

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, July 14, 1981, and Wednesday, July 15, 1981.

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

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

Convened Chairman Schroeder called the meeting to order at 10:09 a.m. Gene Johnson, Director, and Kenneth Smith, Administrative Assistant, represented Real Estate Commission for review of the following rules:

REAL ESTATE COMMISSION[700]
Examinations—license, 1.3(5), 1.4, 2.2(1), 2.2(2), ARC 2086, *N & FE* 6/10/81
also filed emergency ARC 2085.....
Trust accounts, rule 1.27 IAC

REAL ESTATE
1.3(5), 1.4,
2.2(1), 2.2(2)

According to Johnson, the filed emergency rules implement Real Estate licensing laws enacted by the last session of the Legislature. The applicant for licenses will be allowed more time in which to obtain education. Applicants are apprised of the options available to them.

1.27

The applicability of rule 1.27 to farm accounts was called to the attention of the Committee by Senator Arne Waldstein. He was concerned for the ever-expanding role of government and distributed background information about auditing farm accounts. Waldstein said farm accounts are private business accounts which do not come under the definition of trust accounts. He preferred a compromise between Real Estate officials and private interests.

In his opinion, this was an example of the problems which occur when a rule is filed emergency, thus precluding public participation. He was concerned about the gravitation of power to the executive branch. He added this was happening through the agency process as well as the rulemaking process. In response to the farm owners, his business intends to resist the amendments to 1.3(5) and 2.2(1).

Johnson reminded Waldstein that the issue of farm management accounts was not new.

REAL ESTATE
COMMISSION
Cont'd

Recent changes in the trust account rules made no changes in the farm management account areas. As a result of a May mailing by the Commission, licensees were reminded of provisions existing in the trust account rules.

Johnson discussed the 1967 Attorney General's opinion re the matter of farm management accounts and copies were distributed to Committee members. The opinion held that farm management accounts were subject to Chapter 117, The Code, to the extent they relate to renting of real estate. In discussion with Waldstein, Earl Willits, Attorney General Assistant, and the Commission's counsel, the basic concurrence was that most accounts would not be considered "trust" accounts. Johnson theorized the problem could be resolved by requesting a clarification of the 1967 opinion.

In response to Schroeder, Johnson indicated he was not suggesting a change in §117.46, The Code since that could have ramifications in other areas.

Waldstein admitted there was always a possibility that trust accounts could be mismanaged. Holden queried whether the exemption could be provided to accounts where owners share the signature card with the farm manager. Johnson replied that had been considered.

According to Johnson, the trust account relates to that activity for which a real estate license is required. Farm managers are not required by law to hold a real estate license. Johnson reiterated the matter could be clarified by an AG's opinion.

Royce was directed to draft a request for an AG's opinion. Committee members were reminded the rule had been in effect for years and the Committee could take no formal action.

Priebe mentioned the possibility of bonding farm managers. Waldstein admitted that was a valid point and had been considered. However, he was unsure it would be beneficial.

CIVIL RIGHTS Artis Reis, Director, Civil Rights, appeared for review of rules of practice, 1.17(1), ARC 2074. Responding to concerns expressed by the Iowa Manufacturers Association, Civil Rights Commission added language in 1.17(1)--motion to reopen. The rule gives a sense of finality to cases where a complainant or respondent may for good cause shown apply for the reopening of a previously closed case. Reis announced that no adverse comments had been received. Royce indicated he had received a telephone call from Sioux City officials, who plan to submit written comments.

SOIL CONSER-
VATION DEPT.

Ken Tow represented Soil Conservation Commission for discussion of financial incentives for soil erosion control, 5.3(2)a(1), 5.41, 5.74, ARC 2113, IAB 6/24/81. According to Tow, the amendments contain language implementing SF 553 [69GA, ch 12]. Cost sharing moneys were made available beginning July 1, 1981. A significant change occurs in 5.41(1) as a result of the Iowa Soil 2000 legislation. There was general discussion of the legislation.

5.41(1)

In re 5.41(1), Clark recommended a change for brevity and Tow replied it would be reflected in the adopted version.

5.41(7)

Priebe, discussing 5.41(7), understood that the southeastern Iowa tillage research program would be conducted if funds were available. He questioned the agency's foresight in allocating funds for 1983. Tow agreed to refer Priebe's question to the State Soil Conservation Committee.

5.31(2)

There was general discussion of the function of the certifying technician. No recommendations were offered.

MERIT EMPLOY-
MENT DEPT.

Wallace Keating, Director, Merit Employment Department, appeared for review of the following rules:

MERIT EMPLOYMENT DEPARTMENT[570]		
Demotion defined, 1.1(13)	ARC 2102	N..... 6/24/81
Pay upon special duty, 4.5(6)	ARC 2103	N..... 6/24/81
Inclement weather pay, 4.14	ARC 2104	N..... 6/24/81
Method of selection, 7.7	ARC 2105	N..... 6/24/81
Special duty appointment, 10.3	ARC 2106	N..... 6/24/81
Certification and selection, 7.6(1), 7.8	ARC 2101	F..... 6/24/81

1.1(13)

Keating spoke of the definition of "demotions" in 1.1(13) and advised the Committee a public hearing had not been held. Although the rule had been submitted to all agencies, no comments had been received. Responding to Clark, Keating said employees of the Commission for the Blind are not operating under Merit rules. He advised Royce that under 4.5(6), pay upon special duty, individuals will be governed by that class or position rather than the class or position they were in previously.

In exercising options for inclement weather pay, Keating said that 4.14 requires completion within the current work week. Priebe had received complaints to the one-week limitation. Schroeder and Priebe indicated highway employees had some problems with the rules. Schroeder requested Keating to send a letter to Kassel, DOT, asking if they could foresee problems in implementing 4.14.

No questions re 7.7, 10.3 or 7.6(1), 7.8.

11:15 a.m.

Oakley arrived.

ENVIRONMENTAL
QUALITY

Odell McGhee, Hearing Officer, and Jerry Tonneson were present for review of the following DEQ rules:

DEQ
Cont'd

ENVIRONMENTAL QUALITY[400]

Fugitive dust for nonattainment areas, 4.3(2)c(2) and (3) ARC 2073 *F*..... 6/10/81Emission standards for contaminants, 4.3(4), 4.4(14), ARC 1476 terminated ARC 2072...*N*..... 6/10/81

4.3(2)c(2)(3)

McGhee explained that 4.3(2)c(2)(3) concern fugitive dust for nonattainment areas. Traditional sources located in these areas will be required to take reasonable precautions to prevent visible emissions of fugitive dust.

Responding to Schroeder, Tonneson indicated there are approximately 140 facilities in the nonattainment areas in Iowa and the rule has been in effect since 1980. It does not pertain to the offset rule. McGhee pointed out traditional sources were addressed in other rules.

Discussion of problems faced by rock quarries in trying to contain dust. McGhee stressed that there were specific descriptions of the nonattainment areas.

Recess

The meeting was recessed at 11:22 a.m. to reconvene in Room 116.

Reconvened

HEALTH
DEPARTMENT

Schroeder reconvened the meeting at 11:40 a.m. The following Health Department rules were reviewed by Peter Fox, Licensing, Mark Wheeler, Hearing Officer, Mike Guely, Health Department; Herbert Roth, Board of Psychology Examiners; Gene Siegert, Chairman, and Lynda Schuler, Member, Board of Mortuary Science:

HEALTH DEPARTMENT[470]

Psychology examiners, 140.4(3), 140.9, 140.10, 140.101, 140.103(1), 140.105 ARC 2077...*N*..... 6/10/81Mortuary science examiners, 147.200(3) to 147.200(5), 147.212(1)"i" to "l" ARC 2087*N*..... 6/10/81

Advanced emergency medical care, 132.1(3), 132.1(12), 132.1(21), 132.2(1)"d", 132.3(1), 132.4(2) to 132.4(4), 132.5(10)"b", 132.6(1)"b", 132.6(4), 132.7(1)"c", 132.7(3), 132.7(9)"h", 132.10(5), 132.11(3), 132.12(1),

filed without notice ARC 2071.....*F*..... 6/10/81Barbers, continuing education, 132.101(1) ARC 2078...*F*..... 6/10/81Obstetrical services and neonatal intensive care unit standards, 203.9 ARC 2100 *F*..... 6/24/81

Also present: Herb Strentz, Iowa Commission on Freedom of Information; Norman Pawlewski, Health Commissioner, and Ted Ellis, Deputy Commissioner.

140.9(1)

Fox said that amendments to chapter 140 implement the two-year renewal period for psychologists. Holden cautioned that fees should not be increased until the amount of appropriation is determined. Fox indicated the 100 percent increase in the fees [140.9(1)] was to cover some shortfall in the present operation.

140.9(2)

Clark opined the twenty-five dollar penalty in 140.9(2) was excessive. Fox replied there had been problems with deferring renewal of licenses.

Priebe shared Holden's concern. However, he expressed dissatisfaction with agencies raising more money than is needed

HEALTH
DEPARTMENT
Cont'd
140.101

and, subsequently, reverting any excess to the general fund. Clark, in 140.101(6), questioned lack of requirement to complete the continuing education. Fox reminded her that was in the Code. He explained that 104.101(5) was added for clarification.

140.103(1) Roth stated that the new language in 140.103(1) "tightened" the former subrule. There was general discussion of continuing education. The Committee was advised that no comments had been received regarding the rules. Holden reiterated his disillusionment with CE generally.

ch 147 There was discussion of chapter 147 amendments which were scheduled for public hearing July 21, 1981. Tieden questioned the necessity for the rules. Siegert indicated questions had been submitted concerning licensees. Priebe interjected there had been no specific rules regarding solicitation for funerals.

147.212(1) In re 147.212(1), embalming of deceased human bodies, Fox said the rule was in response to FTC requirements. Chiodo recommended change of "should" to "shall" in 147.212(1)k and Fox was amenable. Fox advised Holden there were two statutory references to solicitation. He cited §156.9(3). According to Fox, the Health Department prefers clarification of solicitation to include "honest advertising". The ARRC was of the opinion the rule could generate controversy among mortuary businesses. Fox assured the Committee there was no attempt being made to regulate cemetery associations; complaints had been received about funeral directors.

Holden opined it was an attempt to regulate funeral directors and to him, it was another example of a licensing board adopting law. Siegert maintained amendments were for clarification. To his knowledge, suppliers had not refused business with licensed funeral directors.

Fox recalled an instance when a widow had been contacted by a funeral home on the very day her husband died. The Department maintained that practice should be regulated. No formal action.

Amendments
to ch 132 Guely explained that the amendments to chapter 132 were "housecleaning" rules approved by the Advanced Care Council, Board of Health and Board of Medical Examiners. Schroeder was assured Emergency Medical Technicians would not be affected. Guely said that 132.6(1) was limited to advanced emergency medical care services programs -- not basic EMT's, ambulance or rescue squads. Schroeder recommended that a date certain be included for federal standards. Guely said the dates are periodically changed and he opined they were conferring a

7-14-81

HEALTH
DEPARTMENT
Cont'd

benefit to the public by omitting the date. Holden suggested the language read, "...shall meet the current federal KKK-A01822 specifications, and amendment, as of October 1, 1981." Schroeder thought July 14 or an earlier date would be preferable. After further discussion, Guey agreed to include dates certain.

No recommendations were offered concerning 152.101(1) or 203.9.

Special
Review
Vital
Statistics

Ch 96

Chairman Schroeder announced that filed emergency rules implementing 69GA, HF 413 would be taken up as special review. [The rules would be published in the 7/22/81 IAB as ARC 2158; also as Notice ARC 2159.] Wheeler said the Department was directed, by the governor, to implement emergency rules to be in effect simultaneously with the July 1, 1981 effective date of HF 413. Department officials took the position it was their responsibility to preserve the confidentiality of information obtained for statistical purposes or to satisfy federal grant requirements.

Holden interpreted §144.43 that the records were open previously. Wheeler indicated that was not the interpretation of the Department. Oakley interjected that the AG office concurred with the Department. Holden pointed to the last paragraph of §144.43. Oakley commented on the previous method used by the Department in keeping certain vital statistics, defined by statute, wherein records more than 65 years old were open--subject to a few exemptions. He continued that in understanding the emergency rules, the Department was given very broad authority as to method of procuring and retaining certain vital statistics. Over the years, the Department has developed forms for the information. In effect, it has defined information that would be collected and also defined, by rule, that which would be confidential. The legislature has referred to certain "records", as opposed to "certificates". The "certificate" is the form used by the Department to collect information. Oakley emphasized the term "record is not defined." The Department, having defined the information it would collect, was therefore at liberty to define "records". It therefore excluded, by these rules, certain confidential information. Oakley saw the question as one of applicability of Chapter 68A(public records).

In Oakley's opinion, the statute and legislative pronouncement were incomplete -- and provided little direction to the department. Oakley deemed it an appropriate exercise for the agency to exclude that information which had been collected under the aegis of being confidential--that is, information relating to education, health and medical, etc. He concluded the Department was placed in a difficult position in trying to carry out legislative intent and still protect the confidential status

HEALTH
DEPARTMENT
Cont'd

of certain information. Oakley was hopeful the statute (Ch 144) would be rewritten. Wheeler reiterated the Department adopted emergency rules to ensure confidentiality of information during the interim before the public hearing.

Oakley took the position there was a legal question whether definitions in Ch 68A, The Code, apply to record of marriage or record of divorce. He supported the action taken by the Department.

Strentz indicated he would submit to the ARRC and Health Department concerns of the Council on Iowa Freedom of Information. He urged clarification re legislative intent and confidentiality where necessary. Strentz opined the rules, as presented, may be too restrictive and may be contrary to practice of counties. Among his concerns--he questioned the need for keeping confidential the names of parents on birth certificates.

There was discussion of information contained on the "certificate" of death and record of death. Holden contended the record of death is located in a large bound book in the county clerks' offices. He referred to 96.1(2)--"the record of death shall be the certificate of death" and asked, "Is there to be no other record of death--what about those already in the courthouse?" Oakley thought "actual record" was not the one kept in the book, but another form.

Holden suspected, in some areas, the book was the only record. Wheeler thought they kept certificates. He added that information relating to cause of death and significant circumstances surrounding it is blocked out, if necessary, to preserve confidentiality.

Holden and Schroeder contended the Department was saying, "You cannot see the record of death." General discussion of fees charged for records. Holden failed to see that the legislature had triggered an emergency rule.

Wheeler distributed sample copies of present record forms. Tieden recalled that when he asked to see county records, he was presented a book, not forms. Wheeler explained that was the reason the clerk would cover confidential information.

Priebe envisioned additional cost to county offices and pondered consequences if confidential information was not protected. Wheeler opined additional costs might be offset by charging fees. Priebe questioned authority to charge.

General discussion of confidential records--especially death information. Committee thought the information was general

HEALTH
DEPARTMENT
Cont'd

7-14-81

knowledge. Wheeler noted it would be available only locally. Oakley asked, "What is a legitimate public policy served by preserving that information for other than statistical purposes?"

Wheeler pointed out that failure to compile accurate statistical information could jeopardize their federal contract.

Tieden asked Oakley where the greatest emphasis was being placed --on confidential or public records. He did not believe there was that much change in the bill. Oakley responded that there is resentment when government changes rules in the "middle of the game." For years, information has been collected for health research. Now, we have those who say that this law has decided to make most, if not all, of that information public.

There was discussion of the pros and cons of allowing public access to the information, and Committee options re disposition of the emergency rules.

Pawlewski commented that the Department's interest was not "self-serving". They have an obligation to protect the right of privacy. He pointed out the importance of the public hearing since the matter was not thoroughly debated in the legislature. Pawlewski indicated they would work with county recorders and clerks to clarify the protection of information.

In response to Priebe, Royce noted that Chapter 144 generally refers to "certificates" in one form or another. However, in revised §144.43, we are introduced to something called "record". Because that was not a defined term, he could see justification for the rulemaking process. He recommended that the Committee withhold any action until after the public hearing. Priebe was inclined to move an objection. Schroeder suggested waiting until the August meeting when the rules would be in print. Priebe reasoned the rules were still in effect even though they had not been published.

Motion to
Object

96.1(1-4),
96.3, 96.6

Priebe moved to object to emergency filed amendments to Chapter 96, which will be published July 22, 1981, to ensure their expiration in 180 days. The following formal language was prepared by Royce:

Pursuant to the authority of §17A.4, the Code, the administrative rules review committee objects to the "emergency" filing of ARC 2158, on the grounds that filing is an abuse of the power to implement rules without notice and public participation as generally required by §17A.4, and is therefore unreasonable.

It is the opinion of the committee that in this particular instance rules should not have been implemented prior to giving the public an opportunity to comment upon the substance of those rules.

HEALTH
DEPARTMENT
Cont'd

ARC 2158 purports to interpret the meaning of "records" which are open to public inspection, as required by H.F. 413, 69th General Assembly, 1st session. These rules have drawn the interest of many concerned persons, and have prompted comment that ARC 2158 does not fairly implement the statutory provisions and in fact voids the legislative intent of those provisions. Because of the great amount of public concern the committee believes these rules should not have permanent effect until notice and public participation has been provided.

Under the provisions of §17A.4(2) the objection imposed upon ARC 2158 will terminate the effectiveness of the "emergency" filing 180 days after this memorandum is filed in the office of the code editor.

- Vote Motion carried unanimously.
- Recess Chairman Schroeder recessed the meeting at 1:15 p.m. to be reconvened at 2:00 p.m.
- Reconvened Chairman Schroeder reconvened the meeting at 2:00 p.m. in Committee Room 24.

COMMISSION John Taylor, Director, Commission for the Blind, and Anthony
FOR THE Cobb, Assistant Director, appeared for review of the following:
BLIND

Organization, 1.3	ARC 2080	✓	6/10/81
Employment practices, ch 5	ARC 2081	✓	6/10/81
Promotions, demotions, transfers and terminations, 6.2 to 6.6	ARC 2082	✓	6/10/81
General personnel policies, ch 7	ARC 2083	✓	6/10/81
Classification and compensation policies, ch 8	ARC 2084	✓	6/10/81

In response to Clark, Taylor said 1.3 addresses reorganization of staff. He added they have 13 vocational rehabilitation counselors whose functions include job development and placement. Rehab teachers operate a new, smaller independent program which is not specifically vocationally oriented.

- 5.1 In 5.1, Clark questioned use of "balance of outlook". Taylor stressed importance of staff viewing blindness in a positive manner. Clark preferred spelling this out in the rule.
- 5.2(4) Clark requested clarification of 5.2(4). Re 5.2(6)d, Clark thought response to written inquiry within 5 days to be too strict and favored allowance for good reason. Taylor admitted it was a valid point, considering the problems with mail service. Schroeder interjected that most rules of civil procedure allow 21 days.
- 5.2(6)g Clark suggested provision for eligible lists to expire after 5 years in 5.2(6)g, thus providing a definite time frame.
- 5.4 Tieden, in 5.4, recommended substituting "shall" for "does" and Taylor agreed.
- 5.1(1) Schroeder thought the last sentence of 5.1(1)--announcement of vacancies--to be too broad.

7-14-81

COMMISSION FOR THE BLIND Cont'd In questioning 6.4, Schroeder was informed it pertains to transfers within the organization -- from one desk or floor to another, so long as it is an equal position.

6.6(3) Schroeder and Holden concurred that the 3-day limitation in 6.6(3)--abandonment of position--was unreasonable.

6.6(2)i In 6.6(2)i, line 2, Clark preferred use of "choice" instead of "election". She referred to 7.4(6) as being unnecessary since the rules must be changed to implement any Code revision. Clark pointed out grammatical errors and excessive use of "such" throughout the rules.

In response to Chiodo concerning 7.8(1)&(2), Taylor explained their policy concerning holiday and sick leave pay.

Oakley indicated portions of the rules probably would be renoticed.

TRANSPORTATION DEPT. The following rules of the Transportation Department were before the Committee:

TRANSPORTATION, DEPARTMENT OF[820]
Motor carriers and charter carriers, [07,F] ch 4 ARC 2114N..... 6/24/81
Duplicate licenses, [07,C] 13.6(5) ARC 2070F..... 6/10/81
Special permits for operation and movement of vehicles and loads of excess size and weight, [07,F] 2.1(13),
2.1(14) to 2.1(17), 2.3(1) to 2.3(4), 2.4(4), 2.5, 2.6 ARC 2098F..... 6/24/81
Rail assistance program, [10, F] ch 1 ARC 2099F..... 6/24/81

Representing the Department were Candy Bakke, Bill Kendall, Dan Franklin and Alexis Wodtke.

[07,F] ch4 Wodtke told the Committee the Iowa Inter-city Bus Association participated with the Transportation Regulation Board in drafting the amendments to 07F, Ch4. The effective date for a schedule change has been changed from sixty days to thirty days after notifying the Board.

[07,C] 13.6(5) No recommendations were offered for [07C]13.6(5). Re amendments to 07F, 2.1, 2.3 to 2.6, Schroeder asked if the 16-foot [07,F] 2.1, structures legalized by the legislature were included. Bakke 2.3, 2.4, 2.5, replied this revision was in process. She pointed out that 2.6 Chapter 321E requires all rule changes to be approved by every city and county in the state -- a lengthy process. Schroeder commented that the statute should probably be changed.

RAILWAY ASSISTANCE [10,F] ch 1 According to Franklin, the rules relate to branch line assistance programs and implement the procedures. Questions raised at the last meeting had been resolved. Currently, a project was being negotiated for Storm Lake.

Tieden asked if funds were being repaid by private industry and Franklin replied in the affirmative.

BOARD OF
NURSING
ch 6

Chairman Schroeder recessed the meeting to be reconvened in the Senate Chamber for review of nursing practice for registered nurses/licensed practical nurses, chapter 6. The effective date of the rules had been delayed 70 days from May 6, 1981 by the ARRC.

Chairman Schroeder called on Lynne Illes, Board of Nursing, who reiterated the position of the Board of Nursing regarding chapter 6. She discussed what had transpired since April 15 and indicated that neither the Iowa Hospital Association nor the Board of Nursing had changed their position on the matter. The Board chose not to withdraw the rules. In July, the Iowa Nurses Association requested withdrawal of chapter 6, a change from their earlier support of the rules. Because of that change, a telephone conference call, including members of the press, was held. The Board was unanimous in agreement to proceed and, in their opinion, had made every effort to uphold the original purposes set forth by the task force. Special emphasis was placed on the minimum standards for the role of the nurse.

Approximately 250 persons were in attendance at the meeting. The following acted as spokesmen for opponents to the rules:

Norene Jacobs, Iowa Hospital Association; Colleen Goode, Hospital, Ida Grove; Mary Lindquist, Grinnell General Hospital; JoAnne Hannasek, Director, Dept. of Nursing, Iowa Hospital Assn.; Robert J. Richard, Administrator, Peoples Memorial Hospital; Charlene Wilkening, Med-Surgery Coordinator, Boone County Hospital; Mary Moser, Iowa Nurse's Association; S. Kay Montgomery, Director, Nursing Service, Iowa Methodist Medical Center; Phyllis Crouse, Iowa Chapter-American Society Nursing Service Administrators; Patricia Yenzer, Des Moines General Hospital; Gretchen Stark, R.N.; Linda Klimesh, Winnebago County Memorial Hospital; Jean Kruse, Mt. Ayr Health Care Center; Lorna Wood, citizen; Emily Aikman, Nursing Service, Floyd County Hospital; Jayme Wheeler, Des Moines General Hospital; Rachel Buck, Nurse Practitioner; Jeanine Matt, Palmer Memorial Hospital, West Union; Phyllis Knox, Director of Education, Muscatine General Hospital, Coleen Chenoweth, Des Moines General Hospital and Norman Spencer.

In summary, they urged delay in implementation contending it to be virtually impossible to enforce the rules. Many urged further study of the matter. They argued nurses would be exposed to a greater degree of liability and patients would bear the burden of increased costs for care. Others reasoned supervisors would have to ensure compliance with a laundry list of 20-25 standards for delivering and documenting hospital care. Other critics could foresee increased paperwork as aggravating

BOARD OF
NURSING
Cont'd

a state-wide nursing shortage. Nurses from smaller rural hospitals were primarily concerned as to the "vagueness of terms" which, in their judgment, could only be tested in the courts.

Many praised the standards as fine professional guidelines but opposed giving them the force of law.

Schroeder explained the 45-day delay concept. Holden, in all of his years of service in legislature, had never seen such an "outpouring of objection to a Department's action." He discussed problems inherent in acting on a bill to rescind the rules within 45 days after convening of the General Assembly. He pointed out other legislators must be made aware of the problem by interested parties. Holden expressed his concern for the way that various licensing bodies were expanding their rules. He continued that the Committee lacked authority to veto rules, and he was not sure the objection route would be effective, although it has been in other cases. He opposed practices which create legal implications.

Clark was heartened to hear any number of the opponents agree that the concept of the standards was good. She reasoned it goes along with the feeling that less government interference is preferable. Clark continued that if the rules were delayed into the General Assembly, she would have a bill ready for introduction the first day of the session. As Chair of Human Resources Committee, she was confident it could be voted out of that Committee rather quickly. She urged continued participation by interested persons.

Motion to
Delay Ch 6

Chiodo viewed the rules as having the potential to create total disruption in the practice of nursing. He was unsure of a solution but Chiodo moved that chapter 6 of the Board of Nursing rules be delayed 45 days into the next regular session. Discussion followed.

Tieden indicated his feeling was that the ARRC was obeying the wishes of those here today. He discussed the possibility of malpractice suits should the rules become effective, and he supported the 45-day delay.

Priebe considered Committee options and cautioned that the issue would not be the top priority in the next session of legislature. Priebe supported the 45-day delay but cautioned people not to get their hopes up. He favored withdrawal of the rules as a far better approach.

Schroeder pointed out that the law [17A.8(9)] requires a senate and house joint resolution to be passed in both houses

BOARD OF
NURSING
Cont'd

and signed by the governor in order to disapprove rules. However, he explained that a bill could accomplish the same goal and the legislature would not be limited to the 45 days.

Ch 6
Delayed

Schroeder called for the vote on the Chiodo motion to delay 45 days into the next regular session of the General Assembly. Motion carried unanimously.

Priebe suggested that the President of the Senate and the Speaker of the House be notified as to which Committee Chairman the matter would be referred. Royce could then advise interested parties.

Clark presumed it would be Human Resources or State Government.

Recess

Schroeder recessed the meeting at 4:17 p.m. to be reconvened at 9:00 a.m. Wednesday, July 15, 1981.

Reconvened Chairman Schroeder reconvened the Administrative Rules Review
Wednesday Committee at 9:07 a.m. All members present, including staff.
July 15

CONSERVATION The first order of business was review of the following rules of Conservation Commission:

Use of firearms, 8.1, 8.2	ARC 2108	.....	6/24/81
Waterfowl hunting on Forney Lake and Riverton Area, 14.1	ARC 2109	.....	6/24/81
Waterfowl hunting on Lake Odessa, 15.1	ARC 2110	.....	6/24/81
Migratory game bird regulations, 105.3	ARC 2111	.....	6/24/81
Deer hunting regulations, 106.1, 106.2, 106.4, 106.5	ARC 2112	.....	6/24/81

8.1, 8.2

Robert Barrett, Wildlife Division, was in attendance. Responding to Schroeder, Barrett said the ARRC request to allow officers to go through restricted areas was made. Cost for waterfowl hunting in the Riverton area was increased from \$19.22 to \$20.00. He reported an \$11,000 loss last year.

15.1

Waterfowl hunting on Lake Odessa was simplified. The permit requirement for the so-called Area B was removed.

105.3

Subrule 105.3(5) will allow parapalegics and single or double amputees to use a stationary motor-driven land conveyance for hunting. Also, Green Island Area in Jackson County was added to the list where steel shot may be used.

Ch 106

Quotas for deer hunting were significantly increased in some areas. Discussion of method used to determine deer population. No recommendations were offered.

Committee
Business

Royce reported that Senator Doyle called attention to lack of rules governing user fees for Iowa parks. As a result, discount to senior citizens is not uniformly applied. Also, Royce had been approached as to the authority for licensing metal detectors. He could find no statute on the subject. The Chairman ordered both items to be placed on the August agenda.

AGRICULTURE Bette Duncan, legal counsel, and Dr. Merle Lang, State Veter-
DEPARTMENT inarian, appeared on behalf of the Agriculture Department for
special review of rule 18.7-sale of bovine animals-as published
in the IAC.

Duncan recalled that she had appeared before this Committee while the rule was under Notice and on another occasion for selective review. It was only recently that question was raised as to the statutory authority. She referred to a letter by Royce and stated that Mr. Lounsberry, with her assistance, had formulated a legal appraisal of the provisions of §164.13,.14. She admitted there was a good faith dispute as to construction of those two sections, but added they would comply with an AG ruling. The Department was convinced they do have authority for the rule.

Schroeder pointed out the Committee had raised question as to vaccination dates. Later, the Committee also realized that both Chapters 163 and 164 should have been cited in authority and implementation clauses with respect to vaccination dates.

Schroeder voiced opposition to changing vaccination of beef breeds. Duncan insisted that Committee disapproval was based on provisions of Chapter 164--at no time was Chapter 163 mentioned.

In response to Schroeder, Lang assured him there were no plans to revert to the old system of issuing quarantine slips. If your premise is not state-approved, the cattle would be quarantined. Lang stated that Iowa was in conflict with federal regulations on the total brucellosis program. Those in non-compliance will not be able to deal with interstate cattle--only intrastate, native cattle.

Lang explained that, for many years, federal rules required 24 months for beef cattle and 20 months for dairy. Vaccination can be administered up to 10 months of age.

18.7 Tieden moved that the minutes show that the ARRC requested a
Motion for formal Attorney General's opinion regarding 18.7. Motion
AG opinion carried viva voce.

Lang said he was meeting with the Pork Producers about pseudo-rabies. There was brief discussion of the progress in eradication of the disease..

Committee Following general discussion, Schroeder announced the Adminis-
Business trative Rules Review Committee would hold a special meeting,
Monday and Tuesday, August 3 and 4, 1981 in lieu of the statu-
tory date of August 11.

ARRC agreed to request return of Health Department officials for further discussion of vital statistics.

Minutes Priebe moved approval of the May and June minutes as submitted.
Motion carried.

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

SOCIAL SERVICES DEPARTMENT[770]
Food stamp program administration, 65.3, filed emergency after notice ARC 2096 ... *FEAN* 6/24/81
Food stamp program, utility allowance, 65.8, filed emergency after notice ARC 2097 ... *FEAN* 6/24/81
Fair hearings and appeals, 7.1(15), 7.8(1), 7.8(2) ARC 2091 ... *F* 6/24/81
Food stamp program, 65.4(1) ARC 2092 *F* 6/24/81
Licensing and regulation of foster family homes, ch 113, also rescinds ch 106 ARC 2093 ... *F* 6/24/81
Veterans home, admission, 131.1(6) ARC 2094 *F* 6/24/81
Abuse of children, 135.1(2), 135.1(8), 135.3, 135.4(2), 135.11 ARC 2095 ... *F* 6/24/81

Judith Welp, Rules and Manual Specialist, Mary Laughlin, Evaluations, Michelle Clark, Food Stamp Issuance, Gloria Sapp, Policy, Research and Analysis, Miriam Turnbull, Licensing, and John Straton, Home-based care, represented Social Services Department.

65.3 Food stamps -- Welp said the first rule updates the day the federal regulations were adopted, which affected workers and not the client.

65.8 Schroeder questioned water/sewer allowance in 65.8 and Welp said the chart lists minimums--there were no maximums. She said the shelter expense is compared to the total income and anything over 1/3 of that is then allowed as a deduction and applied to the income. The whole amount is not automatically deducted.

Responding to Priebe, Michelle Clark indicated the maximum paid to one person was \$70 and she admitted it was a complex procedure. Welp explained that the government asks the state to set the standards and to update them annually. Utility costs in Iowa are used in calculating the amounts.

Welp gave an example of income with \$300 monthly average -- 1/3 of that would be \$100 so the individual would have \$55 to apply toward shelter in a one-person household. The balance of \$245 would be used to determine the eligibility. She thought there were some maximums on how much to subtract.

ch 7 Welp said amendments to chapter 7 add as aggrieved those persons who are having income tax refunds attached by the state for unpaid child support. Requests for appeals must be in writing. Welp had no documentation as to percentage of attachments but she agreed to research it.

65.4(1) Amendment to 65.4(1) was an attempt to cut down on mail losses of food stamps -- which average over \$80,000 a month. Discussion of possible theft in the post office. Royce asked if certified mail had been considered. Clark noted that had not resolved the problem in Arkansas.

SOCIAL
SERVICES
Cont'd

After the rule is implemented, DSS agreed to provide statistics on the savings realized. Stamps are delivered to 65,000 homes. Laughlin told Chiodo there were 10 high-loss areas around the state.

ch 113

Committee requests were incorporated in revised chapter 113. No recommendations were offered for Social Services rules.

Recess

Schroeder recessed the Committee for 5 minutes.

Reconvened

Meeting was reconvened at 10:35 a.m.

REVENUE

Carl Castelda and Gene Eich represented Revenue Department for review of the following:

REVENUE DEPARTMENT[730]		
Filing of tax liens, 9.5	ARC 2115	6/24/81
Sales and use tax, 18.3, 18.37(5)	ARC 2116	6/24/81
Gasohol exemption, 64.4	ARC 2117	6/24/81
Determination of value of railroad companies and utility companies, 76.4(2), 76.4(3), 77.4(2), 77.4(3)	ARC 2079	6/10/81
Cigarette tax, 81.16, 82.4(1), 82.7, 84.2	ARC 2118	6/24/81

In re 9.5, Castelda commented the rule clarifies Department policy re time of filing for tax liens in cases where individuals fail to file a tax return. Schroeder questioned change of "will" to "may". Castelda said this was a formality.

Tieden expressed his amazement that overdue taxes were in excess of \$100 million. Castelda did not have figures on "no-pays" for comparison.

Sales and
Use Tax

Castelda said 18.3 was clarified with respect to sales tax since chemicals are sometimes added to water when processing does not exist--example, chlorine for a swimming pool.

18.3,
18.37(5)

64.4

Castelda stated that 64.4 supports the legislative changes re gasohol exemption. [ch 111, 1980, 68GA]

76.4(2)&(3)
77.4(2)&(3)

Castelda yielded to Eich for amendments for alternative security pricing procedures other than the present year-end price requirement.

Cigarette
Tax

According to Castelda, passage of SF 576 required [69GA, ch43] the Director of Revenue to promulgate rules re the cigarette and little cigar inventory tax. Schroeder questioned the June 30 effective date when the law did not take effect until July 1. Castelda admitted there was some controversy regarding the validity of the law and the interpretation. However, since this was a constitutional question, the Department felt, from an administrative standpoint, they had no authority to challenge the law. Castelda had not asked for an AG opinion since the AG had assisted in drafting the rules. Castelda had talked with several members of the legislature about an opinion before the bill was signed by the governor. This was not done. There had already been an opinion, which they cite in the preamble to the rule, regarding an administrative agency's right to challenge the constitutionality of the law.

REVENUE
Cont'd

In response to Chiodo, Castelda reviewed the process the Department will follow in assessing and collecting the inventory tax.

Committee discussion as to proper procedure they should follow with respect to the rules.

Responding to Priebe, Royce advised, in terms of the text of the rule, an agency must presume its law to be valid -- it would be a gross violation of separation of powers if one branch of government presumed another to be acting unconstitutionally. However, he could see a technical problem in that the explanation did not reflect the fact the rules were filed emergency. Castelda said the Department relied on §17A.4. The inventory tax was estimated to be \$500,000.

Responding to Tieden, it was Royce's judgment that Committee action would have very little effect because the statute, not the rules, is crucial to the issue.

Motion Tieden moved to request an AG's opinion to clarify the question whether rules can be implemented prior to the effective date of a statute.
Motion carried viva voce.

11:10 a.m. Oakley arrived.

AGRICULTURE Dr. Lang returned to review Rule 18.7--sale of bovine animals--
18.7 with former State Senator James Schaben, Operator of an Auction Market.

Schaben took the position the rules were promulgated by the Department without prior notice and were in conflict with the present Code and the federal brucellosis laws.

It was Schaben's understanding that the federal rules had not been implemented and he declared §164.14 had been circumvented.

Tieden informed Schaben that the ARRC had asked for an official opinion from the Attorney General and the Department has agreed to abide by the ruling.

Schroeder inquired as to how much advance notice was provided to sale barn operators and Lang advised there was at least six months. The Secretary of Agriculture has an Advisory Committee and every commodity group is represented. Lang could verify that a livestock representative served on the Committee last summer but apparently he failed to inform the sale barn industry. Lang reiterated that without federal compliance, Iowa could no longer handle out-of-state breeding class cattle. In addition, the Department would lose their cooperative agreement for brucellosis control and eradication, a cost which would have to be assumed by county tax dollars.

7-15-81

AGRICULTURE Schaben and Lang disagreed about the federal rule application.
Cont'd There was discussion of the differences between Nebraska and Iowa market operations.

Lang referred to the Uniform Method of Rules to provide state and federal cooperation. Markets in noncompliance lose their state-federal approval.

There was general agreement to await the AG opinion.

COMMERCE David Conn, Assistant Commerce Counsel, was present for the
COMMISSION following rules:

19.3
20.10

COMMERCE COMMISSION[250]
Outdoor gas lights, 19.3(1)"e" ARC 2119 ... F..... 6/24/81
Declining block rates for electricity, 20.10(3) ARC 2069 ... F..... 6/10/81

According to Conn, the rescission of 19.3(1)"e" will remove the prohibition of natural gas for outdoor lighting.

Schroeder inquired if more hearings were scheduled with respect to declining block rates for electricity. Conn indicated the matter is being raised as an issue in rate cases but on a generic basis. He continued that the rule applied only to the energy component of a rate--there could be a declining kilowatt hour charge so long as the energy component within that charge did not decline to the extent the kilowatt hour was picking up customer costs or capacity costs. Those might well decline on a block basis.

Chiodo wondered how the energy component, at any specific time, could change because of volume. Conn said the main object of the rule was to ensure that the "tailblock" always covers the energy cost of the utility so that electricity would never sell for less than the energy cost to produce it. Priebe pointed out there are instances of surplus energy.

PUBLIC The Department of Public Defense was represented by John D.
DEFENSE Crandall, Director of Disaster Services; Henry J. Boccella,
Disaster Plans and Preparedness and Robert H. Stecker, Prevention
Services and Mitigation, Disaster Services. The following was reviewed:

PUBLIC DEFENSE DEPARTMENT[650]
State emergency plan, 6.1 ARC 2121,
also filed emergency ARC 2120 N & FE 6/24/81 1594

Crandall explained the rules were filed emergency in order to meet the deadline for requirements of the Nuclear Regulatory Commission, Federal Emergency Management Agency. No comments had been received re the submission.

There was brief discussion as to the effectiveness of the emergency plan in the event of a disaster.

Holden wondered if there was a demand for the plan.

Crandall informed the Committee it was distributed to communities of 5,000 or more population that would probably have full-time mayors, civil defense directors, plus all the state agencies. He emphasized all communities would be taken care of.

NO REPS

An agency representative was not requested to appear for any of the following:

ENGINEERING EXAMINERS, BOARD OF[390]
 Plats, 2.5, ARC 1472 ~~terminated~~ ARC 2107*NT*..... 6/24/81

IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]
 Rural Rehabilitation student loan and grant program, ch 3, ARC 1386 ~~terminated~~ ARC 2122*N*..... 6/24/81

NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS[600]
 License renewal, continuing education, 2.5(5), 3.2, 3.6 ARC 2076*N*..... 6/10/81

PHARMACY EXAMINERS, BOARD OF[620]
 Minimum standards, 6.6(3), 6.7 ARC 2088*F*..... 6/24/81

REGENTS, BOARD OF[720]
 Purchasing, bids, 8.6(4) ARC 2090*F*..... 6/24/81

SECRETARY OF STATE[750]
 Uniform commercial code, 1.5(3) ARC 2124*N*..... 6/24/81
 Uniform commercial code, ch 1, ~~filed emergency~~ ARC 2123*FE*..... 6/24/81

SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805]
 Licensure standards for treatment programs, 3.8(1), 3.22(12)"b" ARC 2075*F*..... 6/10/81

ADJOURN-
 MENT

Chairman Schroeder adjourned the meeting at 11:55 a.m.
 Next meeting was scheduled for August 3 and 4, 1981.
 Noncontroversial items should appear on the Monday agenda.

Respectfully submitted,

Phyllis Barry
 Phyllis Barry, Secretary
 Assistance, Vivian Haag

Laraine Schroeder
 Chairman

 Date