

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Monday, Tuesday and Wednesday, March 8, 9 and 10, 1982

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

Members Present: Representative Laverne W. Schroeder, Chairman; Senator Berl Priebe, Vice Chairman; Senators Dale Tieden and Edgar Holden; Representatives Betty J. Clark and Ned Chiodo.

Also present: Joseph Royce, Legal Counsel; Brice Oakley, Governor's Coordinator; Phyllis Barry, Deputy Code Editor; Vivian Haag, Administrative Assistant.

Convened Chairman Schroeder convened the meeting at 8:10 a.m.
Monday March 8 in Room 116. Senator Holden was excused.

CONSERVATION
COMMISSION

Conservation officials present were Larry Wilson, Director, Robert Barratt, Bob Fagerland, Joe Brill, Nancy Exline and Ross Harrison. Also present: Mr. and Mrs. Loren Runge, Bonnie Smith, Ernie Aller, Marilyn and Roland Langholz, Verne and Evelyn Manchester Erma Martindale and Ted Yanecek who expressed interest in Chapter 43.

The following rules were before the Committee:

CONSERVATION COMMISSION[290]

State migratory waterfowl, habitat, and trout stamp design contests, ch 73	ARC 2727	F	3/3/82
State forest camping, ch 41	ARC 2668	N	2/3/82
Metal detectors in state parks, ch 43	ARC 2669	N	2/3/82
Rabbit and squirrel hunting seasons, 102.1 to 102.3	ARC 2728	N	3/3/82
Pheasant, quail, and gray (Hungarian) partridge hunting seasons, 103.1 to 103.3	ARC 2729	N	3/3/82
Mink, muskrat, raccoon, badger, opossum, weasel, skunk, fox, and beaver, 104.1 to 104.4	ARC 2730	N	3/3/82
Deer hunting, 106.1, 106.2, 106.4	ARC 2731	N	3/3/82
Waterfowl and coot hunting seasons, 107.1 to 107.4	ARC 2732	N	3/3/82
Common snipe, Virginia rail, sora, woodcock and ruffed grouse hunting seasons, 109.1 to 109.4	ARC 2733	N	3/3/82
Wild turkey fall hunting, 112.1, 112.2, 112.4	ARC 2734	N	3/3/82

chapter 73

With respect to chapter 73, Wilson highlighted changes made since the Notice--those included recommendations by this Committee as well as artists and others at the hearing. The contest will be limited to Iowans and original art work will remain in possession of the artist. Tieden observed the habitat stamp policy was retained and he reiterated his interest in having the stamp placed on the license. Wilson indicated this concept was under consideration and was supported by county recorders.

chapter 41

Exline told the Committee that previously, there were no state forest camping rules. In re chapter 41, regular camping would be allowed in designated areas; backpack camping would remain the same; and vehicular access would be terminated in two areas to provide additional security. Tieden supported the rules.

CONSERVATION
COMMISSION

In response to Tieden and Priebe, Exline stated the fee set by the Commission would be identical to that charged at other camping areas -- \$3.50 a night per camping unit which is defined as a portable shelter used by a group of up to six people. No fee would be imposed for backpackers. Department officials determined backpackers were exempt from 17A re the fees.

Priebe wondered if the rule would create a furor from 4H groups, Girl and Boy Scouts, etc. Exline said group fees are 25¢ per person. Schroeder questioned the limitation on hours of access to the camping areas in 41.6. Schroeder recommended exemption for peace officers re carrying a weapon in 41.4. Exline pointed out there is a statutory exemption. Priebe had problems with this rule. He recalled a recent meeting of 50 people in his area where opposition to park fees was voiced. Schroeder inquired of Royce re the exemption in 17A. Royce quoted from 17A.2(7)"g" which provides "A specification of the prices to be charged for goods or services sold by an agency as distinguished from a license fee, an application fee, or other fees."

Exline announced their attorneys had advised them that camping accommodations and the security provided could be considered as goods and services. Royce questioned the justification of the interpretation and reasoned "fees are always paid for something." When asked for a copy of the "advice" Exline admitted it had been verbal. However, she was agreeable to obtaining a written opinion on the matter for Royce. She called attention to the fact that only one person had attended the February hearing.

ch 43
Metal
detectors

Discussion of metal detectors, chapter 43. As a result of the public hearing, the Department plans several changes in the final rules, e.g., the size of probe or digging tool to be used limited to not over 12" long, 1" wide, or ½" thick and land must not be unduly disturbed. The depth of the hole will also be limited. Beaches and surrounding areas would be off limits to avoid conflict with beach users. Schroeder could see little difference between carrying a metal detector and a picnic basket. Clark contended detectors were noisy.

8:30 a.m.

Chiodo arrived.

Items found by detectors are subject to provisions of chapter 644, The Code, according to Exline. She noted that 43.4, area of use, would be revised and she was amenable to the suggestions for grammar correction in 43.1.

Langholz, speaking on behalf of the interested metal detector enthusiasts, cited service extended by their group which included removal of litter and locating lost items such as jewelry. They assist law enforcement personnel in searching for weapons. In addition, they work with the local historical society. Langholz, who had personally found 16,000 coins, was supportive of an annual license with a badge or a sticker for identification.

CONSERVATION In response to Priebe, Langholz said "hunters" were willing
COMMISSION to pay a fee. General discussion of pros and cons of a fee,
Continued sticker or badge.

Chiodo raised question as to the purpose of the sticker and whether there would be a penalty if requirements were not met. Exline explained that the permit requirement had been eliminated after Assistant Attorney General Osenbaugh advised them that standards, as well as provisions for revocation, would be needed.

Responding to Tieden, Langholz said about 2000 people hunt with metal detectors in Iowa. In Tieden's opinion, if a fee system were adopted, penalty would be needed. Exline pointed out that violation of a rule is a simple misdemeanor.

Following the review of chapter 43, Howard Flatt of Des Moines presented the Committee with a letter wherein he and his wife supported rules which would permit year-round metal detecting.

The ARRC requested the Commission to file an amended notice to allow interested individuals an opportunity to peruse revised rules before they are adopted. Exline agreed to work with the group and to provide a copy of the provision to the Metal Detectors Association.

102.1 to
102.3
Rabbit &
squirrel
hunting

Barratt said the noticed rules on all hunting seasons were broad frameworks and not final season dates. Priebe voiced general opposition to possible extended seasons. He also saw a need for concerted effort to protect the pheasant roosters. In discussion of pheasant, Tieden, Priebe and Schroeder thought increased bag limit was unreasonable. Barratt admitted the proposal was formulated prior to our severe weather. However, he denied rumors that the rule was designed to bring nonresidents into the state. Barratt estimated the pheasant population exceeded that of 1975.

Schroeder suggested that the Commission be apprised of Committee concern about the increase from 6 to 12 birds and the extension of the season to January 31. In response to Schroeder, Barratt said there were few gray partridge south of I-80. He indicated it would be another two years before an open season in that area.

amendments
to ch 106

In re deer hunting, Tieden asked if Iowa could provide for a venison tag to aid in control of poaching--similar to that of Wisconsin. Clark called attention to what she considered to be repetitive language in 106.1(2). Barratt said tags to aid in control of poaching would be exceeding Iowa law. Priebe inquired if Conservation had received reports of damage by large herds of deer.

No questions re 107.1 to 107.4 and 109.1 to 109.4.

112.1, 112.2
112.4

The fall wild turkey season will be approximately the same as last fall. However, Conservation is proposing that bow hunters be allowed to hunt most of the areas in the spring. This would have little impact on the turkey population, which has remained strong throughout the winter.

CONSERVATION There was discussion of hunting hours. Barratt called
COMMISSION attention to the public hearings scheduled for April 10.
Continued

ATHLETIC Walter Johnson, Deputy Labor Commissioner, appeared for
COMMISSIONER review of bouts, rounds and rest periods, 3.2, ARC 2670,
filed rule, IAB 2/3/82.

Johnson called attention to the fact the rule had been re-
viewed three times. No questions, but Chiodo again expressed
his opinion that the concept was "stupid."

AGRICULTURE Bette Duncan, Legal Counsel, and NaRay Ormand, Supervisor,
DEPARTMENT Dairy Products Control, represented Agriculture Department
for review of the following:

AGRICULTURE DEPARTMENT[30]

Crop pests, ch 26 ARC 2678 F.....2/3/82
Dairy products, standards for performing farm inspections, 34.5, 30.27 ARC 2760 IV.....3/3/82

ch 26 It was noted that this Committee had requested the Legis-
lature's Agriculture Committees to review chapter 177A,
The Code. The Committee took the position that noncommercial
movement of certain plants should be exempt from the Act.
Duncan explained that rule 34.5 would establish, by reference,
standards for various dairy products. In response to Schroeder,
Duncan said, to the best of her knowledge, there were no changes
with respect to dry mix or premix for ice cream.

Schroeder questioned the need to update the rules if sub-
stantive changes were not made. Ormond reported that two
simulated products are being "passed off" as milk products
in rest homes, etc. Cheese products from sources other than
milk and starchy yogurt are also being shipped into the state.
These products are not comparable to milk in nutrients and
standards are being set. Discussion as to who was bringing
in the products. Schroeder urged thorough review
by the department. He was suspicious there might be a
"sleeper" in the rule and he preferred that specific areas
be updated. Duncan interjected that the standards affect
dairies but the industry had been contacted. Schroeder won-
dered if new products would be blocked. Ormond cited 190.2
as their authority for the rule and he added that no objections
had been received.

In re section 8 of the blue pamphlet distributed by the
Agriculture Department, Ormond said the only change in the
general instruction for performing farm inspection would be
the water supply tests in conjunction with milking operations.
Duncan declared, to the best of her knowledge, the requirement
for testing private wells was not in the federal register.
Schroeder reasoned that bacteria count in the milk should
be the only concern. Ormond assured Priebe that present em-
ployees would do the testing.

30.27 Schroeder requested a comparison between the new and previous
standards for performing farm inspections. Duncan was
amenable. No further discussion.

PLANNING &
PROGRAMMING

Chairman Schroeder called for review of OPP rules to be taken out of order.

James Lynch, Director, Division of Municipal Affairs, and Mike Miller, Acting Program Manager, represented OPP for review of the following rules:

PLANNING AND PROGRAMMING[630]

Community development block grant nonentitlement program, ch 23 ARC 2709.....X..... 2/17/82 1001

Lynch presented a general overview of the proposal and said a public hearing would be held March 10. The rules deal with one of the nine block grant programs turned over to the states and one of the three which is voluntary. As soon as the federal Omnibus Reconciliation Act was passed in August, the Governor asked the Department to visit with various officials including the League of Municipalities, and to set up an advisory committee. OPP had met with over 200 officials of 35 cities and established a Community Development Council comprised of 10 local officials. There was unanimous support for state assumption of the program.

Lynch said \$24.9 million would be available this year and "every year thereafter." He added the Department was designing application forms which should be ready by April 15. Lynch requested another meeting with ARRC. Discussion followed.

In response to Chiodo, Lynch stated an important advantage was that Iowa could adopt its own rules and simplify implementation. The Department wants to increase the number of small city recipients by involving local officials.

23.1(17) Clark questioned whether the definition of low and moderate income persons in 23.1(17) would apply to one person who doesn't have a family. Miller answered in the affirmative.

23.4(2)f(3) Re 23.4(2)f(3), fourth paragraph, Clark was advised there would be a library of tools to borrow from in communities which have encouraged housing rehabilitation.

9:30 a.m. Oakley arrived.
Clark questioned language in 23.4(3)a(2) and Lynch commented the Department wanted to avoid specificity which could lead to omission of a project or activity. However, he was agreeable to rewording. Clark questioned the limitation to single-year and single-purpose projects in 23.5(1)c for cities under 2500. Single-purpose projects are preferred and will benefit more communities.

23.6 In re 23.6(2)b(4), Clark queried OPP officials as to the reason they hadn't provided for comment as to whether "in-kind match" should be included for any community. Lynch stated that the Department wants cities to view a program as theirs--not a state or federal program. From his own personal point of view, Lynch considered the match requirements to be very important. As to in-kind versus cash, many of the larger cities would have difficulty.

PLANNING &
PROGRAMMING

Clark challenged the division at 2500 population. She cited Charles City as one that could benefit. Schroeder and Tieden supported 10,000 population as a breaking point.

23.7(4)

Clark referred to 23.7(4) and asked if it were anticipated that funds would be available on a first-come, first-served basis. Lynch opposed that concept except on an emergency basis. He was confident there would be no surplus funds. Tieden challenged Lynch's use of the phrase "forever after" re the \$24.9 million. Lynch regretted any misunderstanding and pointed out the program was in less jeopardy than almost any domestic assistance program. He was assured it would be in effect for the next two years.

9:45 a.m.

Clark was excused to attend another meeting.

23.1(7)

In re 23.1(7), Lynch told Chiodo he suspected that "economic distress" definition was gleaned from federal language. Chiodo had been under the impression that the programs were geared to low and moderate income. Chiodo referred to 23.2(1) which seemed to include classes of society that normally have no access to funds under the program. Chiodo was informed that language was taken from the federal law.

Lynch responded there were built-in criteria to ensure that the funds are distributed as directed by Congress. Chiodo could see loopholes.

23.4(2)f(3)

Chiodo opined that in 23.4(2)f(3), rehabilitation of private properties, indicated that the owner of the housing need not be low and moderate income and that the housing need not be available for low and moderate income after it is built. Lynch admitted that was probably true but the provisions were patterned after HUD regulations. Chiodo questioned providing funds to upgrade plants for private utilities. Lynch agreed that was a serious question which must be investigated.

Discussion of 23.4(2)k -- privately owned utilities. Miller commented they had been unable to obtain a definite answer from HUD re removal of language in the rules. Lynch reminded members that a distinction had to be made between "fundable" and "eligible." Schroeder was informed that OPP had not been contacted by anyone with respect to the privately owned utilities.

Tieden was under the impression there were "no strings attached." Lynch declared there were "lots of strings attached" and he had not intended to convey otherwise. Lynch told Chiodo there would be a more precise rating system after the public hearing. Chiodo wanted assurance the Committee could review the rules after the hearing and before they were adopted. Time constraints were considered and it was agreed to schedule a special meeting for further review of the rules following the hearing.

Chairman Schroeder requested OPP officials to consolidate information from the hearing and forward to Royce and Oakley. No further discussion.

REAL
ESTATE
COMMISSION

Gene Johnson, Director, was present for the following rules:

REAL ESTATE COMMISSION[700]

Brokers and salespersons, closing transactions, 1.28 ARC 2754 ..F.....3/3/82

1.28(17)

Chiodo recalled the records were to be retained five years rather than seven as indicated in 1.28(17). Johnson agreed to correct the oversight by amendment.

Responding to Oakley, Johnson said that when a business is closed, the trust accounts are audited, but there is no mechanism per se. Records are retained when companies consolidate. Schroeder was of the opinion that issue should be addressed by rule. Johnson indicated one responsibility of the Commission was to ensure that the state does not become custodian of old records.

BOARD OF
REGENTS

Dr. Robert Barak, Director, Academic Affairs/Research, and Ried Crawford, Legislative Liaison, appeared on behalf of the Board of Regents. The following rules were reviewed:

REGENTS, BOARD OF[720]

Parietal rule—University of Iowa, 2.2(4), 2.2(5), 2.36(5) ARC 2758 ..F.....3/3/82

Iowa braille and sight saving school, 15.9, 15.10 ARC 2759 ..F.....3/3/82

REGENTS, BOARD OF[720]

Traffic and parking at universities, 4.25 to 4.53 ARC 2757 ..F.....3/3/82

Parietal
2.2(4),
2.2(5),
2.36(5)

In re the parietal rule, Oakley wondered if the agency action were in some way relevant to bonding. Barak stated the whole process was worked out with faculty, students, bondholders and administration to serve all needs. Tieden was told the rules would not affect Iowa State since they have no residency requirement. Barak agreed the basis for the parietal rule was educational--not bond related. No recommendations were offered. No questions were posed re 15.9, 15.10.

Parking
4.25-
4.53

According to Crawford, current rules for Iowa State University would be replaced with a set similar to those in force at Iowa. By adopting rules of a general nature, specific details could be implemented at the institutional level. This process would reduce the frequency of costly and time-consuming rulemaking.

Priebe questioned the reason employees' vehicles were not registered. Crawford answered it was primarily because of the number of vehicles and was also due to the fact that faculty and staff pay a fee to park on the campus. Those who park on campus must have a parking permit displayed. Crawford spoke of difficulty in parking enforcement for the 23,000 students on campus at Ames.

Priebe favored equal application of vehicle registration. Oakley referred to 4.30 which allows parking fees to be established by Regents. He noted a provision in 17A exempts students enrolled in educational institutions. He was also interested in the area of fines. Crawford had no knowledge that an opinion had been obtained on the subject.

Crawford indicated fees were seldom changed.

4.31(2)
4.32

In Schroeder's opinion, 4.32 and 4.31(2) provide a great deal of latitude with respect to monetary sanctions and impoundment of vehicles. Crawford admitted it was a significant departure.

Royce raised questioned as to Oakley's reference to the exemption in 17A. He cited 262.69 as the authority to regulate

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BOARD OF
REGENTS
Cont'd

traffic. Royce quoted and discussed Professor Bonfield's interpretation. In the Code, the word "rules" is a specific word of art that requires those statements to be adopted under 17A, even if that statement would otherwise be exempt. Crawford stressed that their Manual was in compliance with chapter 262 and provided further clarification.

In response to Royce, Crawford said the Board goes beyond establishing policy. Schroeder emphasized the Committee has been "cool to the memo concept." Oakley didn't have trouble with delegation as a matter of policy. However, he suggested an in-depth legal examination, particularly in the area of fines, before the amendments are adopted.

Priebe reiterated his opinion that the employee and student should be treated equally in the matter of registration.

Oakley recalled the union contract had provisions with regard to raising fees. Responding to Tieden, Crawford said there were not enough parking spaces for all students. Tieden pointed out that many students live close enough to walk and would never use a parking space yet the rule requires the possession of a parking permit.

No formal action taken on the amendments.

Recess Chairman Schroeder called for a five-minute recess.
Reconvened Committee reconvened at 10:45 a.m.

SOIL CON- Ken Tow, Assistant Director, and Jim Guilliford, Director, ap-
SERVATION peared on behalf of the Department of Soil Conservation for the
following:

SOIL CONSERVATION DEPARTMENT[780]
Iowa soil 2000 program, ch 6 ARC 2715 2/17/82

Tow explained the rules which spell out guidelines re distribution of conservation folders for each farm unit in the state. The rules were reviewed with Soil Conservation Commissioners at 9 regional meetings held last week. As written, the program applies to the entire state. However, a pilot program will be implemented in 8 counties in 1982. Tow said no additional funding had been authorized. Tieden was assured that no new divisions were being established within the Department--only within the rules. Tow reported they were working with Iowa State University Extension for training on pilot areas. Guilliford noted there was no estimated cost per county since there has been no increase in funds.

6.30 In re 6.30, folder content, Tieden inquired if the items were statutory. Tow responded they had been determined by an interagency committee and from Soil Conservation Districts. The Code requires specific items contained in a folder to be prescribed by Administrative Rule but none of the first nine will be lengthy.

6.11 Priebe questioned need for rule 6.11--severability clause--and Royce noted it was unnecessary since the subject was addressed in chapter 4 of the Code.

SOIL
CONSERVA-
TION

Priebe expressed opposition to hiring any additional personnel. Discussion of resources in districts and priorities.

Guilliford stated the development of the folders would cost very little extra and added that no increases would be allocated to the districts. The use of their cost-share funds would be the priority of a district. This program could be used to target areas where landowners are not interested or for "walk-in" business.

Tieden was informed that funds would not be directed toward planning instead of job completion. Guilliford concluded that district commissioners have an opportunity to target particular landowners or farms that have soil conservation needs which have not been developed in the past.

No further comments.

PUBLIC
INSTRUCTION

Larry Bartlett, Administrative Consultant, and Orrin Nearhoof, Director, Teacher Education and Certification Division, appeared on behalf of the Department of Public Instruction. The following rules were before the Committee:

PUBLIC INSTRUCTION DEPARTMENT[670]

Extracurricular interscholastic competition, co-operative student participation, 9.20 ARC 2916 ..N..... 2/17/82

Area vocational schools and area community colleges, instructional and administrative personnel. 2/17/82

15.32 to 15.37 ARC 2717N..... 3/3/82

Rules of evidence--recommendations, 50.11, 50.12 ARC 2736 .N.....

9.20

According to Bartlett, rule 9.20(280) is intended to liberalize the rules regarding eligibility for interscholastic competition. Current rule [9.14] requires that a student be enrolled in and attend classes in the school for which they

9.14

compete. Bartlett continued that competition would include athletics, music and speech--much more encompassing than many, including the press, have noted. He emphasized that, while the rule is intended to liberalize, it has "two main threads." Local control exists with optional participation by the school. The other "thread" is student benefit--there is a mechanism for them to engage in the competition of their choice at a school in which they are not enrolled.

Bartlett explained to Schroeder that the attendance boundary of each school, which is a party to the agreement, must be contiguous to or contained within the attendance boundary of each of the other schools.

Tieden recalled he had seen the words "except section lines" in the rule. However, Bartlett was not familiar with that phrase. Tieden suggested a provision that the student must attend the contiguous school district closest to his or her home. This could prevent "building of dynasties" by bidding for students who are good athletes. Bartlett could foresee a number of potential problems with that approach. For instance, in a large district, there may be students going to 3 or 4 other districts because they are closest to their residence involving 3 or 4 different transportation routes.

PUBLIC
INSTRUCTION
Continued

Schroeder favored requiring the student to be accountable and responsible for transportation, not the school district. Bartlett stated that, under this proposal, the school districts in agreement would make that determination. Schroeder considered that to be a "bad policy."

Tieden admitted he was not too fond of the rule although he could see some justification for the concept.

Bartlett reported that the Association of School Boards, the Superintendent's group, the Athletic Association and both Music and Speech Associations were represented at two meetings on the issue. Although he could not speak for the School Board Association, he assumed they would stand on a position of local control thereby allowing local school districts the option to transport students for these activities.

As a result of communication in regard to the proposal, Bartlett was sure some revision would be considered. For example, in 9.20(2), it has been pointed out that there are two districts in the state surrounded by one other district which would limit their participation to that one district. A waiver of the contiguous requirement may be needed. Tieden reasoned that parents would "pay tuition for the student to go with the team that would have honors." Bartlett pointed out that practice is allowed under the law today.

In response to question by Schroeder as to background on the proposal, Bartlett said initially there was proposed legislation that would allow schools to cooperate in activity programs but the bill did not pass. Bartlett added that the bill was very much opposed because it "left everything wide open" with no controls. Last summer, the Department was approached by a legislator who was co-chairman of an interim committee to draft a rule. Bartlett continued that there were several communications with the education interim committee last summer and he had met with them on two occasions. The interim committee, officially, on motion, recommended the concept to the State Board of Public Instruction.

Priebe recalled that the bill did not come out of committee. Bartlett indicated the bill was delayed by inherent problems. In Schroeder's estimation, that was a "departmental interpretation."

Bartlett informed Chiodo that he did not recall the sponsor of the bill but indicated Senator Ray Taylor had made the initial request. Schroeder asked if there were a formal petition for the change and Bartlett answered in the negative. Schroeder cautioned that the Department was on "very thin ice." Chiodo also expressed concern.

Tieden asked Royce if the Department had the authority to promulgate the rule. According to Royce, the DPI had not exceeded its authority since they have "general powers to regulate any matter dealing with public education in public

PUBLIC
INSTRUCTION
Continued

schools. That is in addition to some more specific powers they have. Granted, the legislation as proposed would have specified this as a matter of law. However, that does not deny they have the power to do that by rule."

Chiodo opined the rule could be "unreasonable."

Schroeder observed that, normally, when the legislature has had an issue before it which they choose not to address, that's an indication they do not want to address the subject matter.

Barlett responded, "Not necessarily the 'subject matter'-- it could have been the form in which it was presented."

Phil Dunshee of the School Board Association basically concurred with Bartlett. A number of small school districts that could no longer afford to set up their own extra curricular activity wanted to provide additional opportunities for their children. This was considered by the interim study committee, which determined it was an issue to be dealt with more appropriately by rule rather than legislation. It is very likely that the [interim] committee could have adopted a bill and recommended legislation that could have accomplished this task with flexibility for school districts. After considering it at two separate meetings, the Board of Public Instruction recommended the rulemaking process be initiated.

Tieden wondered who would be responsible for equipment. Dunshee answered that it would depend upon the agreement reached between the two districts. As to who would be responsible for the insurance, Bartlett told Tieden that all of those kinds of issues would be left up to the parties in agreement.

Chiodo questioned whether the Des Moines district would have the authority to pay another district. Bartlett replied in the negative when phrased that way, but added there were ways such as through Chapter 28E agreement--cooperation between governmental agencies. Schroeder labeled the proposal as a "good lawyer's tool."

Schroeder found the 1986 rescission clause to be somewhat confusing. Bartlett explained that a pilot program was exactly what was requested by the Boys Athletic Association. The rule was a compromise worked out after the Interim Committee meeting last summer. He added that if the project does succeed, there will be a movement to reimplement the rule.

Chiodo asked if there were a limit to the number of schools that could group together, and Bartlett reiterated they have to be contiguous.

Schroeder cited the city of Des Moines and surrounding areas which would have more options than some areas of the state. Bartlett indicated a waiver would be added for those who have limited options. It would be filed with the state or that activity association.

PUBLIC
INSTRUCTION
Continued

Schroeder requested Royce to study the rule very carefully. Tieden reiterated his opposition to a program that would "build athletic dynasties" while denying a youngster an opportunity, because of an "imported" student. Bartlett agreed misuse could result although the intent was to benefit the child. He referred to 9.20(8) which would provide that competition would be engaged in only under the name of the "host" school.

Schroeder repeated his preference for petition for rule change.

Bartlett strongly emphasized that the state Board has, up to this point, taken a position of neutrality in regard to this particular rule. It was his opinion that the proposal was one of the clearest examples of the rulemaking process--every provision is subject to change. Bartlett pointed out the state Board would meet on Thursday, March 11 and hold a public hearing where both sides would be heard. He extended an invitation to Committee members, and agreed to provide a summary of both written and oral presentations to them.

Priebe requested Barry to forward minutes of today's meeting to Bartlett for submission to the Board.

There was brief discussion of 50.11 and 15.32 to 15.37. No recommendations were made.

ENVIRON-
MENTAL
QUALITY

Mike Murphy and Darrell McAllister represented Department of Environmental Quality for the following rules:

ENVIRONMENTAL QUALITY[400]

Public water supply systems and wastewater treatment plants, certification of operators, ch 21 ARC 2686 F..... 2/17/82

Murphy informed Schroeder that the rules relate to qualifications for operators, not chemical tests. Murphy continued that the rules had been simplified.

21.7

Tieden, in re 21.7, inquired as to the type of fees which had been doubled. Murphy responded that to be certified, an operator must apply to take the test, take the test, and then, periodically, renew the certificate. Schroeder and Tieden were interested in knowing whether on-the-job training could be substituted for education. Murphy said some classifications have been downgraded but, generally, they remain the same.

There was discussion of ways experience could be substituted for education--21.6(5). Schroeder considered the rule to be an effective blocking tool and he requested DEQ to further peruse the matter of educational requirements. In his opinion, the individual within the system would be preferable in many instances. Murphy reminded ARRC that the education can be gained through various training courses held throughout the state. Schroeder recommended a mechanism whereby the experienced individual could avoid some of the requirements.

No further discussion.

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BEER AND
LIQUOR
COMMISSION

William Armstrong, legal counsel, appeared on behalf of the Beer and Liquor Control Department for review of liquor licenses--beer permits, 4.19, 4.20(2), 4.20(3), ARC 2722, IAB 3/3/82, Notice.

4.19 Armstrong pointed out that "or a distress warrant" had been added to 4.19 at the request of the Revenue Department. Royce interpreted 4.19 as placing the Department in an extremely advantageous position if they can purchase bankrupt stock at "wholesale cost." Armstrong agreed with Royce that the word "wholesale" could be deleted since, in practice, they allow the purchase price. It was noted that only the Department could purchase the liquor.

4.20(3) Tieden brought up the matter of the \$10 fee for insufficient funds check -- 4.20(3). Oakley declared there was no state law addressing that area. Discussion as to whether or not there should be a uniform fee for insufficient funds checks tendered to any governmental agency. It was suggested the Comptroller might be the logical source for a policy or rule on the issue.

Royce was directed to prepare a petition to the Comptroller for a standard insufficient funds process. Royce pointed out the amount of checks received varies greatly from agency to agency.

Responding to ARRC questions, Armstrong said Beer and Liquor Department had received 430 bad checks in 1981 totaling \$101,000. The uncollected amount was nil since bonding companies now cover that loss.

No other questions.

Recess

Recessed at 11:45 a.m. to be reconvened at 7:00 a.m., Tuesday, March 9, 1982.

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Reconvened Chairman Schroeder reconvened the Committee at 7:05 a.m., Tuesday, March 9, 1982, in Committee Room 116, Statehouse, Des Moines, Iowa. All members were present. Also present: Royce, Oakley, Barry and Haag.

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

HEALTH DEPARTMENT[470]
Physicians' assistants, 136.5(4) ARC 2672 .F..... 2/3/82
Chiropractic colleges, 141.11(2) ARC 2688 .F..... 2/17/82
Certificate of need, appropriate geographic service area, 202.2(9) ARC 2679 .F..... 2/3/82
Certificate of need, appeal to the commissioner, 202.12(2) ARC 2680 .F..... 2/3/82
Certificate of need, request for extension, 202.14(3) ARC 2681 .F..... 2/3/82
HEALTH DEPARTMENT[470]
Reportable diseases, 12(1) ARC 2755 .F..... 3/3/82
Phenylketonuria testing laboratories, 4.1 to 4.4 ARC 2756 .F..... 3/3/82
Financial assistance to eligible end stage renal disease patients, chs 111 to 113 ARC 2720 .F..... 3/3/82
Optometry examiners, rules for examinations, 143.5(3) ARC 2743 .F..... 3/3/82
Optometrists, biennial license renewal, continuing education, 144.1(6), 144.1(1), 144.1(2), 144.2, 160.4(1), 160.4(3) ARC 2744 .F..... 3/3/82
Cosmetology, schools, continuing education, 149.2(5), 151.2, 169.7(6), 160.7(10), 160.7(11), 160.7(14), 160.7(16), 149.7(7) ARC 2746 .F..... 3/3/82
Barbers, license renewal, continuing education, 152.101, 160.6(3), 160.6(5) to 160.6(8), 160.6(10), 160.6(13) ARC 2745 .F..... 3/3/82
HEALTH DEPARTMENT[470]
Eating and drinking establishments, repeats 14.1, filed emergency ARC 2721 .F.F..... 3/3/82
Advances emergency medical care, 132.1(12), 132.12(4), filed emergency ARC 2719 .F.F..... 3/3/82
Physical therapists, licensure examination, fees, continuing education, 137.2(4), 137.2(5), 137.3(1), 137.6(1), 137.6(2), 138.2(1) to 138.2(4), 138.2(6), 138.3(4), 138.4(1) to 138.4(3), 138.7, 138.9, 138.10(3), 138.206(4), 138.210(1), 138.210(8)"b" ARC 2742 .F..... 3/3/82
HEALTH DEPARTMENT[470]
Funds for public health nursing and visiting nurse services and homemaker-home health aide services to low-income elderly persons, 79.1, 79.3(4) to 79.3(6), 79.4(1) ARC 2675 .F..... 2/3/82
Confidentiality of records, 103.1(7) ARC 2706 .F..... 2/17/82
Medical examiners, examinations and fees, 135.102(1), 135.102(3), 135.102(4) ARC 2671 .F..... 2/3/82
Chiropractic examiners, biennial license renewal, continuing education, 141.12(1), 141.13(4), 141.16(2), 141.62, 141.66 ARC 2689 .F..... 2/17/82

Peter Fox and Mark Wheeler, Hearing Officers, Kim Field, Paul Carlson, Mike Guely, L. Ted Sloane, Jeanine Freeman; Harriett Miller, Executive Secretary, Chiropractic Examiners; James Krusor, Board of Medical Examiners; Dr. Ronald Eckoff, Community Health, appeared on behalf of the Health Department.

No recommendations were offered for the first ten ARC's on the Agenda.

Cosmetology 149.7(7) Fox pointed out that subrule 149.7(7) was rescinded to eliminate a second examination without charge. This would comply with 69GA, ch 5, §10.

Priebe and Tieden reported opposition from constituents with respect to the expense of "useless programs" for continuing education. General discussion as to the effectiveness of the courses in some areas. Oakley referred to the Professional Licensing and Occupational Regulation Commission as a mechanism to provide an in-depth study of the issue. He noted that the Commission was charged with reviewing every licensed occupation and with making recommendations to the legislature. In discussing the make-up of the Commission, it was pointed out that members cannot be licensed in any of the occupations which they review.

Barbers Committee members were reminded of biennial renewal for barbers' licenses -- chapter 160 amendments. Priebe viewed the barber school license increase from \$150 to \$200 to be exorbitant.

HEALTH
DEPARTMENT
Continued

Fox explained 160.6(5) pertaining to cosmetology schools. Responding to Priebe, he discussed the fee structure and budgeting for Boards in general. Discussion of space and procedure for payment.

Carlson told ARRC members that the Department figures 20 per cent of the figure recommended by the Comptroller for each board as operational expenses. Holden declared, "We still have to keep on top of this" to prevent excessive licensing. Priebe concurred. Oakley opined that indirect costs must be considered.

- 14.1 Wheeler explained that rule 14.1 was obsolete and had been rescinded at the suggestion of the Code Editor's office.
- ch 132 Krusor said amendments to chapter 132 would extend the EMT-D pilot program.
- chs 137 & 138 amendments Discussion of amendments to rules pertaining to physical therapists. Fox clarified for Clark that the professional examination service requires the 45-day prior notification in 137.3(1). Clark pointed out use of unnecessary language in the series of amendments. In re 138.4(3), Holden preferred some statement verifying attendance at the course. Fox agreed to call the matter to the attention of the Board. In 138.2(6), Holden questioned "not more than five hours may be indirectly related to the practice of physical therapy." According to Fox, some supervisory personnel have education in areas not directly related to physical therapy and the Board has limited these courses to 5 hours.
- ch 79 Clark was not totally satisfied with the handling of services in chapter 79 between DSS and Health Departments. Eckoff referred to the table in 79.1 as a formula to determine aid without knowing the total amount of available block grant. Low-income and elderly persons would receive a larger proportionate share.
- ch 135 In review of chapter 135 amendments, Krusor reported that unnecessary language had been deleted. Also, the deadline for filing applications would be at least 75 days prior to the examination. Oakley asked for Krusor's reaction to the reported large numbers of physicians coming to Iowa to take the exams. According to Krusor, the report was accurate and is creating problems for the Board. Out of approximately 1200 tested this year, only a few will practice in the state. Krusor recognized that action was needed to reduce the volume of examinees. Holden was concerned as to whether the fees were sufficient to cover the cost. Krusor stressed that the majority of those tested were foreign graduates. Iowa does not require postgraduate training to take a flex examination. Nebraska requires one year; Kansas, two years, before they may take the exam. Holden did not support excessive restrictions. He reasoned if the exam were too lenient, it should be changed. Members agreed the area should be studied.
- 103.1(7) Wheeler apprised the Committee that the public hearing regarding subrule 103.1(7) would be held this afternoon. Under the

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HEALTH
DEPARTMENT
continued
vital
records

subrule, "screened volunteers" could be utilized to assist in purging vital records of certain confidential information, this effort being essential in allowing public access. Volunteers would be required to maintain confidentiality, sign oaths and serve without compensation. Holden was interested in statutory authority for use of volunteers. Sloan claimed there would be no modification of original records. The original documents are microfilmed and then reproduced on a new roll of paper. Volunteers will work with these. He referred to 18 books of birth and death records, 7 of which are in such poor condition they cannot be handled.

Oakley interjected the rule was to aid the counties which lack the personnel to work with the antique records.

Holden argued that if information was so "vital" volunteers should not see it. Wheeler emphasized the volunteers will be carefully screened and any violation of confidentiality would be a misdemeanor.

Priebe could foresee problems but Oakley anticipated volunteers would be very reliable. Sloan said they would research only records prior to 1921 and would be blocking out illegitimate birth information. Clark recognized this would be tedious work and she suspected that only persons interested in genealogy would volunteer. She viewed the approach to the issue as very "refreshing." No formal action by the Committee.

NURSING
HOME
ADMINIS-
TRATORS

No formal action on increased fee for nursing home administrators license.

NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS[600]
License fees, 2.5 ARC 2676 .N.....2/3/82

REVENUE
DEPT.

Carl Castelda, Deputy Director, appeared for review of the following Revenue rules:

REVENUE DEPARTMENT[730]
Filing and extension of tax liens, 9.6(3)e" ARC 2711 .F..... 2/17/82
Military service tax exemption on jointly-owned property, 80.2(2)"o" and "p" ARC 2740 .F.....3/3/82
Cigarette samples by manufacturers, rescinds 82.10, filed emergency ARC 2718 .F.F.....3/3/82
Protests, 7.8 ARC 2682.....N.....2/3/82
Beverage container deposits, claim for refund, sale of bedding and litter, morticians and funeral directors —
computing tax, newspapers — tax exempt, construction contracts — tax, tax on enumerated services,
private employment agency and executive search agency — tax on service, 12.S, 12.9, 16.22, 18.21, 18.42(1),
19.7, 19.13, 26.38 ARC 2712.....N..... 2/17/82
Administration of cigarette and tobacco rules, penalties, 91.8(1) ARC 2713 .N..... 2/17/82
Hotel and motel tax, 103.1(2), 103.6(2), 104.6 ARC 2714 .N..... 2/17/82

9.6(3)e
82.2(2)

No Committee recommendations were offered for 9.6(3)e and 82.2(2) o and p. Castelda stated that 82.10 had been rescinded to allow time to work out a compromise between the Iowa Tobacco Distributors Association and the Department. He announced he would be meeting with Senator Hester and George Wilson and that the Department had plans to seek an attorney general's opinion on the validity of the rule re cigarette samples.

Castelda continued that tobacco dealers oppose the rule. He praised the Committee Staff for an excellent paper setting out reasons the rule may not be valid.

Schroeder thought it would be advantageous to the Department to request an opinion from someone other than an assistant attorney general assigned to them. Oakley discussed the exhaustive process of a formal opinion.

REVENUE
DEPART-
MENT
Continued
7.8

He was hopeful the matter would be resolved legislatively. Tieden questioned the reason for new language in 7.8. According to Castelda, the Code speaks in terms of providing an opportunity to appeal, file protests or assessments. It is not unusual for someone to deny a refund claim either in whole or in part and when that is done, there is no assessment. Castelda continued that Revenue did not interpret legislative intent to provide unlimited statute of limitations relating to refund claims and a specific statute of limitations relating to filing of protest assessments. They have reflected their policy to refund of claims also.

8:10 a.m. Holden excused.

In a matter not officially before the Committee, there was discussion of recent legislation which would impose a 25 percent penalty on late filing of taxes. Castelda agreed to respond to a letter for Senator Priebe.

26.38

Castelda noted that ARC 2712 contained clarifying amendments. In re 26.38, Clark took exception to differentiating between executive search and private employment agencies. According to Castelda, the Department attempted to explain the two types of operations so that employment placing businesses can determine whether they should be collecting tax on their services.

18.21

Schroeder referred to 18.21 and questioned whether it should also apply to the cemeterian and cemetery associations. Castelda agreed to research the matter. Tieden could envision every funeral director itemizing to avoid the tax. Castelda recalled that, years ago, the industry agreed not to itemize a funeral package. The Department agreed that when a lump sum was involved, they would impose tax on 50 percent of the billing. However, the current trend is toward itemizing and the federal government is in the process of mandating funeral directors to follow this procedure. Under the rule, Revenue will no longer allow the arbitrary 50 percent because the funeral director has assigned a value to the tangible personal property being sold, and a tax should be imposed.

19.13(1)

Responding to Tieden's question re 19.13(1), Castelda contended electrical installation would be taxable. Castelda added that the rule relates to the area of construction. They have been trying for years to determine what is repair since the whole area of sales tax in construction is extremely complex. Construction experts worked with the Department in clarifying chapter 19. Castelda pointed out the statute refers to "electrical repair and installation" but in all other services, installation is not mentioned. Clark had problems with "or substantially prolong the useful life of the property" at the end of the first paragraph of 19.13(1). She contended "roofing" adds to the life of the property. Castelda declared that, in the Department's opinion, if you repair it, you take it back to its original position. General discussion.

26.38

Clark recommended that the fourth listing in 26.38 be rewritten to delete provision for "no extensive analysis."

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REVENUE Clark pondered how intent could be proved in 81.8(1). In re-
DEPARTMENT view of amendments to chapters 103 and 104, Castelda explained
Continued further modification will be needed to clarify that sales and
Hotel- use tax applies to all rooms and the hotel-motel tax applies
Motel tax to sleeping quarters.

Clark requested revision of 104.6, last sentence, to read
"A person or persons claiming a refund shall..." Other members
favored "Any one" rather than "A person or persons."

8:30 a.m. Clark was excused to attend another meeting.

TRANSPOR- The following Transportation Department rules were before the
TATION Committee:
DEPT.

TRANSPORTATION, DEPARTMENT OF[820]
Motor vehicle dealers, manufacturers and distributors, dealer plates, license requirements, (07,D) 10.4(2)"a" and
"e", 10.7(1) to 10.7(3) ARC 2704 *F*..... 2/17/82
Motor vehicle lighting devices and other safety equipment, alteration or modification of vehicles, (07,E) 1.5 ARC 2705 *F*..... 2/17/82
Truck operators and contract carriers, fuel surcharge, (07,F) 3.8(14) ARC 2683 *F*..... 2/3/82
Motor carriers and charter carriers, fuel surcharge, (07,F) 4.14(14) ARC 2684 *F*..... 2/3/82
Liquid transport carriers, fuel surcharge, (07,F) 13.11(12) ARC 2685 *F*..... 2/3/82
Driver licenses, probationary operator's license, (07,C) 13.5(4)"c", "d" and "e" ARC 2735 *N*..... 3/3/82

William Kendall, Al Chrystal, and Carol Coates appeared on
behalf of DOT. Randall L. Nyberg and Jane E. Phillips, Trans-
portation Regulation Board, were also present.

According to Coates, amendments to 07,D provide application pro-
cedure and requirements for obtaining and retaining a used motor
vehicle wholesaler's license. The Dealer's Association has per-
used the rules.

Schroeder expressed interest in the results of the hearing per-
taining to 07,E, 1.5 which was clarified as to exemption from
alteration or modification of vehicles. He was informed that
no comments were received from Representative Lind's district.

No questions or comments re 07,F, 3.8(14), 4.14(14) or 13.11(12).

07C, 13.5 Review of 07,C, 13.5(4). Kendall explained that probationary
operators' licenses are issued for one year to youngsters be-
tween the ages of 16 and 18 who have terminated their schooling
prior to completion of a driver education course. Under the
rule, the probationary license would not be renewable based
on an AG opinion, Gregorson v Hummel, 80-12-23. Committee mem-
bers could envision problems. Kendall conveyed reservations
of the Department, as well. However, the DOT's general counsel
basically concurred with the opinion.

No formal recommendations.

AUDITOR OF John Pringle represented Auditor of State for review of the
STATE following:

Trust powers, ch 10 ARC 2752 *F*..... 3/3/82
Adjustable mortgage loans, 11.2(8), 11.3(1), filed emergency after notice ARC 2753 *F*..... 3/3/82

No questions were posed re trust powers. Pringle said the change
in chapter.11 clarify that when a loan is periodically adjusted
to amend its terms, the underlying lien position of the lender
is not disturbed.

Recess Committee was recessed at 8:50 a.m. to be reconvened March 10.

Convened Chairman Schroeder convened the Committee at 7:07 a.m. All members present. Also present: Oakley, Royce, Barry and Haag.

SOCIAL SERVICES The following rules of the Social Services Department were reviewed:

SOCIAL SERVICES DEPARTMENT[770]

Mailing addresses, petitions for judicial review and notices of bankruptcy, 1.3(9) ARC 2699 .F..... 2/17/82
 Women's reformatory, visiting, 19.2(1) ARC 2693 .F..... 2/17/82
 ADC, granting assistance, recoupment, 41.4(1)"e", 41.5(5)"e", 41.6(1)"d" and "e", 41.7(2)"b"(1), 41.7(2)"d"(1) and (2), 46.1(8), 46.1(9) ARC 2696 .F..... 2/17/82
 Public assistance, education and training plans, 55.2 ARC 2701 .F..... 2/17/82
 Medical assistance, persons covered, 75.1 ARC 2694 .F..... 2/17/82
 Medical assistance, disposal of resources for less than fair market value, 75.6 ARC 2702 .F..... 2/17/82
 Medical assistance, retail pharmacies, 78.2(2)"e" ARC 2695 .F..... 2/17/82
 Medical assistance, dentists, 78.4(1)"g"(1) ARC 2700 .F..... 2/17/82
 Medical assistance, providers, requests for prior authorization, 79.8 ARC 2697 .F..... 2/17/82
 Medical assistance, procedure and method of payment, \$0.1, \$0.1(1), \$0.1(1)"e", \$0.1(2), \$0.1(3), \$0.2, \$0.2(2), \$0.4, \$0.5(2) ARC 2698 .F..... 2/17/82
 ADC, food stamps, medical assistance, chs 47, 65, 76.9, ARC 2259, ARC 2261, ARC 2301 terminated ARC 2692 .N..... 2/17/82
 Revisions of medical assistance, chs 75, 77 and 78, amended notice ARC 2673 .N..... 2/3/82
 State community mental health and mental retardation services fund, ch 32 ARC 2737 .N..... 3/3/82
 Medical services—hearing aids, 78.14 ARC 2738 .N..... 3/3/82
 Child day care services, 132.4(2) ARC 2739 .N..... 3/3/82

Judith Welp, Rules and Manual Specialist, Lois Berens, and Kathe Kellen, Medical Services, represented the Department.

- 1.3(9) Welp said 1.3(9) would bring the state in line with the latest federal regulations. Visiting hours at the Women's Reformatory
- 19.2(1) would be increased and children of inmates would be allowed to visit under 19.2(1). Discussion of inadequate dining facilities at the institution.
- 41.6(1)d Schroeder took the position that the \$1500 car allowance was low in 41.6(1)d but Welp claimed that was the maximum allowed by the federal government.
- 55.2(1) Rule 55.2 was rewritten to clarify how financial awards are used. Priebe and Schroeder favored a waiver for the three-week requirement in 55.2(1). Welp was unaware of any problems in this area.
- 75.1 At the request of the Social Services Council, 75.1 was clarified as to eligibility for medical assistance. Priebe was apprised that the definition for full calendar month in 75.1(7)
- 75.6 was that of SSI. Discussion of 75.6 which imposes an eligibility penalty on persons who transfer resources to become eligible. According to Welp, a recent Act of Congress made this possible. Clark voiced support of the rule.
- No recommendations were submitted for 78.2(2)c, 78.4(1)g(1), 79.8, chs 80, 47, 65, 75, 76, 77 or 78 amendments.
- Hearing Aid Dealers Oakley questioned Welp as to the reason public hearings were not scheduled for 78.14. Welp agreed hearing aid dealers could be unhappy with the rule but the Department saw no recourse in light of the declaratory ruling on the matter. Oakley referred to prior rule which had been challenged in court. He was unsure as to what the policy decisions were. Kellen explained that the original rule required a physician and audiologist to do the testing. However, hearing aid dealers maintained they could perform tests. The Department then changed the rule to allow a physician, audiologist or hearing aid dealer to test.

SOCIAL
SERVICES
Continued

78.14

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The Court ruled DSS had not promulgated correctly. Hearing Aid Dealers petitioned the Department to repromulgate the rule. DSS requested a declaratory ruling from the Health Department on whether or not hearing aid dealers could do testing within the scope of their practice. The ruling held they could not-- that the dealers were restricted to fitting hearing aids after a loss has been determined. It was Oakley's judgment there would be opposition to the rule and he inquired as to who would defend the declaratory ruling. Kellen was hopeful that it would be the Health Department. It was the consensus of the Committee and Oakley that public participation should be provided. Kellen emphasized public hearings were held on the original rules. Royce recalled that was years ago. Welp thought it possible to hold one hearing.

Kellen told Oakley that the only difference is that this rule, under Notice, allows the physician to do testing. In the old rule, that was required to be done by the audiologist. Most physicians refer patients to audiologists. Also, after need for aid has been established, a hearing aid dealer may make a recommendation. General discussion.

Kellen informed Holden that a dealer receives a larger fee when it is necessary to travel to fit an aid--78.14(4). No formal action taken on 78.14.

7:40 a.m. Chiodo arrived. No questions re 132.4(2).

Minutes Holden moved that the Committee adopt the minutes of the February meeting as submitted. Motion carried viva voce.

Recess Schroeder declared a recess until 7:50 a.m.

No Repre- Agency representatives were not required to be present for
sentatives the following:

CIVIL RIGHTS COMMISSION[240] Rules of practice, administrative closures, 1.5(1)"e" ARC 2687 <i>F</i>	2/17/82
DENTAL EXAMINERS, BOARD OF[320] Fees, hearing in contested case, 15.1, 15.2, 51.7(1) ARC 2677 <i>N</i>	2/3/82
INDUSTRIAL COMMISSIONER[500] Contested cases, 4.17, 4.18, 4.20, 4.31 ARC 2723 <i>N</i>	3/3/82
PRISON INDUSTRIES ADVISORY BOARD[635] Meetings, 1.1(4) ARC 2710 <i>F</i>	2/17/82
PUBLIC DEFENSE DEPARTMENT[650] State emergency plan, 6.1 ARC 2708, also filed emergency ARC 2707 <i>N. Y. F. F.</i>	2/17/82
PUBLIC SAFETY DEPARTMENT[630] Weapons, 4.7 to 4.12 ARC 2748 <i>F</i>	3/3/82
Arson investigations, disclosure of information, 5.12 to 5.14 ARC 2749 <i>F</i>	3/3/82
Liquefied petroleum gases, 5.250 ARC 2750 <i>F</i>	3/3/82
Smoke detectors, 5.806 to 5.808 ARC 2751 <i>F</i>	3/3/82

3-10-82

BOARD OF
ACCOUNTANCY

William M. Schroeder, Executive Secretary, Board of Accountancy,
appeared for review of the following:

ACCOUNTANCY, BOARD OF[10]

Annual meeting, annual register, 2.3, 2.8 ARC 2724 .F.....3/3/82
Foreign licenses, registration and renewal of certificates and licenses, permits to practice, continuing education, 5.2, 6.1, 6.3,
6.4(1), 9.4(1), 9.9, 9.11(2), 10.3(1) to 10.3(3) ARC 2726 .F.....3/3/82
Specified forms, fees, 13.1, 14.1, 14.2 ARC 2725 .F.....3/3/82

2.8

Holden raised question as to the language in 2.3 and 2.8. Holden found it somewhat disconcerting that the Board had adopted a rule to permit publication of an annual register when the legislature had repealed the requirement--2.8. He asked for source of revenue for the project. Wm. Schroeder replied the funds were generated by licensing and registration and from the exams. This year, an additional \$80,000 is anticipated. Further, the Register benefits the consumer and various state agencies. Holden questioned whether the Board could pay for the publication out of licensing or registration funds.

Royce commented the whole question of the Register originated a couple of years ago when the ARRC called attention to possible misuse of fees. Subsequently, the legislature did repeal the statute which gave a "presumption that the Register was not to be published."

Committee members suggested Accountancy review their fee structure since the legislature does not intend that fees "pad the general fund." Holden suggested that the professional association could publish a roster following the procedure used by lawyers and policemen's associations. Schroeder informed the Committee that the Board sends a newsletter to all registered accountants twice each year.

No further questions.

APPEAL
BOARD

Maurice Baringer, State Treasurer; Richard J. Johnson, Auditor of State; Francis R. Larew, Treasurer's Office; and Ron Amonson, Comptroller's Office, appeared on behalf of the Appeal Board for review of the following:

APPEAL BOARD, STATE[60]

General provisions, budget appeals, 2.2(2), 2.5 to 2.7, ch 5 ARC 2747 .F.....3/3/82

Also present: Dick Davis, Polk Des Moines Taxpayers Assn.; Norman Jesse, Assistant Polk County Attorney; Earl Willits, Assistant Attorney General.

Baringer informed Committee members that no one attended the public hearing. He continued that points made by letter were considered but not all were adopted. It is the sentiment of the Appeal Board that the law is quite clear and the rules are a repeat of the law. Baringer referred to provision in Chapter 24 of the Code that the hearings shall be informal. The Board interprets that to mean they do not have to follow the rules of civil procedure and take testimony.

Davis advised that the Taxpayers Association has no opposition to the rules. He contended that Chapter 17A has no

APPEAL applicability to the appeal process as described in Chapter 24.
 BOARD Davis added that the subsequent legal recourse available to both
 Cont'd parties under 17A does appear to be potentially threatening to
 timely tax collections in the fall.

5.9 Baringer called attention to new Rule 5.9 where they require a local budget to be amended by May 31. This would give time for citizens to take advantage of the appeal process. The previous June date precluded this. In response to Priebe, Baringer said the Appeal Board has access to the advice of the Attorney General.

5.5(14) Jesse spoke in opposition to some of the rules and stated that Polk County is engaged in litigation with the Board. He contended the rules had not been adopted in compliance with 17A since the Notice did not contain the substance of the rules for public comment. Jesse argued that, in some respects, the rules expand upon authority granted by Chapter 24A with regard to appeals. In other areas, they are contrary to the law and attempt to resolve by rule the legal questions pending before the Supreme Court at the present time. He cited subrule 2.2(2) as not including proceedings under Chapter 24. Re 5.5(14), Jesse interpreted the parenthetical insertion "(as opposed to staff)" as an attempt to exclude the Polk County Budget Director with respect to filings. Jesse supported procedures laid out by the rules which deal with formalities about which local government could not otherwise be apprised.

Chiodo reiterated his disapproval of rules being adopted after summary only Notices. He also questioned why the phrase "as opposed to staff" was included in 5.5(14).

Baringer responded that 5.5(14) was an attempt to provide uniform application across the state--"Polk County to the contrary, notwithstanding, is still part of the state." Baringer stressed it was not their intent to prohibit the use of staff but elected officials should be present to defend their budgets at the hearing. He noted the language in question was excerpted from the statute.

Chiodo interjected that if the Appeal Board were concerned about supervisors answering questions, it should be required by rule.

Holden reasoned the burden must be placed on those with legal accountability but that would not preclude staff from making presentations. Tieden suggested this should be further clarified in the rule.

In response to question by Oakley, Jesse declared the District Court reached the "astounding conclusion that the Appeal Board was not governed by the APA, which resolved all subsidiary questions and dismissed our petition for judicial review." He was confident the Court erred. Oakley made the point there was nothing in the rules that was inconsistent with that district court ruling. Oakley doubted that the Polk-Des Moines Taxpayers Assn. represented all the views of all the taxpayers in Des Moines and Polk County. He had no problem with the formalities. As to the generality of the Notice, Oakley was aware the practice does generate a legal question. However, he supported the procedure followed by the

APPEAL Appeal Board and he pointed out the Committee has defended the
BOARD concept in the past. Oakley was interested in knowing the impact
Cont'd of HF 2371 by State Government. Baringer said the section with
reference to 17A was removed before it was passed and filing times
will be on the same basis as cities. General discussion.

Jesse had no objection to the Board's solicitation of public comments but thought there should have been a second Notice setting out the final rules. Baringer reminded Jesse that the timetable did not permit the "full 17A review" for this year's budget cycle. The rules should be in place by April 7.

Discussion of possible statutory changes being needed. Royce cautioned that, in this case, the Rules Review Committee was "in the middle of a case" that is now on its way to the Supreme Court and anything the Committee does could have impact.

Priebe pondered the impact of a possible delay of 45 or 60 days. He wanted to avoid Committee "endorsement" of the rules. Baringer declared that any one uncomfortable with these rules should also be uncomfortable with Chapter 24 of the Code.

Willits questioned if the rules were not effective until April 7, would that mean any appeal filed prior to April 7 could not be filed under these rules? Royce thought it could not.

Baringer advised that the hearing held as a result of those appeals would be under these rules. Willits wondered if these rules were not emergency adopted, would it be fair to assume in a judicial challenge, the challenger would have the burden of proof. He received an affirmative response.

No further comments.

COM- Christine Hansen, Commission Member; John Pearce, Robert J.
MERCE Latham, Alice Hyde, Ben Stead, and Arthur E. Zahller represented
COMMIS- Commerce Commission for review of the following:
SION

COMMERCE COMMISSION[250]

Tariffs — notice, contents, directory assistance, 7.4(4), 22.2(5) "b", 22.3(10) ARC 2691 F..... 2/17/82

Gas utilities, 19.1 to 19.8 ARC 2703 F..... 2/17/82

Purchased gas adjustment, 19.10 ARC 2690 F..... 2/17/82

Forms, practice and procedure, petitions, 2.1(3), 7.1(4), 7.7(5), 7.7(11), 7.7(12), 7.7(16), 7.8, 11.3(3) ARC 2761 F..... 3/3/82

Telephone utilities—inside station wiring; accounting, 22.1(3), 22.11, 16.5(5), 16.5(19) to 16.5(22), 16.5(26), 16.5(27), 16.5(29) to 16.5(33), 16.5(36), 16.5(39), 16.5(42) ARC 2762 AY..... 3/3/82

Also present: Don Williams, Northwestern Bell; Todd Schulz and J. Kent Jerome, Iowa Telephone Association; Jack B. Clark and John Lewis, Iowa Utility Association; Joe F. Lent, National Federation of Blind, and Gene Kennedy, Iowa Sheriffs Association.

7.4 Hansen stated that no major changes were made since directory assist-
22.2, ance tariffs were under Notice of Intended Action. Lent indicated
22.3 the Federation was well satisfied with the rules and expressed
appreciation to the Commission.

ch 19 Discussion as to operation of temperature compensation gas meters.
Gas Hansen apprised the Committee that amendments to chapter 19 would
Utili- bring the gas regulation in line with the electric regulation.
ties

3-10-82

COMMERCE There are waivers, particularly in rural areas.
COMMISSION Chiodo questioned if this would solve the problem of late
Continued readings. He recalled that because of bad weather, meters
were read at 34- and 35-day intervals last winter. Hansen
replied it would not solve the problem of a severe winter.
Chiodo asked if readings were late, would utilities be allowed
to bill for 30-day intervals.

Zahller explained the rule provides a target for which to
strive. If 33 days of billing are paid, the company could
not impose a delinquency charge.

Chiodo thought the consumer was at a disadvantage since they
did seem to be billed at the higher rate for any days over the
30-day cycle. Priebe surmised the issue could be resolved by
billing 35 days at a declining block rate.

Oakley asked if there were an economic or regulatory impact
analyzed on the utilities, would compliance to these rules
create additional costs. He was informed that additional
expenses as a result of the rules would be passed on to the
customer.

Forms, etc. No recommendations were made re amendments to chapters 2, 7 and
11.

Telephone Hansen indicated comments had been received from the utilities
Utilities with respect to proposed amendments on costs for inside wiring
of station connections for intrastate telephone utilities.
Stead reviewed the background and said the Commission had
received arguments and had drafted the proposed rules. Addi-
tional comments would be received through March 25.

Jerome said the Iowa Telephone Association plans to submit
written comments to the Commission and will request an oral
hearing in an attempt to resolve some problems they have with
the proposal.

Oakley recommended that the Committee be furnished advanced
copies of the final draft before it is adopted. Priebe men-
tioned the possibility of an economic impact request. After
discussion, the Committee agreed to request informal information.

19.10 There was brief review of rule 19.10 re purchased gas adjustment.
At the request of Chiodo, Latham explained the calculation
formula. One change made in response to comments was Commerce
left open the possibility of having more than one PGA clause
per company. They have been overwhelmed by criticism from
"interruptible customers." Latham added that the formula is
really based on adjustment and the adjustment is based upon
purchases.

No further comments.

Recess Chairman Schroeder recessed the Committee at 9:18 a.m. to
be reconvened at a date to be announced.

Committee Chairman Schroeder reconvened the ARRC meeting at 8:05 a.m. in
 Reconvened Committee Room 116, Statehouse, Des Moines, Iowa. Members
 present: Schroeder, Priebe, Holden, Tieden and Clark. Not
 present: Chiodo. Also present: Royce, Oakley, Barry and Haag.

OFFICE OF The following rules were reviewed by James Lynch and Mike Miller
 PLANNING & of the Office of Planning and Programming:

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Community development block grant nonentitlement program,
 Ch 23, Notice ARC 2709 IAB 2/17/82

Robert Harpster, League of Municipalities; Ralph Gross, Iowa
 Housing Finance Authority, and Jack Paetz, City of Muscatine
 and Iowa chapter of the National Association of Housing, were
 also present.

Lynch thanked the Committee and Royce for the opportunity to
 present an update of developments at the public hearing. In
 his opinion, the issues had been satisfactorily resolved.
 He had distributed a "Summary of Public Comments and Proposed
 Revisions." Lynch continued that five public hearings in each
 of the four quadrants of the state were held with 200 people
 in attendance. Department officials have examined the infor-
 mation and met with Iowa Community Development Council, an
 advisory sounding board. A major point was the question of
 single-year vs. multiple-year commitment of funds--for one year
 or up to three years. Another point was whether or not applica-
 tion should be for a single-purpose, e.g., a water system or
 for a multiple-purpose -- water system, street improvement and
 housing rehabilitation. OPP concurred that both multiple-year
 commitments as well as multiple-purpose applications and commit-
 ments should be allowed. Cities over 2500 could apply for
 multiple-year commitments.

Lynch continued that, initially, small cities were to be re-
 stricted to a one-year funding but there was strong sentiment
 against that. The Department is now proposing these cities be
 allowed to seek additional funds, but not with a prior commitment.
 There could be two separate projects or, conceivably, the same
 one -- a downtown revitalization project where facade improve-
 ments were made one year and street improvements the following
 year.

Lynch and Oakley discussed process to be followed for small
 city funding. Lynch had examined the question as to whether
 cities between the 2,500-10,000 category should be considered
 equally on the question of recognition of "in-kind local effort."
 In-kind effort is not required, but it is rewarded with points
 up to 100. Small cities are much more likely to be able to
 take advantage of the in-kind effort, which would be resources
 other than cash. Lynch emphasized that OPP prefers to ensure
 a neutral rating system and to direct funds toward top priorities.

Clark cited Charles City as an example of a financially burdened
 city but one where the citizens and local merchants are dili-
 gently coordinating their efforts. She stressed the importance
 of "volunteerism." - 1686 -

PLANNING &
PROGRAMMING

Lynch indicated that unless it were a "local project," he would not consider it to be "top priority." He stressed the importance of tough criteria to aid in the Department's selection of only 70 or 80 cities out of the anticipated 300 applicants. Priebe thought there could be a "top priority" but no money -- budgets are developed out of necessity.

Royce questioned a statement by Lynch that a mandate could force Iowa to comply with federal figures. Lynch had no response.

It was pointed out that low and moderate income family guidelines include 80% of the average income within a given county. Clark and Priebe disagreed with the county guideline and favored a statewide average for poverty level. Lynch said much thought was given to the low income average and the decision was made to use the county level since a buyer usually purchases a home in his own county. General discussion.

8:30 a.m.

Holden excused.

Lynch maintained a statewide median would give certain counties an advantage.

There was discussion of rating factors.

Although the Committee understood that the rules would need to be implemented by emergency provisions, they were a bit apprehensive. Lynch urged that no delay be imposed. However, he was willing to republish them to allow for further public scrutiny. He said approximately 35 states will participate in this program. Oakley suggested an alternative would be for the Department to publish a Notice for the purpose of analyzing grants made under these criteria. Lynch opined that December would be a logical time to start the process. Priebe favored a commitment from the Department to republish. Lynch noted they could formally solicit opinions from their CDB Bulletin which goes to all recipients.

There was mutual agreement that the rules would be renoticed in midsummer.

Lynch called attention to "a sleeper" in the last page of the summary which related to Iowa Housing Finance Authority. Departure from the original rules will allow communities to use funds at their own discretion to support a bond issue by the IHFA. Lynch stated that, for technical reasons, IHFA lacks sufficient money to issue mortgage review bonds for housing purposes so these funds would be an infusion of capital for that purpose. Funds will be available through local savings and loan institutions to purchase single-family homes.

Lynch stressed that OPP was not mandating that communities use these funds to support IHFA -- to engage in "mortgage write-downs" but the Advisory Council was persuaded that the proposal could result in tremendous benefits. There was brief discussion with no formal action.

ARTS
COUNCIL

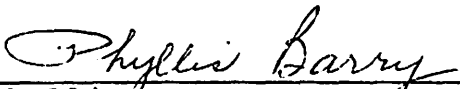
Royce apprised the Committee of a complaint from a Waterloo constituent who contended there was unfair apportionment of Arts Council grants. He was particularly opposed to the rules of the program which require a \$200,000 budget in one particular area.

Schroeder asked Royce to obtain more information on the issue and to recommend that the Council be petitioned for a rule change.

Adjourned Chairman Schroeder adjourned the meeting at 9:00 a.m.

Next regular meeting will be held Tuesday and Wednesday, April 13 and 14, 1982.

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Vivian Haag

APPROVED:


CHAIRMAN