

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Thursday and Friday, January 8 and 9, 1981.

Place of Meeting: Senate Committee Room 24, Statehouse, Des Moines, Iowa.

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

Chairman Schroeder convened the January 8, 1981, meeting at 10:10 a.m.

CONSERVATION
COMMISSION

Robert Barrett represented Conservation Commission for Wildlife refuges, 3.1, 3.2, Notice, ARC 1646, IAB 12/24/80. In re 3.2, Barrett explained the new rule pertains to trespass on the Pool Slough Wildlife Area, Allamakee County from March 1 to June 30 of each year.

HEALTH DEPARTMENT

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

HEALTH DEPARTMENT[470]

Nonpublic water wells, 45.1(6), 45.2, 45.3, 45.5(2), 45.5(3), 45.5(4)"b", 45.6(4), 45.6(5), 45.7(1)"a", 45.8(1)"a"(2), 45.8(1)"a"(4), 45.10 - 45.12 ARC 1663 ..N..... 12/24/80
Vital statistics, 96.2, 98.7, 99.7, 100.5, 101.9, 102.10, 104.3 ARC 1629 ..N..... 12/24/80
Chiropractic examiners, 141.1(9), 141.1(16), 141.1(17), 141.1(2), 141.1(3)"d", 141.13(1)"d", "f" and "g", 141.13(3), 141.13(4), 141.13(11), 141.24(3)"a", 141.24(5)"a", 141.24(6)"a", 141.24(7)"a"(2), 141.24(27), 141.62(4), 141.66(1), 141.73 ARC 1617 ..N..... 12/10/80
Chiropractors, continuing education, 141.66 ARC 1615 ..N..... 12/10/80
Cosmetology examiners, license to practice electrolysis, 149.8 ARC 1607 ..N..... 12/16/80
Physical therapy, continuing education, 138.2(1), 138.2(4) ARC 1638 ..F..... 12/21/80
Chiropractic examiners, disciplinary actions, 141.41(25), 141.41(27), 141.41(28)"c", 141.41(29) - 141.41(32), 141.41(35)"a", "b" and "d" ARC 1614 ..F..... 12/10/80
Certificate of need, 203.4(2)"b", "f" - "p", 203.4(3), 203.4(5)"c" and "d", 203.4(6)"b" - "d", 203.4(9) ARC 1666 ..F..... 12/24/80

NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS[600]

Licensure, 2.2(3) ARC 1637 ..N..... 12/24/80

Appearing on behalf of the Health Department were Peter Fox, Kim Fields, Susan Osmann, Muriel Cole, Don R. Coughenour, Grace M. West, Nancy Welter, Shirley Houvengle, Irene G. Howard and Kenneth Choquette. Also present were Jon Johnson and Jim Hubbs, Iowa Water Well Association.

Since the Committee was ahead of schedule, Chairman Schroeder announced that discussion of nonpublic water wells would be deferred.

96.2

Fox addressed the Committee re vital statistics amendments. Tieden questioned new language in 96.2 to permit copying of vital records 65 years old or older and Fox responded that was according to law.

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HEALTH
DEPARTMENT
Cont'd
99.7(1)

Fox explained that 99.7(1) would comply with federal requirements regarding birth certificates. General discussion of problems surrounding evidence of birth for social security or passport purposes.

1.9

In answer to Schroeder, Cole pointed out a black ribbon would enable clear reproduction of records in 101.9.

Holden referred to 99.7(2) and thought there should be some way for a person to be certified for travel in other countries without the requirement of an "affidavit of personal knowledge."

102.10

Holden took issue with requirements for birth certificate information in 102.10. Cole advised the Committee that requirements were federal and Holden asked the Department to apprise the federal government of the complications due to their intervention.

Chiropractic
Examiners

Houvenagle, Executive Secretary, Chiropractic Examiners, said through an oversight, previous Notice wasn't completed within the statutory time limit and it was necessary to resubmit the changes which were before the Committee.

141.1(9)

Holden asked that 141.1(9) be amended by substituting "threatens the health or safety of citizens" for "threatens citizens".

141.1(17)

Tieden and Holden questioned removal of "or implicit" in 141.1(17).

141.13(11)

Holden interpreted 141.13(11) to imply that the public would be excluded from reviewing examinations and he recommended additional language to provide "public members shall be allowed to attend any review."

141.66

In re 141.66, Holden wanted assurance from department officials the Chiropractic Board would be able to confirm that certain Continuing Education courses had been taken. Houvenagle indicated course approval would be sent to the Department.

149.8

Discussion of 149.8, standards for instruction in electrolysis and curriculum. Holden pointed to an incorrect implementation situation in 149.8--(147) should be (157). The rule was specifically implementing section 157.5, The Code.

Nonpublic
Water Wells
ch 45

Discussion moved to chapter 45 amendments--nonpublic water wells. Choquette recalled that the ARRC reviewed a draft of these amendments at their last meeting. He advised that the Health Department had mailed copies of the proposed changes to affected communities and only one response had been received--this being from the Council Bluffs Board of Health.

HEALTH
Cont'd
45.6(4)(5)

Holden took the position that the rule should provide that "frost pits shall be water tight construction" and he requested that the word "unnecessary" be substituted for "auxiliary in 45.6(5).

45.5(3)

Clark suggested the words "such" and "as may be necessary" should be deleted from 45.5(3). In re 138.2, Fox advised Clark that the five hours would allow for Continuing Education courses in supervision.

Staff
Assignment

Schroeder requested Royce investigate the reason no response had been made concerning a pump problem at Newhall.

141.41

According to Houvenagle, adopted amendments to 141.41 were identical to those published under Notice with the exception of 141.41(25) and 141.41(35). [ARC 1614]

Certificate
of Need
203.4

Seigelman, in response to Schroeder, said the percentages and variances used in certificate of need rules were all within the industry recognized tolerances nationwide. Some had been tempered to pertain to the unique situations germane to rural states, with the help of the staff in the Radiology Department, University of Iowa.

Nursing
Home
Administrators
EMPLOYMENT
SECURITY

According to Fox, 2.2(3) would be rescinded as it is no longer applicable.

The following rules were before the Committee:

EMPLOYMENT SECURITY[370]
Employer's contribution and charges. 3.8, 3.17(11), 3.41(3), 3.43(4)"a", 3.43(11)"a" and "b", 3.46(2), 3.49(1)"a", 3.55, 3.63, 3.70(12), 3.82(2)"a"(1), "c", "n"(6) ARC 1652 12/24/80
Claims and benefits. 4.1(24), 4.1(25), 4.1(25)"b"(8), "c"(3) and (5), 4.1(26)"b", 4.1(38)"a" and "f", 4.1(61), 4.1(68), 4.1(133), 4.1(134), 4.2(1)"a" and "b", 4.2(1)"b"(8), "d", "e", "h", "k", 4.2(2)"b", 4.3(1), 4.5(2), 4.5(2)"g", 4.6(2)"d", 4.7(1)"d"(1), 4.10(1), 4.11(1)"a", 4.11(2), 4.11(10), 4.22(1)"y", 4.25(41), 4.26(8), 4.26(9), 4.26(14), 4.37(1)"e", 4.38(5), 4.50, 4.51 ARC 1653 12/24/80
IPERS, 8.5(1)"a"(31), (33), 8.11(7), 8.12(9), 8.13(2), 8.13(6), 8.14(2), 8.19(6) ARC 1609 12/10/80
Federal social security. 9.4(1), 9.5(2), 9.5(3), 9.7(1)-9.7(3) ARC 1610 12/10/80
Forms, 10.4 ARC 1611 12/10/80

Appearing on behalf of Employment Security were Joseph Bervid, legal counsel, and Paul Moran. Bervid outlined the changes in their filed rules following Notice of Intended Action.

4.2(1)b

Clark raised question as to the definition of dependent and she discussed a hypothetical situation where a charitable institution might be caring for an individual.

11:20 a.m.

Chairman Schroeder recessed the Committee for ten minutes. Oakley arrived.

TRANSPORTA-
TION

Appearing on behalf of the Transportation Department were Carol Coates, Gordon Sweitzer, Charles Pestdnik Colleen Jarrad, Carol Padgett and Lowell Schellhause. Also present: Charles Ingersoll, Iowa Motor Truck Association.

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TRANSPORTATION DEPARTMENT
Cont'd

TRANSPORTATION, DEPARTMENT OF [S20]
Vehicle registration and certificate of title, [07,D] 11.1(1) - 11.1(6), 11.7(1), 11.25, 11.35,
11.41, 11.42, 11.46, 11.46(2), 11.53 ARC 1647 F. 12/24/80
Motor vehicle inspection, [07,F] 21.2(1), 21.2(2), 21.2(5), 21.3, 21.3(3), 21.5(6), 21.3(9), 21.4(2), 21.4(4),
21.5, 21.7(1), 21.9(1), 21.12(1) - 21.12(4), 21.13, 21.13(1), 21.13(3), 21.15(4), 21.15(5), 21.15(8)"a" and "c"(2) ARC 1648 F. 12/24/80
TRANSPORTATION, DEPARTMENT OF [S20]
Motor vehicle axles, [07,F] ch 9, filed emergency ARC 1606 F.F. 12/10/80

ch 11 Coates, in discussing amendments to chapter 11, vehicle registration and certificate of title, admitted there had been some confusion regarding registration of special plates. Priebe criticized DOT for being lax about submitting fee recommendations. Holden indicated a preference for identical registration fees for all vehicles under 8000 lbs.

9.1(1) There was discussion of definitions of motor vehicle axles and Schroeder questioned statutory authority for [07,F] 9.1(2)--"triple axle." He urged corrective legislation and Tieden favored a law to define "multiple" rather than "triple" axles. Schroeder suggested "Any axle that is more than 40" apart but not more than 84" between, regardless of the number of axles." Pestotnik was amenable.

Pestotnik distributed a brochure concerning bridge embargos and explained that rock and cement haulers, who use triple axles, would be affected.

In response to Ingersoll, Pestotnik explained DOT was interested in increasing the highway capacity by permitting conventional trucks to use their legal weight, without restrictions. Ingersoll was unsure DOT had accomplished their intent. Priebe concurred the change should be made by law, not by rule, and Pestotnik was willing to seek legislation.

Ingersoll pointed out the subrule would not affect long distance trucks and the Association was not objecting to it. Pestotnik presented material pertaining to federal bridge inspection standards and a list of bridges affected in Iowa. He discussed the fact that a limited message is used in posting the bridges.

Ingersoll suggested the rule would be improved by including language "for the purpose of bridges."

There was discussion of placing a 180-day delay with a termination date of July 1, 1981. Schroeder commented it was the ARRC's responsibility to decide that a termination date was needed in cases where the filed emergency process is abused.

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TRANSPORTATION
DEPARTMENT
Cont'd
Motion to
Object
[07,F], ch 9

After further discussion, Priebe moved an objection to [07,F]chapter 9 with the stipulation it could be corrected with a termination date. There was discussion regarding the proper language to use in the objection. Royce drafted the following objection:

The committee objects to 820 IAC [07,F]Ch 9 on the grounds its promulgation without notice and public participation exceeded the statutory authority of the department of transportation. The committee voted this objection for the purpose of imposing a termination date upon this rule, which will fall on the 180th day following the filing of this objection. It was the opinion of the committee the "emergency" provisions of Chapter 17A, the Code were improperly used in this case because of the great degree of public interest in the rule and the need to allow the public a formal opportunity to comment on its provisions.

Vote

Short form voting was requested. Motion carried unanimously.

Recess for
Lunch
Reconvened

Schroeder recessed the Committee for lunch at 12:30 p.m. to be reconvened at 1:30 p.m.

Committee was reconvened at 1:30 p.m. with Vice Chairman Priebe in the chair. The first order of business was the rules of the Department of Environmental Quality.

ENVIRONMENTAL
QUALITY

Odell McGhee appeared to represent DEQ for review of Air quality, emission standards for contaminants, 4.3(2)"b", Notice, ARC 1608, IAB 12/10/80. Also present was Connie Leatherman, Environmental Specialist.

4.3(2)b

McGhee explained the Notice of Intended Action concerned the institution of Reasonable Available Control Technology, RACT, as part of the state implementation plan for nonattainment areas. Committee members questioned whether DEQ rules would be more stringent than the federal regulations. McGhee said that the Air Quality Law does not allow the state to be more stringent.

4.3(2)b(5)4

Priebe thought language in 4.3(2)b(5)4 to be "double talk." Leatherman pointed out the APS-1, air pollution standard, was a federal form. Clark recommended revision of the language for clarification. McGhee promised to work toward more amenable language regarding air pollution standards. He contended Iowa was already liberal in its air quality standards and industry was not "pushed to the limit."

In the second paragraph of the preamble, Holden requested addition of "federal." He thought whenever initials are used in the rules, the words should be included; e.g., "FR", federal register.

BOARD OF
PHARMACY
EXAMINERS

Norman Johnson, Executive Secretary, and Susan Lutz, Board Chairperson, were present for review of the following:

PHARMACY EXAMINERS, BOARD OF [620]

Continuing education program attendance, 6.8(1) ARC 1643 *N*..... 12/24/80
 Controlled substances, 8.3 ARC 1641 *N*..... 12/24/80
 Discipline, 10.1(10) - 10.1(12) ARC 1645 *N*..... 12/24/80
 Licensure, 1.13(1), 1.13(3), 1.14 ARC 1640 *F*..... 12/24/80
 Renewal date and fee, 4.1 ARC 1641 *F*..... 12/24/80
 License renewal, 6.8, 6.8(2), 6.8(3), 6.8(5) - 6.8(7), 6.8(9), 6.8(10) ARC 1642 *F*..... 12/24/80

6.8(1)

Lutz said 6.8(1) re American Council on Pharmaceutical Education providers was a follow-up on the appeal made by Dr. Jacobs at a previous meeting. Nonaccredited programs will be considered and Royce commented that was very fair. In re 8.3, Lutz indicated the fee had been increased for registration and reregistration.

SOCIAL
SERVICES

Judith Welp, Harold Templemean, Marjorie Smith, Ann Morrison and Bette Murray were present and the following rules were reviewed:

SOCIAL SERVICES DEPARTMENT [770]

Child support recovery, 95.6, filed emergency after notice ARC 1626 *N, F, F*..... 12/10/80
 Nonassistance child support recovery, 96.7, filed emergency after notice ARC 1627 *P, R, F, N*..... 12/10/80
 Child care centers, 109.3(1), 109.6(1), 109.6(3) "b", "c" and "d" ARC 1618 *N*..... 12/10/80
 Case management, 130.6(2) ARC 1619 *N*..... 12/10/80
 Child day care services, 132.4(3) "b" ARC 1620 *N*..... 12/10/80
 Mental health resources, 28.2(C), 28.2(S) - 28.2(10), 28.3(1), 28.11, 28.12 ARC 1621 *F*..... 12/10/80
 Supplementary assistance, 54.2 ARC 1622 *F*..... 12/10/80
 Medical assistance, 78.1(2) "a" (5), 78.2(2), 78.4(1) "c" (1), 78.6(13), 78.6(16), 78.7(4) ARC 1623 *F*..... 12/10/80
 Medical assistance, copayment by recipient, 79.1(4) ARC 1624 *F*..... 12/10/80
 Nonassistance child support recovery program, 96.1 - 96.6 ARC 1625 *F*..... 12/10/80

95.6

According to Welp, 95.6(1)-(5) implements the set off against income tax refund or rebate. Priebe questioned if extra work would be involved for the Department. Welp said social security numbers are entered into a computer which eliminates much work.

Schroeder requested Welp peruse the Federal Register for similar regulations which might affect Iowa and he agreed to supply her the publication date. Welp was of the opinion there would be no impact on the child support and nonassistance child support recovery rules.

109.3(1)

In response to Priebe, Welp explained the requirement for annual statement of health signed by a physician or designee was necessary to prevent communicable diseases in centers. Holden thought the language to be redundant. Welp was amenable to Committee's suggestions and agreed to check with Department officials.

132.4(3)b

In response to Clark, Welp said people who work less than 30 hours per week are not paid through this particular program, and all services are directed toward certain goals.

38.11(1)

Tieden, in re 28.11(1), was told that Clarinda was no longer a "catchment area" for adolescents. Tieden pointed out that the

79.1(4)

public is affected by 79.1(4) and he wanted assurance the public was cognizant of the copayment information. Welp said notices had been sent with medical cards for individuals and to vendors who would be collecting the copayment.

SOCIAL According to Welp, one benefit in eliminating the fee for non-
 .SERVICES assistance cases was DSS would be able to qualify foster care
 Cont'd cases for federal matching funds.

4:40 Chairman Schroeder resumed the chair and recessed the Committee
 p.m. for five minutes.

SOIL CON- The Committee reconvened with discussion of the following Soil
 SERVATION Conservation Department rules:

SOIL CONSERVATION DEPARTMENT[730]
 Surface coal mining, penalties, 4.6(8) ARC 1667 .A..... 12/24/80
 Iowa financial incentives program for soil erosion control, 5.30-5.33 ARC 1668 .A..... 12/24/80
 Surface mining and soil reclamation, ch 4 ARC 1669 .F..... 12/24/80
 Iowa financial incentive program for soil erosion control, ch 5 ARC 1670 .F..... 12/24/80

Appearing on behalf of the Department were Kenneth Tow, James F. Ellerhoff, Ken Bruene, Leon Foderberg, Dan Lindquist and Bill Nicholas. Also present were Eric Davis, Iowa Coal; Dan Montgomery, Iowa Farm Bureau; Walt Fall, Mike Clark, Jim Heiser and Brice Dahm, representing the Coal Industry. At the request of Soil Conservation, rules under Notice for financial incentives program for soil erosion, 5.30-5.33, were considered. Tow stated the Noticed rules were related to Filed rules in chapter 5, which will ultimately become the package of rules by which the Department will administer the state cost share program. Rules have become necessary with the growth of the program and to meet the requirements of ch 17A, The Code. The total rule package implements certain portions of HF 2561 [68GA, ch 1153], commonly called the "Iowa Soil 2000 Program."

5.32(2)c Tieden questioned the formula used in 5.32(2)c(2). Lindquist com-
 (2) mented that the original capacity of a terrace anticipated to fill with sediment would have less total capacity at the end of ten years. Schroeder and Priebe were curious as to what would happen when land ownership would be changed. The Committee was concerned that the formula would not be acceptable. Schroeder doubted land could be depreciated in the same manner as buildings and land erosion was discussed.

Priebe commented he would object to the subrule if it were not changed, and he thought the burden of proof should be shifted to the Soil Conservation Department. The Committee preferred a straight line depreciation method instead of the accelerated method and would support an incentive program.

Objection Priebe moved an objection to 5.32(2)c(2). The chair called for
 5.32(2)c the question. Short form voting requested. Motion carried. It
 (2) was pointed out that the objectionable language appeared in the Noticed rule only. Barry requested clarification for publication purposes since the provision was only a proposal. The chair asked unanimous consent to let the minutes show that the ARRC would file its objection if the subrule were not changed by the Agency before the rules are adopted. So ordered.

5.31(2) Schroeder, in re 5.31(2), was interested in keeping the checking process simplistic.

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SOIL CON-
SERVATION
Cont'd

5.51(1)

Priebe opined the formula in 5.51(1) would be misunderstood by the majority of farmers. Tieden was interested in the development of the individual soil conservation district percentage allocation factors. Lindquist said they considered the conservation needs in making the determination and if a county contained a higher proportion of erosive acres, there would be a higher factor on the table. Committee members were apprised that the formula had been used for several years.

Tieden could see problems for counties because of the huge land variances. Linquist reviewed the formula for Committee members. Lindquist said the information was based on soil samples from across the state and the program is voluntary. He continued that the supplemental allocation program would assist counties which have land variances. Priebe discussed the land variance between Kossuth and Decatur counties. He wanted to know if the federal government used the same formula. Lindquist advised him they had used the sixty percent figure instead of eighty percent because that was the amount counties most generally needed. Soil Conservation preferred to keep the original allocation simple.

5.72(2)

Schroeder could see problems in requiring signatures by the buyer, seller and operator.

ch 4

Discussion moved to surface coal mining rules, chapter 4. Tow introduced coal industry representatives, and distributed papers concerning history of development of the Coal Regulatory Program. Tow explained that there would be no duplication of inspection on the part of the state and federal governments, and reviewed the complete history of the program.

Schroeder expressed interest in placing a 70-day delay on the rules to allow time for further study. The Legislature is faced with the funding required to implement the program.

Tow said he had talked with the Regional Director of OSM (Office of Surface Mining) and he was forwarding to the Secretary of Interior a recommendation for approval conditional on adoption of the Noticed Rules (ARC 1667). Tow was uncertain what the impact of a 70-day delay would be, and he discussed the funding of the positions required to implement the Coal Regulatory Program. He emphasized there would be a strict federal oversight of the program.

Clark interjected that the state should possibly consider allowing the federal government to handle the program so people would become cognizant of the pressure placed by them. Tow explained that the federal government had created more regulations resulting in the need for additional staffing.

SOIL CONSER-
VATION
Cont'd

Oakley mentioned the impact of the program on the budget recommendations of both the legislature and the governor. Tow explained that the interim program had been 100 percent grant funded, and he said there are 7 or 8 mines involved in surface mining. There was further discussion of placing a 70-day delay. In Holden's opinion, efforts of the past two years had the effect of reducing coal production rather than improving it.

Motion to
Delay
chapter 4
Committee
Business

Clark moved a 70-day delay of chapter 4, Soil Conservation Rules. Short form voting requested. Motion carried.

Priebe called attention to the fact that DOT had not followed through on their agreement to hold meetings in eastern and north central Iowa regarding use of funds for transportation of the elderly. He requested Royce to contact Joan Short, DOT, to learn why the meetings had not been held. Royce agreed to investigate the matter.

Recess

Chairman Schroeder recessed the meeting to the Senate Chamber for consideration of Board of Nursing rules.

Reconvened
ch 6
BOARD OF
NURSING

Schroeder reconvened the meeting at 3:30 p.m. He explained rules re nursing practice for registered nurses, licensed practical nurses, chapter 6, were to be discussed. He called attention to the forthcoming public hearing, January 28, 1981, but indicated individuals wishing to be heard would be given the opportunity today. Appearing on behalf of the Board of Nursing was Barbara Steen, Chairperson, Elizabeth Kinney and Donna Heald; Jeanne Wilson, Board Staff Member. Also present were Kay Myers, Executive Director, Iowa Nurses' Association; Charlene Teed, Iowa Council of Gerontological, Directo of Nurses; Bonnie Ballard, LPN, Nursing Home Administrator and approximately 30 nurses or licensed practical nurses.

Myers congratulated the Board for defining the standards and giving credence to the nursing process. She pointed out that 63 percent of nurses in Iowa are employed in institutions; the other 37 percent work in various other areas of the profession, and the standards must be universal. Myers opined the nursing practice must retain responsibility for the protection of the public. She was of the opinion a patient bill of rights should be enacted into law. Myers expressed opposition to the rules on behalf of the Iowa Nursing Association.

Steen said the rules were the result of over two years of work on the part of the Board, professional staff and many dedicated nurses. In reviewing the minimum standards, she said the Board recognized there were two particularly controversial rules and they were concerned that ARRC had been exposed only to opposition. She presented Chairman Schroeder with a file of letters of support.

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BOARD OF
NURSING
Cont'd

Teed presented a letter in support of the rules as submitted. Her organization represents 300 long-term care centers.

Ballard spoke in support of the minimum standards regarding the Licensed Practical Nurse. To LPN's, it is imperative they be allowed to function in a supervisory capacity. Ballard mentioned the fact that costs to the consumer could rise.

Margaret Hartmas, RN consultant, supported LPN's right to serve in a supervisory capacity.

6.1

Holden pointed out inconsistencies in the manner in which the definitions were written. He recommended the format used in the IAC to quote the word being defined and then, use a sentence to define it. Holden questioned the statutory authority for 6.1(12), (14), (16), and (17). He continued there should be some reference to authority for the standards established in 6.1(18).

Clark asked Myers what her suggestion would be for making a change in the two definitions mentioned in 6.1(1). Myers recommended use of "direction" instead of "supervision." Clark also requested general removal of "such" or "said" within the rules.

Recess

Schroeder thanked everyone. He recessed the Committee at 4:30 p.m. to be reconvened Friday, January 9, 1981.

COMMITTEE
RECONVENED

PUBLIC
INSTRUCTION

1-9-81

Chairman Schroeder reconvened the Committee at 9:00 a.m., Friday, January 9, 1981, in Senate Committee Room 24. Representative Clark was excused to attend another meeting. The first order of business was review of School Permits, Public Instruction, Notice, ARC 1493, IAB 10/29/80 and a special review of curriculum requirements. Dwight Carlson, A. John Martin, Carl Miles and Don Cox represented Public Instruction Department; Dolleen Woodward, Ombudsman's office; Bill Kendall, Gordon Sweitzer and Jim Fischer, DOT, were also present. Carlson explained he was present to respond to questions the Committee might have with regard to the proposed rules on school permits.

Woodward said her office had been confronted with situations in which an applicant for a minor's school license had been refused because of potential liability on the part of the school superintendent. She continued the criteria set forth in the law and by DOT had been met.

In response to Schroeder, Kendall said there had been one complaint. Schroeder had visited with several superintendents in his area and they were reluctant to issue permits for minor's school licenses. Kendall indicated DOT was hesitant to interfere with the matter, since it was a DPI rule. Carlson reminded ARRC that there was an appeal procedure for patrons in ch 290, The Code. It was pointed out that most people are not aware of the appeal process.

Holden commented that the legislature wants the process to work. General agreement there was confusion about the law and it was the consensus of the Committee that corrective legislation would be in order. Holden thought the DPI interpretation to be narrow, and was concerned that the special needs of the family were not being considered.

Tieden was sympathetic with superintendents who were hesitant to certify a permit because of the potential liability.

Priebe opined the appeal was "too tough" for the average person.

Priebe brought up the matter of 7 or 8 driver education conferences which were held throughout the state by DPI. He recalled that it was "rather an exclusive gathering" in that the minority party legislators were excluded. In response to Priebe, Carlson admitted the school permit licensing had been discussed at the conferences.

ARRC members requested DOT and DPI officials to meet and work out a recommendation to the legislature regarding the matter.

Priebe was concerned about curriculum requirements for schools. He cited a case in his district where DPI had withdrawn state aid because the school had offered a course, but not enough students wanted to study it. There was general discussion

Special
review

PUBLIC about curriculum requirements with Miles quoting §257.25, The Code.
INSTRUCTION He said a school, irrespective of its size, shall offer a minimum
Cont'd of courses and shall teach those courses. Miles pointed out
standards had been in the Code since 1965. He mentioned situations where teachers tend to discourage students from taking certain courses by offering them in an unfavorable manner.

Martin contended DPI did not have authority to deny state aid and a school district is allowed a second year before action is taken concerning curriculum.

Priebe said that school districts lacking students who wish to take an offered course are placed in an untenable position. He suggested DPI was forcing school districts to reorganize.

There was general discussion of the law, which mandates courses, and its philosophy. Tieden pointed out the legislature, historically, has depended upon DPI for educational recommendations.

Priebe wanted assurance schools would not lose state aid because of lack of curriculum, and he did not agree with DPI's interpretation of the law.

Cox opined DPI would not violate the law.

Tieden took issue with the statement that a teacher could present a subject in a manner which would discourage students from studying it. He thought that impuned the integrity of teachers and was an unfair statement. Martin admitted that was not the general rule but he had knowledge of cases where that had occurred.

Priebe was of the opinion the whole school financing program should be perused by the legislature to avoid loopholes. Schroeder suggested the respective legislative committees be presented proposed legislation about curriculum.

REVENUE DEPARTMENT

The following rules were before the Committee for review:

REVENUE DEPARTMENT[730]
Sales and use tax, 6.1(2), 6.1(3)"j", 8.1(6)"d", 11.6(2), 12.10, 12.11, 15.6, 15.19, 16.35, 16.37, 17.1(5)"j" and "t", 17.14(1), 18.6, 18.7(1)"a", 18.15, 18.18, 18.42, 25.2(6)"e", 26.21, 26.48, 30.1(1), 30.10(1), 34.3, 34.4, 34.5(6) ARC 1655 .F..... 12/24/80
Individual income tax, 38.9, 40.4, 40.9, 40.14, 40.17(3), 43.3(3) ARC 1656 .F..... 12/24/80
Penalty and interest, 44.3 ARC 1657 .F..... 12/24/80
Corporation tax, 52.5(2), 52.2(3), 53.8, 53.9 ARC 1658 .F..... 12/24/80
Franchise tax, 58.5(2), 59.2(1) - 59.2(3), 59.3, 59.6 - 59.9 ARC 1659 .F..... 12/24/80
Motor fuel, 63.8, 63.17, 63.25(2)"e", 64.3, 64.4, 64.14, 64.18, 65.6(4), 65.12, 65.15, 65.17 ARC 1631 .F..... 12/10/80
Real estate transfer tax and declaration of value, 79.2(2), 79.2(10), 79.5(4), 79.5(5), 79.6 ARC 1660 .F..... 12/24/80
Cigarette tax, 81.10(1), 81.15, 82.6(5) ARC 1661 .F..... 12/24/80
Gambling, 91.1, 91.2 ARC 1635 .F..... 12/10/80
Corporation tax, allocation and apportionment, 54.2(2)"b" and "e" ARC 1632 .N..... 12/10/80
Assessors, examination and certification 72.2, 72.7, 72.9, 72.10(2), 72.12, 72.14 - 72.18 ARC 1654 .N..... 12/24/80
Property tax credits and exemptions, ch 80 ARC 1633 .N..... 12/10/80

Appearing on behalf of Revenue were Carl Castelda, Deputy Director; Gene Eich, Deputy Director, Property Tax Division; Don Reed, Cynthia Eisenhauer, Brian Bruner, Don Cooper and Ed Henderson.

Castelda commented the Department had made the grammatical changes to the filed rules at the request of Clark.

REVENUE Holden questioned whether or not 79.5(4) covered a request by the
DEPARTMENT Highway Commission regarding Easements. Eich indicated the law
Cont'd had been changed regarding declaration value forms.

59.7 In response to Tieden's question re 59.7, Castelda said the word
"targeted" was from the federal law. Cooper said it referred to
specific types of programs.

81.10(1) Holden, in re 81.10(1), did not recall the "reasonable cause"
waiver for late filing of cigarette tax existed for other tax-
payers. Castelda informed him that it was based on same standards
used for income tax for corporate and individual, sales and use tax,
etc.

54.2(2)b Castelda informed the Committee the Department had worked with
the Iowa Taxpayers' Association in drafting the rule.

ch 80 In response to Priebe and Tieden, Eich said "designee" could be
a guardian, conservator or individual with power of attorney.
General discussion concerning homestead tax credit. There was
discussion of the industrial property tax exemption, 80.6.

Chairman Schroeder recessed the Committee for a brief time awaiting
the appearance of the next agency representative.

AUDITOR John Pringle, Savings and Loan Division, said the recent amendments
to the renegotiable rate mortgage rules, 6.1(3), 6.2, 6.3, 6.6,
ARC 1664, Notice, IAB 12/24/80, clarify the types of loans.
Due to the volatility of the interest rates, the proposal is to
allow the interest rate to increase up to 1 percent per year after
the rate is renegotiated. Currently, it is 1/2 of 1 percent per
year, with a total fluctuation of 5 percent over the
life of the loan. Priebe questioned the authority for that action.
Pringle commented the Division is subject to the same limitations
as the Bank Board. Committee wanted assurance changes would not
be made by the Auditor until the federal government acts.

6.3(1) Pringle said he did not believe the variable mortgage rate
would be changed by the federal government. Holden asked Pringle
to consider condensing language in 6.3(1) for easier understanding.

HOUSING William H. McNarney and George Cosson represented the Housing
FINANCE Finance Authority for review of assumption of mortgages, 2.10,
AUTHORITY Notice, ARC 1613, IAB 12/10/80. In response to Schroeder, McNar-
ney did not anticipate problems, and indicated there had been
increased interest in assumptions of mortgages. New mortgages
are not being written at the present time. According to McNarney,
there are approximately 4600 single-family mortgage loans.
2.10(2) Discussion of the prepayment rate, 2.10(2). Cosson explained
that prospective buyers would be denied the right to assume a loan
if it were to cause the authority to have insufficient funds.
McNarney pointed out there is a real problem in trying to have a

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HOUSING
FINANCE
AUTHORITY
Cont'd

proper management approach with existing economics. Holden could understand that, but said the borrower was not to blame for the Authority's problems in putting together a package. McNarney quoted from §220.22, The Code, which contains provisions for the Authority relating to requirements which prohibit loan assumptions without permission of the Housing Finance Authority. There was discussion of the "due-on-sale" clause, and the legislative intent.

Holden was of the opinion the conditions for the assumption of the mortgage should be written in the contract. McNarney said Holden's point was well taken and commented the Authority is having to cope with situations which were not anticipated. He was hopeful the economy would improve.

Royce could not see how a rule could affect a mortgage that was already in effect. Cosson thought they had interpreted within the parameters of the law and stated the courts have indicated administrative rule becomes law. He emphasized there are alternatives to the rule to deny the right to assume a loan to anyone who is making less money than the original borrower. The Authority could choose not to modify their income limitation from time to time to deal with the effects of inflation. Both alternatives will prejudice the person of the lower income.

McNarney said if the Authority were not able to make adjustments to meet its short-term obligations, they would be precluded from the short-term market in the future and that would reflect directly in a higher interest rate to every IHFA borrower. He admitted it was not a perfect solution.

According to McNarney, a hearing had been held and no one attended. Also, they had received no oral or written comments.

Holden indicated he would be inclined to object if the rule were filed in its present form. Schroeder recommended modification of the assumption language. McNarney declared they could resolve the matter.

BUREAU OF
LABOR

Walter H. Johnson, Greg Leopold and Bill Maddex represented the Bureau of Labor for consideration of consultative services and training, chs 6, 8 and 9, Filed, ARC 1665, IAB 12/24/80. Also present, Donald Hauser, Iowa Manufacturers Association. Johnson explained the rule pertains to OSHA-type inspections at the request of an employer and totally under the employer's control. Priebe responded that 8.3(3) did not state that and recommended removal of "primarily". Committee members requested deletion of the word and Maddex was amenable.

Johnson said if inspectors see unsafe or unhealthy conditions in facilities, they would be pointed out to the employer. Hauser

BUREAU OF
LABOR
Cont'd

commented IMA had perused the rules and had no problems with them. In response to Holden, Johnson said the qualifications of a consultant and compliance officer were basically the same in the industrial hygiene area; in the area of safety consultants vs. safety inspectors, the qualifications are slightly higher. In 8.3(1), Holden suggested addition of language to advise the employer of his or her rights. Johnson replied that this was at the employer's request, which could be terminated at any time. There was review of the process followed by an employee when reporting infractions of an employer. Holden wanted the Bureau of Labor to make "reasonably certain" that the reporting individual was an employee. Johnson admitted he could see some validity in Holden's point, but reminded him the rule was from the federal regulation. However, he was amenable to review of the matter.

8.43(3) In re 8.4(3), effect upon enforcement, Holden did not believe much had been accomplished. Johnson answered if the severity were not corrected or reduced, the matter would be referred to the enforcement division as a result of the consultant's visit to the plant.

AGRICUL- Dr. Merle Lang, State Veterinarian, was present for review of the
TURE DEPT. following Agriculture Department rules:

AGRICULTURE DEPARTMENT(30)

Livestock importation, 17.1, 17.2(3), 17.3(1), 17.3(2), 17.4(1) - 17.4(3), 17.5 - 17.7, 17.9 - 17.11 ARC 1630 .F..... 12/10/80
Livestock movement, 13.1(3), 18.2, 18.3(6), 18.3(8), 18.4(5), 18.5 - 18.8, 18.9(2), 18.11 ARC 1631 .F..... 12/10/80

In answer to Schroeder's question as to whether the Department had made any modifications in the rules since they were published under Notice, Lang responded that the Department took the position that there was no basis for making any change.

17.1(3) In re 17.1(3), Committee members contended it would be more important to have livestock trucks cleaned after the livestock are hauled--not before and could see problems with enforcement.

Lang thought the rule gave the option of cleaning the truck after it was unloaded or sometime before it was loaded.

17.6(2) Priebe was curious as to the effect of rule on vaccination and Lang explained this would not have an effect at this time. The state stands alone on the subject of vaccination and the problem may be resolved in the spring of 1981. Lang indicated the industry supports this rule.

17.10 Priebe commented that dogs and cats should be required to have vaccination also. Lang said they must have health certificates, and in the case of exhibition and performing dogs, a veterinarian would be available.

OBJECTION
17.1(3) Returning to discussion of 17.1(3), Priebe said it was unreasonable and moved an objection on that basis. Short form voting. Motion carried. In response to Lang's question, the Committee explained

AGRICULTURE the objection reversed the burden of proof. Holden asked for
DEPARTMENT explanation of sheep scrapie. Lang replied it is a viral-like
organism, supposedly infectious, which affects the nervous system.

18.1(3) Schroeder indicated he had some problems with 18.1(3), fees for
permit, and was unsure Agriculture had the authority to establish
the dollar amounts. Lang said they had requested some opinions
from the attorney general, but had none in writing. The pos-
sibility of placing an objection was discussed.

Lang emphasized the Department was mandated, under uniform methods
and rules for brucellosis, to enact a dealer registration and
recordkeeping provision by January 1, 1982.

Motion to Priebe moved an objection to 18.1(3) on the grounds it exceeds the
object statutory authority. Short form voting. Motion carried.
18.1(3)

Tieden referred to 18.7(2) and asked whether or not it would
include "beef breeding" calves. Discussion followed and
18.7(2) Priebe moved to object and said the objection could be over-
come by striking the words "and breeding". Short form voting.
Motion carried.

As requested earlier by Bette Duncan, Agriculture Department,
Royce posed a question to the Committee with respect to possible
legislation which would remove the statutory set fee and allow
department head discretion to set the fee. Committee members
were unfavorable to that concept.

The following was prepared by Royce:

The committee objects to subrule 30 IAC 17.1(3) on the grounds it is un-
reasonable. The subrule appears as part of ARC 1630 in III IAB 12 (12/10/80)
and requires all livestock vehicles to be cleaned and disinfected before
they carry shipments into the state. The committee feels this provision is
impossible to enforce because it relates to activities that occur outside
of Iowa jurisdiction.

The committee objects to subrule 30 IAC 18.1(3) on the grounds it ex-
ceeds the authority of the department to impose a permit fees when such a
charge is not authorized by statute. This provisions appears as part of
ARC 1631 in III IAB 12 (12/10/80).

The committee objects to 30 IAC 18.7(2) on the grounds it exceeds the
authority of the department. This provisions appears as part of ARC 1631
in III IAB 12 (12/20/80) and relates to exceptions from requirements for
brucellosis testing. It was the feeling of the committee these exemptions [exceed]
those provided by §164.13, the Code. This objection may be corrected by
striking the words "and breeding" from the subrule.

18.11 Lang commented some changes had been recommended which were
not included in 18.11 and they pertain to the transportation
certificate. The Committee advised Lang the changes would have
to be refiled under Notice. Oakley suggested checking the mat-
ter for the possibility of filing emergency, a copy of which
could be distributed to Committee members.

COMMERCE Daniel Fay and John Murphy appeared on behalf of Commerce Commis-
COMMISSION sion for discussion of financing of energy conservation measures,
the concept of which was initiated by the Commission, being 27.11(1),
27.11(8), ARC 1628, Notice, IAB 12/10/80. Four comments were
received from financial institutions.

Special
Review
ENGINEERING
EXAMINERS

Holden assumed the chair for special review of Plats, ARC 1472, IAB 10/15/80. Appearing on behalf of the Board of Engineering Examiners were Francis E. Holland, Bonnie Fagerstrom and Arnold Chantland. Other interested individuals present were Philip H. Tunnicliff and Scott Tunnicliff, Davenport; George A. Eickhorn, Attorney; Kenneth D. Bucklin, Iowa Engineering Society; Gary G. Brown and Marvin G. Hinkle, Society of Land Surveyors of Iowa.

Holden called on Board officials to report on results of their public hearing which was held November 21, 1980 concerning rule 2.5(114). Holland, Board Chairman, submitted a copy of minutes and summaries of written comments. Approximately 50 persons attended the hearing and 96 letters were received.

On December 19, the Board recommended that the existing 2.5 remain unchanged. However, they moved that the Board consider modification to allow for a waiver of the plat requirement, providing that the land surveyor and client, or property owner, agree to the waiver in writing. The majority of those attending the hearing opposed rescission or relaxing the rule.

Holland reviewed some of the comments received at the hearing. Holden thought two main points had been made in those comments. Plats provide helpful information to surveyors, auditors, assessors, abstracters and county engineers and the overall impact might be a reduction in costs to the citizen. He pointed out that most responses were derived from the affected licensees.

Royce asked Holland for the statutory authority which allows the Engineering Examiners to set up broad standards for the entire practice of the profession. Holland maintained the Board has the responsibility for protecting the public and in so doing, they have the power to set up certain rules. He continued that the minimum standards were not peculiar to Iowa. Royce commented licensing boards in Iowa, as a rule, do not determine specific parameters of the profession. The question was whether the Board was dealing with the competence of a professional or the scope of the entire profession. There was discussion as to the Committee's prerogative, which could include recommendation for legislation.

Holden opened the discussion to others who wished to speak. Eickhorn, attorney for Tunnicliff, spoke in opposition to the rule and distributed supporting arguments. Holden thought the Committee was aware of the fact that regulated practitioners concur with Board action, and that affected persons would not likely be well represented.

Eickhorn reviewed the history of the Tunnicliff family who has been engaged in the survey business for 5 generations. Their contention was the rule burdened the client with unnecessary costs.

ENGINEERING Oakley mentioned the fact that, many times, third parties order
EXAMINERS a survey or plat. He was uncertain a rule was all that compelling,
Cont'd and thought some kind of informed consent could be used. Eick-
horn responded the rule usurps the prerogative of the client,
and he noted a surveyor's certificate was an alterantive to the
plat-type arrangement. Tunnickliff contended the certificate had
never been refused. Eickhorn opined that the plat requirement
could not be waived. Patchett questioned statutory authority
for the rule. He took the position it was well beyond the
accepted bounds in other rules.

Motion Priebe moved that a letter be sent to the Lieutenant Governor
and the Speaker of the House requesting them to refer the matter
of plats to the appropriate legislative standing committees.

Patchett mentioned the alternative of petitioning the Board to
rescind the rule, thus forcing a response.

Vote Short form voting on the Priebe motion was requested. Motion
carried.

Patchett Since this was his last meeting, Patchett expressed his
Farewell gratitude for the privilege of having served with this
Committee. He also thanked the staff for their coopera-
tion and expressions of mutual respect were exchanged.

No Repre- No representatives were requested to appear for any of the
sentatives following and no recommendations were offered:

CIVIL RIGHTS COMMISSION[240]
Contested case hearings, 1.9(5)"a" ARC 1662 *A*..... 12/24/80 756

INSURANCE DEPARTMENT[510]
Property and casualty insurance rate, 20.6 ARC 1612 *A*..... 12/10/80 728

SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805]
Standards for treatment programs, 3.22(11)"b", 3.22(13) ARC 1636 *N*..... 12/10/80 718

February Schroeder announced the February meeting would be held on the
Meeting statutory date, February 10, 1981, 7:45 a.m. Meeting adjourned.

Respectfully submitted,

APPROVED:

Phyllis Barry
Phyllis Barry, Secretary
Assistance of Vivian Haag

Lawrence Schroeder
CHAIRMAN

Administrative Rules Review Committee
(Section 17A.8, Code of Iowa)

Representative Ned Chiodo (To fill a vacancy, term
expiring April 30, 1983) *N. g. 1-26-81*