MINUTES OF THE REGULAR MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting — The regular meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday and Wednesday, July 12 and 13, 1994 in Room 22, State Capitol, Des Moines, Iowa.

Members present — Representative Janet Metcalf and Senator Berl E. Priebe, Co-chairs; Senators H. Kay Hedge, John P. Kibbie, William Palmer and Sheldon Rittmer; Representatives Horace Daggett, Minnette Doderer, Roger Halvorson, and David Schrader. Senator Priebe excused on Wednesday.

Also present — Joseph A. Royce, Legal Counsel; Paula Dierenfeld, Administrative Rules Coordinator, Phyllis Barry, Administrative Code Editor; Mary Ann Scott and Kimberly McKnight, Administrative Assistants; Caucus staff and other interested persons.

Convened — Representative Metcalf convened the meeting at 10 a.m. and recognized Susan Voss, Insurance Division, for the following:

INSURANCE

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella'
Long term care asset preservation, ch 72 Filed ARC 4769A - Under 70-day delay 4/27/94

Ch 72 — Voss advised these rules were Noticed in February and placed under 70-day delay in June in order for her to provide Palmer and Royce with additional information which she had done. Voss assured the Committee that this program would be under close scrutiny to ensure compliance with original intent. Other options were being considered as well.

Motion — Palmer made a motion to lift the 70-day delay on Chapter 72.

P. C. Keen, Department of Human Services, responded to Daggett that they do look at fair market value for the resources. Annuities could be assigned to a nursing home as determined by the annuity company, if the payee could be changed.

Keen informed Hedge when annuities were considered as assets and when they were considered as income.

Kibbie was assured that the Senior Health Program would be conducting presentations throughout the state to educate senior citizens regarding insurance matters.

Priebe was informed that an IRA was an asset (could be cashed in) or if it were received as monthly income, it would go to the nursing home.

Motion,70-day delay lifted — Motion passed with Priebe voting against the motion.

ATTORNEY GENERAL

Charles Krogmeier, Deputy Attorney General, Steve St. Clair and Bill Brauch were present for the following agenda:

ATTORNEY GENERAL[61]
Organizational structure, 1.1 to 1.3, Filed **ARC 4827A** 6/8/94
Prize promotions, ch 32, Notice **ARC 4846A** 6/8/94

1.1 to 1.3

No questions on ARC 4827A.

St. Clair reviewed proposed Chapter 32 relating to prize promotions. Metcalf recommended that the AG Office clarify the language as suggested in Royce's Rules of Interest. Royce had observed that the enabling legislation was in need of interpretation and the rules had failed to do this.

Committee business

Priebe made a motion to approve the minutes of the June ARRC meeting as submitted. Motion carried.

CSG meeting

The upcoming Council of State Government meeting was discussed.

RACING & GAMING

Lou Baranello and Karyl Jones represented the Commission for the following agenda:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Incorporation of model rules of the Association of Racing Commissioners International, 2.2(1), 3.14(1), 3.14(2), 4.1, 4.4(1), 4.4(5), 4.5, 4.27(2), 5.14, 5.15, 5.15(3), 5.15(5), 5.15(9), 5.16, 6.3, 7.1 to 7.4, 7.5(1), 7.5(3), 7.5(9)"a," 7.7(4)"d," 7.8(1), 7.8(4)"l," "q," "r," and "t"(1), 7.8(5), 7.8(6)"a" and "c," 7.8(10) to 7.8(13), 7.9, 7.9(3)"c" to "f," 7.9(4), 7.9(5), 7.10(2), 7.10(3), 7.12, 7.14(6), 7.14(11), 7.14(12), 7.15(4), 8.2(13)"g"(1), 8.3(12)"h," 10.1, 10.2(1)"i" and "m," 10.2(2), 10.2(3)"e," "g," and "h," 10.2(6)"a"(4) and (5), 10.2(6)"d"(2), 10.2(8) to 10.2(12), 10.2(14), 10.2(16), 10.3, 10.4, 10.6, 10.6(3)"a," "e," "f," and "i," 10.6(4), ch 11, 12.12, 20.11(4)"a," 20.11(4)"a"(2), 20.11(7), 20.14(1)"f," ch 22, 24.11(2), 24.29(8)"a"(3), 25.11(2)"a," 25.14(3), Notice **ARC 4845A** 6/8/94
Thoroughbred racing — minimum wagers, entry coupling, 8.2(20), 8.3(13)"h," 10.1, 10.5(2)"c"(1), (3) and (4), Filed **ARC 4860A** 6/8/94
Occupational and vendor licensing, ch 13, Notice **ARC 4844A** 6/8/94
Excursion boat and racetrack enclosure gaming, ch 20 title, 20.10(1)"c," 20.10(4), 20.10(5)"b" to "d," "f," "h" to "j," 20.10(9), 20.11(4)"c," 20.12(1)"s," 20.20, ch 21 title, 21.10, 21.13, 24.21, 24.21(1), 24.21(3), 24.26(5)"g"(12), 25.11(1), 25.11(2)"b" and "c," 25.11(3), 25.12(1), 25.13, 25.14(1), 25.14(2), 25.15, 25.20(4), 25.20(5), 26.10(1), 26.10(2), 26.10(2)"e" to "j," 26.10(4) to 26.10(6), 26.19(2), 26.20(3), 26.21, Notice **ARC 4843A** 6/8/94
Excursion boat and racetrack enclosure gaming, ch 20 title, 20.10(1)"c," 20.10(4), 20.10(5)"b" to "d," "f," "h" to "j," 20.10(9), 20.11(4)"c," 20.12(1)"s," 20.20, ch 21 title, 21.10, 21.13, 24.21, 24.21(1), 24.21(3), 24.26(5)"g"(12), 25.11(1), 25.11(2)"b" and "c," 25.12(1), 25.13, 25.14(1), 25.14(2), 25.15, 25.20(4), 25.20(5), 26.10(1), 26.10(2), 26.10(2)"e" to "j," 26.10(4) to 26.10(6), 26.19(2), 26.20(3), 26.21, Filed Emergency **ARC 4861A** 6/8/94

2.2(1) et al.

In discussing the amendments in 2.2(1) et al., Priebe was advised that lasix and phenylbutazone must be administered in the barn if a horse were racing. Priebe took the position that shots should be administered in the stalls to avoid stress to the horses, a practice followed by other states. Baranello said that shots were administered by a practicing veterinarian under the supervision of Commission veterinarians. He agreed to refer the matter to the Commission.

25.11(2)

In Item 74, Metcalf was informed that red dog and poker were new games added by the Commission.

Baranello clarified for Daggett that these rules were to be consistent with guidelines set forth by the Association of Racing Commissioners International, not federal law.

8.2(20) et al.

Priebe requested clarification as to who was the administrator and who had to approve deviations from minimum wager payoff. Baranello stated that Mr. Jack Ketterer was the administrator referred to and he must approve any deviations.

RACING (Cont.) Priebe referred to 10.5(2) and voiced opposition to deletion of the word "trainer." He believed that two horses should be coupled by the trainer as well as the owner. The trainer would inform the jockeys how to run two horses in the same race. Baranello said this would not be allowed when conducting trifecta wagering. Priebe noted this was not contained in the rule and Barnaello responded that it was a policy of the Board of Stewards and he felt sure it was in the rules. Priebe also expressed concern with a husband and wife riding in the same race but Baranello said the AG Office advised this was not a conflict.

Ch 13 In 13.2(1)"g," Priebe asked why this provision was limited for horses only. Baranello responded that these skilled positions did not exist for greyhound races but he would research this further.

Ch 20 et al. Baranello explained the purpose of amendments to Chapter 20 was to include the pari-mutuel tracks that would have slot machines to accommodate change in the law. It was agreed that if games of skill or chance were included, additional legislation would be needed—25.11(2)"b."

Baranello advised that the Commission was drafting a definition to exclude all types of machines that were not the common slot machines, such as video poker or video blackjack. Baranello assured the Committee that video poker and video games of chance at the race tracks would not be allowed. The difference between slots and video poker and games of chance was discussed. Priebe recalled that when this "bill" was before the legislature, they were lead to believe it was for "slots" only. Clarification was also requested for "theoretical weighted average" and discussion followed on this as well. Doderer felt the gambler should be aware of how this weighted average was computed.

Schrader asked that Item 29 [26.10(6) Wagers] be amended to include money which is placed under tokens on the table (poker). Baranello would discuss this with poker room managers.

The use of personal checks for purchasing tokens in 25.11(3) (Item 16) was discussed and clarification and rewording were suggested.

Ch 20 et al. It was noted that the Noticed and Emergency versions of ARC 4843A and 4861A were identical with the exception of amending 25.11(3).

REVENUE Carl Castelda, Deputy, and Melvin Hickman were in attendance from Revenue and Finance and Castelda gave an overview of the following:

REVENUE AND FINANCE DEPARTMENT[701]
Individual income tax, 38.10(10) to 38.10(14), 40.4, 40.9, 40.10(2), 40.21(4), 40.26, 41.8(1), 42.1, 46.3(2)"b"(4), 46.4(2)"8" and "12," 46.4(6)"b"(5), Filed ARC 4842A 6/8/94

38.10(10) et al. Castelda stated that ARC 4842A was their annual clean-up amendments on income tax rules.

There was brief discussion of tax on dividend income and the indexing of tax rates for income tax purpose if there were a $60 million cash balance at the end of the year.

No Committee action.

REVENUE (Cont.) Castelda announced that their agency was one of six that would soon be converting their rules to CD ROM and he sought the Committee's approval to make the necessary reference changes by memorandum to the Administrative Code Editor rather than by emergency rule making. The Committee agreed it should be done by the most efficient and least costly method (by memo).

NATURAL RESOURCES DNR was represented by Mike Carrier, Steve Dermand and Don Cummings and the following agenda was reviewed:

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
General permit for eligible classes of private docks, fees, 16.1 to 16.4, 16.5(1), 16.5(2), 16.5(8), 16.5(10) to 16.5(24), 16.6, 16.7, 16.8(1), 16.8(3), 16.8(7), 16.9(1)"e," 16.10, Filed **ARC 4856A** 6/8/94
Snowmobile and all-terrain vehicle registration revenue cost-share program, ch 28, Notice **ARC 4857A** . 6/8/94
Horsepower limitations on artificial lakes, 45.4, Filed Emergency **ARC 4852A** 6/8/94
Type of registered vehicle a permitted, nonambulatory person may use on a state game management area, 51.7(2)"a" to "c," Filed **ARC 4855A** 6/8/94
State parks and recreation areas, state forest camping, 61.3(1)"a" and "b," 61.5(7)"a" and "e," 61.5(9)"f," 61.22(1), 62.8, 62.9, Notice **ARC 4853A** 6/8/94
Nonresident deer hunting, 94.1, 94.2, 94.7(1), 94.7(4), 94.7(5), 94.8, Filed Emergency After Notice **ARC 4851A** 6/8/94
Common snipe, Virginia rail, sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4, Filed **ARC 4847A** 6/8/94
Wild turkey fall hunting, 99.1, 99.1(1), 99.1(2), 99.4, Filed **ARC 4849A** 6/8/94
Deer hunting, ch 106, Filed **ARC 4854A** 6/8/94
Rabbit and squirrel hunting, 107.1 to 107.3, Filed **ARC 4850A** 6/8/94
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox (red and gray), beaver, coyote, otter, and spotted skunk seasons, 108.1 to 108.4, 108.5(2), Filed **ARC 4848A** 6/8/94

Also present were Gary Keast, Administrative Assistant, and Ted Erickson, Board of Directors, Lake Panorama Association; Shirley Peckosh, Iowa Horticultural Society, Commercial Affiliates/Iowa Nursery & Landscape Association.

16.1 et al. Dermand reviewed the Filed rules regarding private docks and reported that three members of the Lake Panorama Association attended the public hearing. Their concern was in regard to the $25 individual annual permit fee for docks that do not meet the standards. Dermand said that approximately 30 percent of the docks at this lake were cantilevered—wider than state standards and constructed of concrete making them permanent structures.

Keast gave a brief history of the lake and described it as a dammed up river and not very wide. He said that these cantilevered docks were constructed by lake members because of the narrowness of the channel. These members object to the $25 annual penalty while lake owners with longer docks pay nothing. A DNR representative claimed he had not heard of a cantilevered dock but Panorama members contend that these docks should be documented and recognized. There was no communication from DNR that their concerns were received or denied.

Dermand interjected that this was not a situation of a permit being denied, but a penalty being imposed for docks not meeting state standards. The purpose of this rule was to streamline the effectiveness of the processing not to change the dock standards. Thus, the docks that fell within the standards were eliminated from fee requirements.

Daggett inquired about liability with this type of dock. Dermand responded that these permanent structures would be a liability when there was snowmobiling on the lake. Reflectors were required on these structures.

DNR (Cont.)

Halvorson was informed that most of these cantilevered structures were wooden and the depth of the water determines how far they extend into the lake. He agreed that more hazard would be created by a cantilevered dock than by a floating dock.

Since there were no motions made by the Committee on these rules, Metcalf suggested that the representatives from the Lake Panorama Association contact members of the appropriate legislative committee since statutory change might be needed.

Ch 28

Carrier explained proposed new Chapter 28 regarding a cost-share program established from registration fees of snowmobiles and all-terrain vehicles.

The chapter was rewritten to consolidate various procedures standard to both cost-share programs. In 28.5, Metcalf inquired why criteria for all-terrain vehicles included an environmental impact item and snowmobile program did not. Because snowmobiles operate on frozen ground with snow cover, Carrier said there was not the degree of impact to vegetation and soil. Metcalf pointed out potential problem in habitat containing deer, such as western Iowa. The Department agreed to take her concerns under consideration.

Sheldon was advised that in the first year, the ATV registration totaled about $50,000 and snowmobile program was about $120,000. This would vary considerably with the amount of snowfall. Carrier spoke of competition for snowmobile funds because of the number of snowmobile clubs and county conservation groomed trails. A Grant Review Committee which includes members of these groups, disburses the funds. The ATV funds were not competitive.

Priebe asked if land acquisition were included in the original legislation. Carrier said the ATV legislation included land acquisition but he was unsure about the snowmobile legislation. Priebe did not think it was and suggested clarification of the final rule in this regard. The Department would comply with his request.

45.4

In review of horsepower limitations on artificial lakes, Daggett was advised this had not created a problem.

Schrader observed that Red Rock and Saylorville were artificial lakes but were not mentioned. Dermand said that the Iowa Code stipulates some exclusions and he did not see a problem. No Committee action.

51.7

No questions or recommendations re amendment to 51.7(2).

61.3 et al.

Hedge was informed that campground fees were quite consistent among the state parks. No action.

Ch 94

Cummings explained the necessity for emergency filing for rules governing nonresident deer hunting. The Commission did not meet in February, yet applications needed to be sent to nonresident hunters in order to meet the time frame. The Commission hopes to increase the number of licenses issued.

Priebe expressed his dislike of emergency rule making and opined the time element was not just cause to file emergency. He asked to be recorded as opposing the rule as an emergency filing. Dermand interjected that they were working with limited staff and staggering the resident and nonresident applications for licenses helped this situation.

DNR (Cont.) Rittmer agreed that there was excessive emergency rule making.

Chs 97, 99 No comments or recommendations for Chapter 97 or amendments to Chapter 99.

Ch 106 Cummings explained the changes from the Notice of Chapter 106.

Discussion of areas closed to hunting—106.5(4) and the words "immediately adjacent to. . . Union Slough . . . ." Priebe had problems with this as Union Slough was in his area. Deer are located in this area and much hunting would be eliminated by use of this phrase, in his opinion. Priebe then suggested emergency rule making to resolve the problem. Cummings said they would address his concerns.

In 106.11, Hedge inquired if the dates for valid licenses were statutory or by rule. Cummings advised they were by rule and set up to prohibit hunting when deer were pregnant or with their young. Farmers or landowners having depredation problems were allowed these permits. Hedge was told that only one of these permits had been issued to date and he expressed concern that the problem could not be addressed during the summer months when most damage was done. Cummings pointed out that hunting was allowed in September to help solve the depredation problem.

Shirley Peckosh informed the Committee she had met with representatives of DNR several times to develop the program because of the damage suffered by Christmas tree and orchard producers. She admitted that both sides had been somewhat lax in their efforts. Peckosh claimed there was no procedure to follow in applying for a license, this being the reason for only one application.

She urged more aggression by DNR in working with the producers toward a solution to their concerns. She read letters from producers who reported damage to their Christmas trees and orchards. The time frame for obtaining permits was discussed with Kibbie.

Motion to Object Priebe moved to object to rule 571—106.11, deer depredation permits, and that the rule also be referred to the Speaker and President of the Senate for review by the appropriate committee. He said the rule would remain in effect but contended that DNR had taken too long to implement it. Priebe suggested the date restrictions for permits (valid September 1 to February 28) be removed. Finally, he noted the objection would place burden of proof on the state. Motion carried.

The following was prepared by Royce:

Objection

> At its July meeting the committee has voted to impose an objection on rule 106.11, relating to deer depredation permits. The members believe this rule is unreasonable in that it puts too many restrictions on the taking of deer and will not prevent or substantially reduce damage to threatened crops. This program is designed to help protect high value horticultural crops from deer depredation, by allowing the land owner to kill the deer which threaten production. To accomplish this goal the permit should not be restricted to a specific time and date. Instead, the process should not only attempt to stop future damage, it should also work to stop current depredation by allowing the deer to be killed when the damage occurs.

Ch 107; Ch 108 No questions or recommendations on ARC 4850A or 4848A.

Recess Metcalf recessed the Committee at 12:30 for lunch and reconvened it at 1:30 p.m. for the following Utilities agenda:

UTILITIES

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
Electric safety, service, and metering standards, 15.10(1)"a" to "c," "e," and "f," 20.5(2)"b" to "g," 20.6(3), 25.2(1), 25.2(2)"a," 25.2(2)"b"(2) and (4), 25.2(3)"b," 25.2(5), 25.3(5), Notice **ARC 4875A** 6/22/94

15.10 et al.

Present from the Division were Don Stursma and Cindy Dilley who reviewed Noticed amendments. No questions or comments

NAT'L.& COMM. SERVICE

Susan Cory, Coordinator, and Jody Heuberger represented the Iowa Commission on National and Community Service for the following proposed organizational rules:

NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
Organization and operation, rule making, declaratory rulings, due process, public records and fair information practices, chs 1 to 3, 5 and 6, Notice **ARC 4879A** 6/22/94

Cory explained the purpose of the Commission was to foster the ethic of community service and to access funding through the Corporation on National and Community Service. Community service participants throughout Iowa would be paid and would receive an educational benefit while performing a community service. The Commission would also be working with the Department of Education on the Service Learning Program. No one attended the public hearing which was scheduled for July 12.

Since the Commission was established by Executive Order 48, Royce asked if it would be in existence for a limited period of time. Cory was unsure but noted the rules conform with federal guidelines detailed in the National and Community Service Trust Act of 1993 which provided for a three-year plan. No additional comments or questions.

PROFESSIONAL LICENSURE DIV.

Carolyn Adams from Public Health reviewed the following:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Physician assistants — preventing transmission of human immunodeficiency virus and hepatitis B virus, 325.10(3)"x," Filed **ARC 4881A** 6/22/94

No questions.

PUBLIC HEALTH

Carolyn Adams also reviewed the following Public Health Agenda: Also present from the Department were Mike Guely and Dan McGhee.

PUBLIC HEALTH DEPARTMENT[641]
Immunization of persons attending elementary or secondary schools or licensed child-care centers, 7.4, 7.7(1), Filed **ARC 4830A** 6/8/94
HIV-related tests for convicted sexual-assault offenders and victims, 11.70 to 11.73, Notice **ARC 4831A** .6/8/94
Approval of laboratories for employee drug testing, 12.1 to 12.7, 12.11 to 12.15, 12.17 to 12.23, Filed **ARC 4832A** 6/8/94
Radiation — incorporation of changes made at federal level, 38.2, 38.5, 38.8(1), 38.8(2), 38.8(3), 38.8(8), 38.9(6)"i," ch 38 Appendix A, 39.3(3)"a," 39.4(1), 39.4(22)"d"(3)"9," 39.4(22)"e"(2), 39.4(22)"i"(3)"5," 39.4(22)"i"(6), 39.4(22)"j"(2), 39.4(26)"a," "d" and "g," 39.4(29)"d"(1)"2," 39.4(29)"d"(3), 39.4(29)"h"(3)"2," 39.4(29)"h"(5), 39.4(29)"m"(1)"2," 39.5(15)"j"(4), 40.82(2)"c," 40.96(1)"c," 40.96(2)"c," 40.96(4), 41.1(1), 41.1(3)"a"(10), 41.1(3)"f," 41.1(8)"c"(3)"7," 41.1(8)"c"(4)"4," 41.1(10)"b," 41.1(10)"c"(3), 41.1(12)"a" to "g," 41.1(12) Appendix I, 41.2(7)"a," 41.2(14)"f," 41.2(30)"a," 41.2(35)"a" and "d," 41.2(38)"b"(6), 41.2(39)"a"(4), (7), and (8), 41.2(44)"b"(6), 41.2(45)"a"(1), 41.2(60)"c," 41.2(62), 41.2(65)"b"(6), 41.2(69)"b"(2)"3" to "5," 41.2(75), 41.3(5), 41.3(7)"b," 41.3(9)"c," 41.3(12)"b," 41.4(3)"d"(3), 41.4(4), 41.5(8)"a," 41.5(21), 45.1(2), 45.1(3)"a," 45.1(5)"a" and "b," 45.1(9), 45.1(14)"a," 45.1(15)"a," "b," and "d," 45.1(18)"a," 45.2(5)"c," 45.2(6)"a"(1) and (2), 45.2(6)"b"(4), 45.3(3)"c," 45.3(7)"c," "g," and "h," 45.3(8)"b," Notice **ARC 4834A** 6/8/94

7.4, 7.7(1) — No Committee action.

11.70—11.73 — In response to Daggett, Adams said the testing requirements were almost verbatim from legislation.

Ch 12 — Guely assured Metcalf that most of the changes in Chapter 12 were corrective and not substantive.

38.2 et al. — Adams reviewed the radiation rules with no questions or comments.

Recess — Since they were ahead of schedule, Metcalf recessed the Committee to allow them an opportunity to meet with a visiting Korean delegation.

Reconvened — The Committee was reconvened at 2:10 p.m. to review the Human Services agenda:

HUMAN SERVICES **HUMAN SERVICES DEPARTMENT[441]**

Commodity distribution programs, ch 73 preamble, 73.1, 73.3(3), 73.4(3)"d"(1), 73.6(1), 73.11(2), 73.13, 73.13(2), 73.13(4)"d," 73.13(5)"a" to "c," 73.13(6)"a" and "b," 73.14, 73.27, 73.29(1), 73.29(2), 73.42, 73.49, 73.51, 73.52(2), 73.53, 73.54(1), 73.54(2), 73.56(3), 73.57(4), 73.57(5), 73.58, 73.61, 73.62, 73.62(2), 73.62(5)"a" to "c," Notice ARC 4867A 6/8/94
Medicaid eligibility — trust income, 75.13(1)"a," 75.13(2), Filed ARC 4824A 6/8/94
Medicaid payment for fertility drugs prohibited, 78.1(2)"a"(2), Notice ARC 4874A 6/22/94
Expansion of elderly waiver program to ten additional counties, 83.22(1)"b," Notice ARC 4866A .....
Federal flood relief supplemental social services block grant funds for emergency social services, 153.8, Filed ARC 4825A 6/8/94
Employees of Medicaid group care providers of skill development services; changes within foster care, respite service, family-centered, rehabilitative treatment, and contracting chapters, 156.1, 156.9(4)"a" and "b," 180.3, 180.5, 180.6, 180.7(1)"a," 180.9, 185.10(1)"b"(6), 202.1, Filed Emergency After Notice ARC 4826A 6/8/94
Family planning services — provision of injectable contraceptives, 173.1, Notice ARC 4873A 6/22/94
Abuse of children, ch 175, Notice ARC 4791A - Carried over from June Agenda 5/11/94
Special Review - IQ level for "person with mental retardation," discrepancy in Ch 22 and Ch 24 ..... IAC

Attending from DHS were Mary Ann Walker, Harriet Shoeman, Harold Templeman, Pauline Walter, Kim McMullen, Joe Sheeley, Jo Lerberg, Sue Stairs and L. Michaela Funaro. Also present were Deb Westvold and John Easter, Iowa State Association of Counties; Patty Erickson-Puttmann and Jim O'Kane, Woodbury County.

No questions or recommendations on ARCs 4867A, 4824A, 4874A, 4866A, 4825A, 4826A or 4873A.

Ch 175 — Royce announced that the Christian Science representatives expressed concern with proposed Chapter 175 on abuse of children but could not be present today. Walker announced they had met with that group and were working on a compromise.

IQ Level–Mentally Retarded — The special review requested on rules relating to IQ level for mentally retarded was before the ARRC.

Templeman, Acting Director of Mental Health/Mental Disabilities, brought the Committee up to date on this concern. He said they worked with ISAC on a questionnaire sent to the counties and referred to Westvold for the results. Westvold distributed copies to the ARRC, a copy of which is on file in the office of Administrative Code Editor. Westvold said that 77 counties responded and the results were outlined in the questionnaire. Four counties indicated they had experienced an increase in number of persons with mental retardation accessing services because of the change in the definition. ISAC had not taken a formal position on the rule.

DHS (Cont.)
IQ Level

Doderer expressed concern on the $56 million figure. Templeman said that an additional 3,428 clients would be added in 5 counties at this projected cost. Priebe wondered why counties would not want to stay with the old definition. Westvold responded that this depended on how counties have dealt with persons with disabilities. Counties that liked the new definition did not look at the IQ score but at the client's level of functioning and whether the service was needed. In other words, with the new definition, they were able to obtain additional funds because their policy was more liberal. Clients on the SSI program were discussed. Their (hospital) costs would be picked up by Medicaid. Priebe told of a MR constituent on SSI and how he was "milking" the system. Priebe felt that their medical costs would still fall on the county or state.

Priebe asked about the number of people who would qualify if the IQ went from 70 to 75. Templeman argued that 70 was not a firm number—only a beginning point. He said the test had an error rate of plus or minus five points and 75 was the absolute maximum.

Responding to Daggett, Templeman explained the definition was changed to comply with national terms. The old definition was "approximately 70" which means there was no absolute maximum. Templeman indicated that most states went with the new definition because it was nationally recognized.

O'Kane addressed the Committee and expressed opposition to the rule. He said it would increase the number of people for which services would be mandated. O'Kane stated that the Social Security Administration uses an IQ of 60 to 70 for mentally retarded. He thought Glenwood used 70 also. O'Kane did not know what this meant in terms of costs to the counties but felt there should be a formal process to follow so counties would be apprised of these costs and numbers.

Erickson-Puttmann echoed remarks of O'Kane and also those she had made at the June meeting. She listed substantiating information to support the use of 70 IQ.

Daggett asked if it would be appropriate to ask the State-County Management Committee to review this issue. Templeman reminded that their duties and responsibilities were outlined in the statute and he was unsure how detailed they would get. Daggett expressed concern at rules that would increase costs to his counties and he favored caution.

At Kibbie's request, Royce explained the status of this rule. He stated that the rule became effective last fall which would curtail the Committee's options. They could either make a general referral to the legislature or file an objection because the rule was improper or unlawful, for some reason.

Motion to Refer

Kibbie then moved to refer rule 441—24.1 to the next legislative session.

Priebe asked him if he wanted to object to it also.

Royce explained that an objection was a legal action which allows a rule to be in force but if it were challenged in court, the burden of proof would be with the agency—they must pay court costs and attorney fees.

Erickson-Puttmann indicated to Priebe that ISAC did not take a position on this rule and she felt the questionnaire indicated that counties could go either way. Regarding Kibbie's motion, Royce explained that the following sentence did not appear in the initial Notice of Intended Action but was added as part of the rule-making process in the Filed rule: "2. The criterion for significantly

DHS (Cont.)

subaverage intellectual functioning is defined as an intelligence quotient (IQ) score of 70 to 75 or below."

Substitute Motion

Priebe moved a substitute motion to object to rule 24.1 and also make a referral to the legislature. His reason for objecting was that it was changed between the Notice and Filed versions thus precluding public participation in the review process.

Walker maintained that this was not uncommon for DHS to modify rules following the Notice but Priebe argued the change was not pointed out to the ARRC.

Metcalf repeated Priebe's substitute motion.

Doderer was concerned about the impact of the rule between now and next January when the legislature could act.

Templeman reminded that the survey revealed 60 counties said either definition was acceptable or they agreed to follow the new definition which indicated it had no impact on them and at this point, they must take the counties at their word.

Schrader asked the Committee to defeat the substitute motion and vote for the original motion to refer. He wanted to avoid state money being spent on litigation over a definition between the state and the county providing the service. Schrader made reference to the first question on the survey where a total of 66 counties looked at the functioning level or a combination of that and IQ to determine eligibility, but he wished it were 100 per cent. Schrader suspected the only winners as far as accessing service in this changed definition would be those with IQ between 70 and 72 or 75 that would be turned down otherwise. He favored this rule if it would benefit those people.

Kibbie requested further information on the Woodbury County figures and Westvold referenced her remarks made at the May ARRC meeting. The figures reflected the American Psychiatric Association's projected estimated distribution of IQs in a population. In her first memo to the Committee, she said if the Department's standards were used, the figure would be $33 million. The American Psychiatric Association shows that 7 per cent of the population has an IQ between 70 and 80. She estimated that 50 percent of the 7 percent would fall between 70 and 75 and this was how she determined the Woodbury figure of 3,428 clients.

Templeman responded to Rittmer that enforcement of this rule would not differ from other rules and any complaint would be pursued. Rittmer felt more review by the GA was warranted.

Hedge wanted to avoid being more protective of the state's money than of the county's. He did not believe the objection would create a burden.

Doderer again alluded to the cost of $190,000 per year for 11 clients and questioned how this could be justified. Priebe indicated there were people in ICF/MRs that were costing more than this.

Motion to Object

Priebe made closing remarks on his substitute motion to object to and refer 441—24.1 to the General Assembly. Motion carried on a show of hands, 8 to 2.

DHS (Cont.)
Objection

The following was prepared by Royce:

At its July meeting the committee has voted to impose an objection on that portion of rule 441 IAC 24.1, relating to the definition of mental retardation, as emphasized below:

"Persons with mental retardation" means persons with significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more applicable adaptive skill areas. Mental retardation refers to substantial limitations in present functioning and manifests before the age of 18.
1. Intellectual functioning is defined as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.
2. The criterion for significantly subaverage intellectual functioning is defined as an intelligence quotient (IQ) score of 70 to 75 or below.
3. Applicable adaptive skill areas are defined as communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work. [objected to language is underlined]

That provision appeared as part of ARC 4289A, published in IAB Vol. XVI, No. 7 (09-29-93). It was the opinion of the committee members that it was unreasonable to adopt this particular provision without first publishing it as a notice of intended action, providing interested persons with an opportunity to comment on the merits of this amendment. In making this determination, the committee follows a principle it has applied since 1981, which states that the degree of acceptable change between a notice of intended action and a notice of final adoption is measured by:

1) The extent to which an individual concerned with the adopted rule should have understood that the proposed rule could have affected their interests.
2) The extent to which the subject matter or issues involved in the adopted rule differed from those of the proposed rule, and,
3) The extent to which the effects of the adopted rule differed from the effects that would have occurred if the proposed rule had been adopted.

The change of the IQ level, in part used to define mental retardation, violated item one of this test. The initial notice, published April 28, 1993, set the IQ level at "approximately 70", which was no change from the then current language. No one satisfied with that language had any reason to suspect it would change or that they should come forward and rigorously support that existing language. The fact that this change has become controversial after it was adopted clearly indicates the need for notice and public participation before the change was implemented.

The department contends that the change merely clarified the existing language and notes that the margin of error for an IQ test can vary as much as five points. This argument might well justify the change in the rule itself, but it does not negate the need for providing notice of that change. The issue is not whether the rule is good or bad, it is whether the process was properly implemented.

Recess

Metcalf recessed the Committee at 3:20 p.m. until 9 a.m. Wednesday, July 13.

Reconvened

Metcalf reconvened the ARRC at 9 a.m. All members were present with the exception of Senator Berl Priebe who had been excused. The following Education agenda was considered.

EDUCATION DEPARTMENT[281]
Extracurricular interscholastic competition — high school wrestling coaches, 36.15(6)"a,"
Notice **ARC 4862A**, also Filed Emergency **ARC 4863A** 6/8/94
School-based youth services programs, ch 66, Notice **ARC 4864A**, also Filed Emergency **ARC 4865A** ... 6/8/94

36.15(6)"a"

Representing the Department were Kathy Lee Collins, Mary Ann Kapaska and Don Helvick. Collins gave brief history on the amendment to the wrestling rules. Doderer expressed concern about the drastic weight cutting by the athletes but Collins indicated this practice was less common now.

Ch 66

In the absence of Ray Moreland, Kapaska reviewed revised Chapter 66 regarding school-based youth services programs.

Daggett was interested in changes from the previous rules. Collins understood that the 1994 GA had added criteria for the school-based management money which these rules reflect. Moreland had advised Kapaska that extensive changes were necessary, thus the entire chapter was rewirtten.

In response to Kibbie, Kapaska indicated that applications for funds under the old rules were being returned to approximately 30 school districts for revision to comply with the new rules. Schools were working on their applications but did not know the deadline. Collins interjected that no one attended the public hearing but ISEA supported the rules. Moreland had addressed one inquiry regarding the definition of "family counseling" but that was the only public reaction.

Doderer requested, in 66.4(16) that language be added to reflect gender balance when the rules were amended in the future.

Metcalf referenced Royce's Rules of Interest Memo and thought his remarks regarding application fees and qualifications required for the different categories were valid and suggested that the Department take note. Royce contended the rules were deficient in setting out a meaningful grant procedure—66.7(3). Potentially over 400 applicants could compete for funding and Royce thought it was imperative to detail procedures for apportioning the $2.8 million among the three categories. Daggett referred to 66.4(5) and wondered if home schooling would be affected. According to Collins there would be no negative impact. This subrule was designed to ensure parental involvement in the program.

David Leach, P & A News, referenced definition of "Mental health and family counseling" in 66.2 and expressed concern with the words ". . . in and outside the home . . . ." With this language, Leach reasoned that teachers could be sent into the homes for mental health and counseling. He suggested deletion of the words as being beyond the law. Leach continued by expressing his views on how "bureaucrats take the law into their own hands." He then focused on the subject of abortion and Planned Parenthood at which time Doderer voiced opposition and asked that he direct comments to the rules before the ARRC.

Metcalf explained that these rules were filed emergency and the Committee lacked authority to change specific wording.

Doderer interjected that home schoolers teach in the home and she saw no justification for Leach's concern.

EDUCATION (Cont.)

Leach reiterated that he was only asking for two words to be deleted so that mental health and family counseling would not occur in the home.

Kibbie concluded that Leach should bring his concerns to the next legislative session. No Committee action.

ACCOUNTANCY EXAMINING BD.

Marie Thayer and Bill Schrader, Executive Secretary, gave a brief overview of the following:

ACCOUNTANCY EXAMINING BOARD[193A]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Definition of "partnership," 1.1, Filed Emergency **ARC 4839A** 6/8/94

1.1

Involvement of CPA firms in limited partnerships was clarified for Daggett. No Committee recommendations.

ALCOHOLIC BEVERAGES

The following agenda was reviewed by Janet Huston:

ALCOHOLIC BEVERAGES DIVISION[185]
COMMERCE DEPARTMENT[181]"umbrella"
Timely filed status of renewal applications for licenses and permits, statute of limitations for filing complaints, 4.26, 10.1, Notice **ARC 4878A** 6/22/94

4.2, 10.1

No questions.

ENGINEERING & LAND SURVEYING

Pat Peters explained the following:

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Engineer intern, land surveyor intern, practice of engineering or land surveying by firms, 1.4, 1.9(2), 4.7 to 4.29, Notice **ARC 4884A** 6/22/94
Disciplinary hearings — fees and costs, 4.28, Filed **ARC 4883A** 6/22/94

1.4 et al.

Kibbie was advised that the fees were not changed in 1.9(2) and amendments were nonsubstantive. Thayer agreed to provide information on the balance of fees collected in 1994.

Peters described the amendments as intended to protect the public against services offered by firms without properly qualified engineers.

4.28

No questions or recommendations.

BANKING

Don Seneff, Counsel, and Larry Kingery, Bureau Chief, were in attendance for the following agenda:

BANKING DIVISION[187]
COMMERCE DEPARTMENT[181]"umbrella"
Industrial loans, 16.6, 16.8, 16.9, 16.12, 16.15(2)"b" to "d" and "g" to "i," 16.15(3)"b" and "d," 16.15(5), 16.16 to 16.19, 16.21, 16.23, 16.24, 16.26 to 16.30, Notice **ARC 4828A** 6/8/94

The Department discussed briefly the loan-to-value ratio. Seneff said this would be eliminated from the rule based on industry standards. He added that most

BANKING (Cont.) 16.6 et al.

loans made by industrial loan companies were small loans in areas where the homes involved would be lower priced.

No Reps

Royce provided the Committee a brief summary of the rules under the "No Rep" category. See page 20.

EPC

Christine Spackman and Ann Preziosi represented the Environmental Protection Commission of DNR for the following noticed amendments:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Air quality — volatile organic compounds, violations, permitting requirements, 20.2, 21.5, 22.5(1)"a," 22.5(1)"f"(2), 22.5(1)"m," 22.5(2), 22.5(3), 22.5(4)"b," 22.5(7), 22.105(2)"i"(5), 23.1(2), 23.1(2)"qqq," Notice **ARC 4885A** 6/22/94

20.2 et al.

Preziosi advised Metcalf that this rule was promulgated for "clean-up" and clarification purposes for consistency with federal regulations. Brief discussion on how these rules related to the Muscatine nonattainment area.

ETHICS

Lynette Donner and Kay Williams from the Ethics and Campaign Disclosure Board explained the following:

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
Requests for board opinions, 5.2, 5.3, Notice **ARC 4841A** 6/8/94

5.2, 5.3

Williams and Halvorson discussed disposition of Board opinions. Williams anticipated that formal advisory opinions would be published in small pamphlet form and available upon request. At present, they were on file and available upon request. Informal advice, if converted to writing, was also on file. Declaratory rulings were on file but for financial reasons had not been published.

Williams explained that formal advice was taken to the Board for a vote whereas informal advice was from staff. No Committee action.

ECONOMIC DEV.

David Lyons, Director, Melanie Johnson, Counsel, and Bob Henningsen, Business Development, were in attendance for the following agenda:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
New jobs and income program, ch 62, Filed Emergency After Notice **ARC 4858A** 6/8/94
New jobs and income program — eligible project, median wage, 62.2, 62.7(1)"d," Notice **ARC 4859A** ..6/8/94

Ch 62

Lyons reviewed new Chapter 62, "New Jobs and Income Program," which was adopted under emergency provisions following Notice. No questions.

62.2, 62,7(1)"d"

In review of proposed amendments to the emergency version of Chapter 62, Lyons indicated there were several "quite sensitive in substance" issues in the legislation with "gaps" which needed to be filled by rules. The two main

DED (Cont.)
62.2, 62.7(1)"d"

items were how far a project has moved along while still being eligible for this New Jobs and Income Program and how to calculate average median wages for the area. Lyons stated that a great deal of input had been received.

Lyons explained that amendment to 62.2 (Item 1) had been termed the "one-third rule" which basically provided if the operation was not up to one-third design capacity for the operation, it would still be possible to qualify for this program. He gave background on how this determination was made. Because of input received, Lyons said they anticipated changes in this rule and would continue to review it and furnish information to the legislature in January. He said they would move from automatic qualification of the one-third to discretionary qualification which would allow them to track the information closely and avoid abuses.

Lyons viewed Item 2 (62.7(1)"d") as probably the "touchiest" amendment. This would allow health and dental benefits added into the wage package for calculation of average wages. Both positive and negative input was received on this. On the positive, if these benefits were not included, companies in Iowa were being told that health and dental benefits were not an important part of the wage package. On the negative side, Lyons said they were being told the amendment would negate the legislative considerations of a having a program which guaranteed high wages and good benefits, not high wages with good benefits. In looking at the statute, the Department determined that it was difficult to pin the health and benefit issues directly to the legislative language.

Copies of a proposal that Lyons intended to take to the Board next week were distributed to the Committee. This proposal would ask that the inclusion of the health and dental benefits be dropped and instead they would focus on direct statutory language by using beginning manufacturing wages in a county.

Metcalf inquired about procedural ramifications on the revision. Royce assumed there would not be litigation on the procedure but cautioned there was a limit as to how much change could occur between a notice and adopted rule. He advised that substantial change could occur as long as it was directly related to the original notice of intended action and a logical outgrowth of the comment already given.

Lyons was of the opinion the amendment had passed the reasonableness test.

Regarding the design capacity of Item 1 [definition of "eligible project"], Palmer thought the statute placed it at 50 percent but Lyons stated the statute did not stipulate when a project started so the definition of "eligible project" was proposed.

Responding to Palmer about differences between the two Acts, Lyons said the carry forward in the New Jobs and Income Program was 7 years and in IPSCO bill it was 20. They discussed if there were a limit as to when design capacity was

DED (Cont.)

reached. Johnson interjected there were time frames in the rules that forced them to move along (in a five-year period). Palmer concluded that during this five-year time frame, there must be at least 30 per cent design capacity. Lyons emphasized that there was no limitation on the years to reach one-third, 50 per cent or 70 per cent, but it does say that in 5 years the promised jobs must be reached. Palmer concluded that the design capacity would be established at the time application was made for grants.

Palmer then referred to the 130 per cent of average wages of a county and how it applied to fringe benefits. He felt legislation spoke directly to that issue. Palmer asked Lyons if they were now backing away from that. They discussed legislative debate as well as the conference committee.

Hedge was advised that information they were given last month on county wages did not include health benefits. Regarding taxes that were already encumbered, Lyons said if TIF were in place, that would be in force and the tax base could not be exempted. Hedge could envision problems.

Lyons clarified for Doderer that he plans to ask the Board to strike new language in 62.7(1)"d" regarding health and dental insurance payments and insert "for starting wages in each county."

Motion

Doderer moved that the ARRC go on record that Item 2 [62.7(1)"d" of ARC 4859A], as written, does not follow the statute and recommended that the Board change it to follow the statute.

Halvorson questioned the need for the motion when Lyons had indicated this would be done.

Lyons had no problem relating to the Board the ARRC recommendation that they proceed as outlined by moving away from health and dental insurance toward a more clear statutory authority on beginning county wage jobs.

Palmer recollected that one of the selling points of this program was that they were not only creating jobs for higher pay but also incidental costs (fringe benefits). He would feel more comfortable if the rule were terminated and rewritten.

Lyons stressed the importance of having guidelines in place more quickly. He was uncomfortable trying to handle applications without guidelines and he favored the Doderer motion.

Metcalf reassured Palmer that Lyons has touched base with all Committee chairs who were well aware of concerns.

Halvorson recalled that their goals were good jobs and good wages that included benefits and that was still the goal. The Committee chairs that reviewed this a

DED (Cont.)

few days ago wanted to ensure that the intent of the Conference Committee report was followed and that a problem was not being created. He felt that language in the statute could create a problem. A wage barrier could be set so high that companies could not qualify or some could qualify only if the starting wage were set at $17 or $20 per hour.

In response to Daggett, Royce said the Doderer motion essentially urged that the proposed amendments contained in Item 2 [62.7(1)"d"] not be adopted in final form.

Hedge did not recall the ARRC ever taking such action. Royce said this action would merely express the consensus and opinion of the 10-member ARRC. He agreed such action was not part of the formal powers of the Committee but was not precluded.

Dierenfeld interpreted Doderer's motion to express support for what Lyons had said and to take his recommendations to the Board.

Schrader interpreted Doderer's motion as support for withdrawal of this amendment (Item 2). He also disagreed with Royce. In Item 2, Schrader felt the issue was whether health and dental benefits constituted a legitimate part of wages. He felt that possibly an amendment should be made on how county-based average wage was calculated.

Metcalf understood from Lyon's handout that a new definition was being added regarding the minimum starting wage of a county or something along that line. Lyons clarified that based on comments received, they decided this would not be the appropriate way to proceed. The law was intended to assure high beginning starting wage jobs with benefits when they give tax breaks. Rather than focus on what they could add into the wages, they would focus strictly on the high beginning wages for these jobs.

Metcalf felt this was a new concept and would agree with Schrader.

Royce pointed out that the procedure followed for Chapter 62 was very unusual. An entirely new Chapter 62 was adopted and published on an emergency basis [IAB pages 2396–2401]. That chapter includes rule 62.2 and 62.7 which the Department proposed to amend in ARC 4859A. If the amendment (italic words) contained in Item 2 [62.7(1)"d"] was not adopted, the original language appearing on page 2398 would remain in effect. This Bulletin [6/8/94] contained new language and an amendment to that language at the same time.

Metcalf agreed a possible solution would be to recommend that Item 2 [62.7(1)"d"] should not be adopted in final form and that the Department resubmit any changes for publication through the normal process to provide opportunity for the Committee to take normal action. Doderer agreed with this approach and moved it as a substitute motion.

Substitute Motion

DED (Cont.)

Hedge intended to support the motion but opined that a new policy was being established. Metcalf agreed.

Rittmer suggested use of "consensus" of the ARRC rather than "recommendation." Doderer was in agreement and would accept that as a friendly amendment. No opposition voiced.

Motion adopted

The Doderer motion carried by voice vote.

Schrader then referred to Item 1, last sentence of 62.2 which read: "Material action includes the initiation of production or service operations *in a facility which has achieved one-third of its design capacity.* He suggested that the words "the initiation of" be stricken. He declared it was difficult to initiate production in a facility that had already achieved one-third of its designed capacity. He said production might be initiated over one-third. Another option could be "Material action is initiation of production . . . " that would start up-front.

Lyons and Henningsen said they were attempting to clarify that sentence and Schrader's concern was noted.

Schrader quoted from House File 2180 in support of his argument.

He cited specifically the 80 per cent of the cost of insurance and the $11 per hour or 130 per cent requirement. Subsection 5"a" of the Act which addressed quality of jobs and their rating seemed to require the Department to place greater emphasis on higher wage scale, lower turnover rate, full-time recruiter, comprehensive health benefits, or other related factors. This clearly indicated to Schrader that the intent of this legislation was that these were independent factors. What constitutes wage could be a good argument but these references in the bill would seem to indicate that the insurance and the wages were inclusive of one another. Schrader continued that subsection "d" of section 6 of the Act provided the definition of the 130 per cent average wage and was so clear that the Department could not, through rule, add "average starting wage."

According to Rittmer, he voted on the legislation with the intention that it would be an incentive to attract new industry and expansion. The Department could not tell him how many companies already in the process of building could quality. Rittmer wondered how far back they would go to allow a company to qualify for the incentive. Lyons stated that he had been contacted by legislators who preferred a more "controllable program" and one accepted on a broader basis. He added there were federal programs where the cutoff date was the date of final application and anything occurring before that date would not quality. He recognized the advantage of uniformity for consultants or business advisors of these companies and would continue to study the issue.

No further Committee action.

INSPECTIONS & APPEALS

Rebecca Walsh and Nancy Ruzecka reviewed the following noticed amendments:

INSPECTIONS AND APPEALS DEPARTMENT[481]
Infection control in hospitals, 51.9(11), 51.9(12), 51.12(6), 51.24, 51.50(10)"c," Notice ARC 4829A 6/8/94

51.9 et al.

Ruzecka explained that these amendments update rules that were written in 1947. No questions or comments.

INDUSTRIAL SERVICES

Clair R. Cramer, Deputy Industrial Commissioner, gave a brief overview of the following agenda:

INDUSTRIAL SERVICES DIVISION[343]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
Mediation of second injury fund claims, 4.47, 10.1(3), 10.1(6), Filed Emergency **ARC 4872A** 6/22/94
Payroll tax tables, 8.8, Filed Emergency **ARC 4871A** 6/22/94

4.47, 10.1; 8.8

No questions or comments on the Industrial Services agenda.

LABOR SERVICES

The following agenda was reviewed by Walter Johnson, Paul McLaughlin and Marcielle Rockhill:

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
Sanitation and shelter rules for railroad employees, renumber ch 52 as ch 29, 29.7,
Filed Emergency **ARC 4877A** 6/22/94
Minimum wage, 215.1(3), 215.2(1), 215.2(3), 215.3(10)"c"(1), 215.3(11)"a" to "e," 215.3(13), 215.4(2), 215.4(15), 216.27(1), 216.27(2), 216.30(1), 216.30(3), 216.30(4), 217.3(4), 217.37, 218.6, 218.102(2), 218.501(1)"a," 219.2(2)"a," 219.104(2), Notice **ARC 4876A** 6/22/94

Ch 52, 29

Johnson explained that this emergency rule making was a renumbering of a chapter and an amendment to implement statutory language. No Committee action.

215.1(3) et al.

The proposed amendments regarding minimum wage were primarily for clarification purposes.

Daggett inquired about the length of time temporary help was retained by a company. Johnson replied there was no definition of temporary versus full time and it was not addressed in the statute. Most often benefits were not provided for the temporary or part-time employee.

Metcalf was advised the federal hourly minimum wage was $4.25 and Iowa's was $4.65. It had been at this level since January 1, 1992.

SOIL CONSERVATION

Ken Tow and Bill McGill gave brief overview of the following:

SOIL CONSERVATION DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"
Financial incentive program for soil erosion control, 10.41, 10.41(2), 10.41(7), Notice **ARC 4838A** 6/8/94
Levee reconstruction and repair program, ch 14, Notice **ARC 4869A**,also Filed Emergency **ARC 4868A** . 6/22/94

10.41

No questions.

Ch 14

The emergency filing of the new Chapter 14 on Levee Reconstruction and Repair Program was reviewed.

On another issue, Hedge asked about the legality of placing sand from the river bottoms back into the river. Tow thought this question would fall under the jurisdiction of DNR flood plain rules.

McGill responded to Rittmer that an allocation of $550,000 was made and cost-share assistance was limited to 40 per cent of the total cost of repair or recon-

SOIL CONS.(Cont.) struction. There were no applications on file at this time but the procedures have gone out. McGill told Rittmer that the FEMA and Soil Conservation Service money required local sponsors, many of whom were county boards of supervisors. No Committee action.

LOTTERY Attending from the Division were Micki Schissel and Sherry Barnett, who reviewed the following agenda:

LOTTERY DIVISION[705]
REVENUE AND FINANCE DEPARTMENT[701]"umbrella"
Contested cases, ch 6, rescind 7.1 to 7.9, Notice **ARC 4836A** 6/8/94
Scratch ticket price, 8.3, Notice **ARC 4837A** 6/8/94

Ch 6, 7.1—7.9 No questions.

8.3 Schissel pointed out a correction which would be made in the amendment to 8.3—the scratch ticket should be $1 instead of $2.

STATUS OF BLACKS The Division was represented by Gary Lawson and Karen L. Cozar from the Department of Human Rights. The following was reviewed:

STATUS OF BLACKS DIVISION[434]
HUMAN RIGHTS DEPARTMENT[421]"umbrella"
Change name of division and commission to status of African-Americans, 1.1 to 1.3, Notice **ARC 4880A** 6/22/94

1.1 to 1.3 Lawson informed the Committee that the amendments to the rules were made to be consistent with the statute. No questions.

No Reps No agency representatives was requested to appear for the following:

HEALTH DATA COMMISSION[411]
Uniform hospital billing form, submission of data, rescind 5.5, 6.3(6) and 6.3(7),
Filed Emergency **ARC 4882A** 6/22/94

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"
Iowa Code citation corrections, 50.6, 50.8(4), 50.15, 50.16(2)"a"(1), 50.25(5), 50.43(1), 50.43(2),
50.81 to 50.84, Notice **ARC 4833A** 6/8/94

LAW ENFORCEMENT ACADEMY[501]
Reserve officer weapons certification, 10.1(3)"b," Filed **ARC 4823A** 6/8/94

REGENTS BOARD[681]
South Africa divestiture, rescind 8.2(5), Filed Emergency **ARC 4870A** 622/94

STATE APPEAL BOARD[543]
MANAGEMENT DEPARTMENT[541]"umbrella"
Claims, 3.1, 3.1(1), Notice **ARC 4840A** 6/8/94

TRANSPORTATION DEPARTMENT[761]
Administrative rules and declaratory rulings, 10.1(3), 10.3(1), 10.3(1)"c" and "d," 10.4(1), 10.4(1)"b" and "c,"
Filed **ARC 4835A** 6/8/94

Adjournment — Before adjourning at 11:40 a.m. the Committee and Staff extended best wishes to Mary Ann Scott who would retire July 28.

Meeting Dates — The following statutory meeting dates were agreed to by the Committee: August 9 and 10 and September 13 and 14.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assisted by Mary Ann Scott

APPROVED:

Janet S. Metcalf

Representative Janet Metcalf, Co-chair