, concerning promulgation of rules by DOT. The rules are submitted to the DOT Board, and the Commission adopts them even though state reorganization placed that power with the Director. Royce suggested review of the issue at the October meeting and that DOT be advised. So ordered.

Parker in
Chair

Parker resumed the chair.

**JOB
SERVICE
DIVISION**
Employment
Services
Department

Employer records and reports, employer's contributions and charges, claims and benefits, benefit payment control, 2 701, 2 843, 2 844, 3 402, 3 3143, 3 34, 3 35, 3 4847a, 3 4853, 3 48117b, 3 51 to 3 56, 3 60, 3 61, 4 11134, 5 1022, ARC 7811, A 12 87

UTILITIES
DIVISION
Commerce
Department

Bureau of rate and safety evaluation, conversion, auditing, and research bureau	1 521 1 541	ARC 7834	N	8 12.95
Filing requests or demands for contested case proceedings	6 521 82, 10 231, 11 144	ARC 7854	N	15.87

NO AGENCY
REPS

DENTAL EXAMINERS BOARD[320]		
Procedural rules, 51.12	ARC 7865	F
LABOR SERVICES DIVISION[317]		
EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"		
Occupational safety and health standards for general industry, by reference, 10.20	ARC 7861, ARC 7865, ARC 7866, ARC 7867	F
Occupational safety and health regulations for construction, by reference, exposure to asbestos, 26.1	ARC 7863	F
Occupational safety and health standards for agriculture, by reference, 28.1	ARC 7862	F
EMPLOYMENT SERVICES DEPARTMENT[341]		
Administration -- division of labor, 1.144	ARC 7813	F
SECRETARY OF STATE[750]		
Election forms, 4.3, filed in emergency	ARC 7849	FE

Doyle moved approval of the minutes of the August meeting as submitted. Motion carried.

Next meeting scheduled for October 13 and 14, 1987.
Meeting was adjourned at 12:55 p.m.

Phyllis Barry
Phyllis Barry, Secretary
Assistance of Vivian Haag

APPROVED: Paul E. Pich CHAIRMAN