

MINUTES OF THE REGULAR MEETING  
of the  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Wednesday and Thursday, November 12 and 13, 1980; delayed one day due to legal holiday, Veterans Day, November 11.

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

Members Present: Representative Laverne W. Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar H. Holden and Dale Tieden; Representative Betty J. Clark and John E. Patchett.

Also present: Joseph Royce, Committee Staff.  
Brice Oakley, Rules Coordinator.

9:00 a.m. Chairman Schroeder convened the meeting at 9:00 a.m.

PROFESSIONAL  
TEACHING  
PRACTICES  
COMMISSION

The following rules were before the Committee and appearing on behalf of the Commission were Don Bennett, Executive Secretary, and Joan Burgess, Chairman of the Board.

PROFESSIONAL TEACHING PRACTICES COMMISSION[640]  
Contract nonperformance, complaint proceedings, 3.1(1)"b", ch 5 ARC 1491 /F..... 10/29/80  
Student discipline, ch 6 ARC 1495 /F..... 10/29/80

ch 6

At the request of Burgess, the student discipline chapter 6 was reviewed.

Holden expressed the opinion that the matter of discipline should rest at the school board level.

Burgess responded the Act [272A] under which the Commission operates charges them without setting out the method by which a teacher deals with student discipline--the professional practices of teachers. Holden took the position the Commission was "stretching" its authority.

Tieden opined the Commission exceeded legislative intent and he could foresee an effort to usurp powers of the school board. Moreover, the Commission was going beyond what the courts had already ruled.

Burgess contended the rules contain the common law of Iowa and of the federal system and set out an acceptable level in the area of corporal punishment for all educators. General discussion of the pros and cons of student discipline

In reply to Royce's question, Bennett said there had been two Iowa Supreme Court cases which established common law principles for Iowa.

PROFESSIONAL  
TEACHING  
PRACTICES  
COMMISSION

The Commission had dealt with conduct recognized at law as being illegal, criminal and civilly torturous. The rules would serve as guidance to boards and educators.

Tieden reiterated his belief they were superseding their authority. Holden doubted the need for the rules since the Commission was addressing an area already in the law.

Discussion by the Committee of the proper procedure to follow regarding the rule. Tieden and Holden favored an objection and Schroeder preferred a delay. Burgess declared the rules were reasonable and nothing had been established which was outside case law. Royce opined that was not necessarily the issue--he saw it as whether an act that was civilly torturous should be automatically made a matter of licensing discipline.

In response to query from Oakley, Burgess said the Commission had dealt with one case of corporal punishment and one was under investigation. Oakley opined the Commission had authority to promulgate rules. It seemed to him rules were only necessary to provide uniformity throughout the statute. He asked Commission officials if they expected substantial increase in complaints if the rules were promulgated and Burgess answered in the negative. She pointed out that the ISEA does not oppose the rules and the Teachers' Association and Administrators' Association levied no opposition. However, the National Education Association is opposed to corporal punishment.

Priebe was interested in reaction of school boards, and noted he had not been contacted about the matter.

Ted Davidson, Iowa School Board Association, argued the rules would go beyond current law and intrude into areas that should be a local matter. He added the courts have made "Corporal punishment a discretionary matter of the school boards." Aggrieved parents have the right to appeal a local decision to the DPI.

Burgess pointed out that the DPI cannot take "license action." She concluded the Commission was concerned with "the professionalism of the education system."

MOTION TO  
OBJECT --  
Ch 6

Tieden moved, contingent with final form preparation of the objection by Royce, that the ARRC object to chapter 6 of Professional Teaching Practices Commission rules on the grounds the rules were arbitrary, unreasonable and capricious and exceed the Commission's authority.

Substitute  
Motion to  
DELAY

Priebe stated his preference for delaying chapter 6 into the next General Assembly to allow legislative Education Committees ample time to resolve the matter. He made a substitute motion to delay chapter 6 of the Professional Teaching Practices Commission 45 days into the next General Assembly contending local

PROFESSIONAL boards should "retain their power." He suggested the School  
TEACHING Board Associations, Iowa State Education Association and Depart-  
PRACTICES ment of Public Instruction work toward an equitable solution.  
COMMISSION

Cont'd

ch 6

Delay

Holden reiterated his desire to avoid infringing on operation of local school boards and indicated support for an objection. Clark favored delay over the objection. She pointed out there were two different issues involved--licensing and discipline.

Tieden was doubtful the legislature could resolve the matter in 45 days and he opposed the substitute motion.

Priebe opined an objection would merely shift the burden of proof to the agency and even though the legislature fails to take formal action within the 45-day period, he was convinced that the Education Committees would address the issue.

Vote Schroeder called for the question on the substitute motion and roll call showed the following: Schroeder, Priebe and Clark, aye; Holden and Tieden, no; Patchett, absent and not voting. Motion failed to receive 4 affirmative votes and was lost.

MOTION TO

Object

Ch 6

Tieden renewed his motion to object to chapter 6 of the Professional Teaching Practices Commission rules. Chairman Schroeder called for the question. Roll call was as follows: Schroeder, Priebe, Holden and Tieden, aye; Clark, no; Patchett, absent and not voting. Motion carried with 4 ayes. [See also page of these minutes.]

ch 5

Discussion moved to chapter 5, contract nonperformance complaint proceedings. Holden viewed chapter 5 as even more direct interference with local boards' right to deal with their contracts and personnel, etc.

Burgess emphasized the Commission wouldn't "meddle" unless a case was referred to them. Then it would be a state matter and they would need criteria under which to operate. The rules contain the precedents established by the Commission over the last several years.

Holden referred to 5.3(3)--nonperformance--factors in mitigation--and asked how often a certificate was suspended. Bennett replied there had been 60 to 80 suspensions in the last six years.

Responding to Clark and Holden, Burgess said the Commission had indefinite suspension, but could recommend revocation to Board of Educational Examiners. Oakley found it interesting that school boards want the Commission to handle these cases. He referred to Royce's memo as an excellent survey of the question. Oakley continued the issue was school board's. He believed the criteria by which a teacher may be relieved were too vague, too permissive and loaded in favor of the teachers.

PROFESSIONAL  
TEACHING  
PRACTICES  
COMMISSION  
Cont'd

In his opinion, the question had state-wide impact--whether or not the Commission should be a form available for indirect enforcement of contracts--and there should be specific rules in that regard. Although he viewed the rules as well intentioned, he recommended that they be revised to overcome vagueness in many places. Clark questioned Royce as to result of eliminating 5.6.

Burgess asked to respond and explained Commission would continue to function under those precedents although they were not codified. She contended school boards, in some instances, were seeking sanctions to be imposed on teachers by the Commission. Burgess said, in some situations, a teacher wants to leave a district for the safety of themselves or stability of family.

Davidson stated the Association was generally opposed to the rules in that they were "loosely drawn, vague and establish standards which could encourage breach of contract." Items of personal inconvenience of employees should be recognized as a reasonable excuse for breaching a binding, legal obligation. He continued that chapter 3 of the Commission's rules was sufficient to meet any case that comes before them on an ad hoc basis.

Davidson also opposed the rules because "they intrude in employment relationship, which by law, was a school district matter, establish excuses and mitigating factors for nonperformance and tend to weaken bilateral nature of an employment contract in favor of the employee, use words which are unclear, vague and ambiguous--also include statements of conclusion which are inappropriate, and potentially deprive the school board of its most effective remedy for a breach of contract."

Gaylord Tyron, representing elementary middle school principals, said the school board is challenging the professional commitment of the teacher. All administrators and board members appreciate the fact that a teacher or administrator can better oneself by moving on.

Bennett said the remedy referred to in the rules was for breach of a contract. Until 1974, the remedy did not exist--the matter went to court. He failed to see the logic in the statement that the Commission was usurping the function of the school boards. Three paragraphs could be rescinded by the Commission and the remedy would no longer be there. He said qualifiers were also vague, and if principles were general, exact standards would be difficult to set down.

10:10 a.m.

Patchett arrived.

Oakley agreed rules were needed in the area. He thought 5.3(3) and 5.6 could be reworked and made appropriate.

Schroeder pondered whether a 70-day delay should be imposed.

Oakley thought 5.6 was unreasonable, vague and not good public policy. He noted an objection by the governor would have to be

PROFESSIONAL filed by December 5. Oakley stressed that his position should  
TEACHING not be construed as the governor's decision.

## PRACTICES

## COMMISSION

Cont'd

Schroeder viewed 5.3 and 5.6 as rules of concern. Davidson recommended complete revision to reduce the scope. The School Board Association objects to establishing state-wide substantive and procedural standards for the local process of mutual agreement to terminate a binding employment contract.

Burgess responded the Commission does not nor will not take just the word of the individual. They had no problem with requiring "corroborating evidence" in 5.6.

Responding to Davidson, Bennett commented that the mission of a Practices Commission was to adopt criteria, enforce and regulate the practices of every professional staff in every district in the state. He declared they were in an impossible situation since the statute directs them to deal with the school board's educators.

Priebe and Holden agreed 5.3 and 5.6 should be rewritten.

Motion to  
Delay 70

Holden moved a 70-day delay on chapter 5 rules. Motion carried viva voce. Patchett was recorded as "pass."

Schroeder clarified that Bennett was willing to delete 5.3, not 5.6.

Recess

Reconvened

Schroeder recessed the Committee at 10:30 a.m.

Chairman Schroeder reconvened the Committee at 10:35 a.m.

ENVIRONMEN-  
TAL QUALITY

Present for discussion of the following rules were Odell McGhee, Hearing Officer, David Bach, Compliance Officer, and Charles Miller, Air and Land Section, all from DEQ:

## ENVIRONMENTAL QUALITY[400]

* Alternative emission control, 3.7, 4.6, 7.1(12)	ARC 1473	F	10/15/80
Radioactive materials transported ch 42	ARC 1474	F	10/15/80
Hazardous waste, ch 45	ARC 1441	F	10/15/80

## ENVIRONMENTAL QUALITY DEPARTMENT[400]

Definitions, 1.1(1), 1.2(31); controlling pollution, 3.1(1), 3.1(2), 3.5; emission standards for contaminants,			10/15/80
4.1(1), 4.3(4), 4.4(14)-4.4(17)	ARC 1476	A	

McGhee explained that amendments to 3.7, 4.6 and 7.1(12) allow increased emissions from one emission point to be offset by decreased emissions from another point, as long as the environmental impact is equivalent.

ch 42

Chapter 42 concerns transportation of radioactive materials in Iowa. The Association of Community Action (ACORN), among others, had petitioned for notification to DOT whenever radioactive materials, which exceed a certain level, were being shipped through the state.

Miller explained DEQ preferred that, for safety purposes, DOT provide a description of any vehicle being used.



ENVIRON- Oakley thought rules of this nature should address the worst possible  
 MENTAL case situation. He asked what the relationship was between DOT and  
 QUALITY DEQ relative to these rules. Miller said he thought DOT would adopt  
 Cont'd rules to implement the program. Oakley cautioned that people should  
 not be led to believe the rules were any kind of final answer.

ch 45 McGhee said the rules adopt federal standards in the area of hazard-  
 ous waste. He mentioned a memo from DEQ director Larry Crane to  
 ARRC members, wherein Crane suggested chapter 45 rules expire Decem-  
 ber 31, 1980, and proposed adopting them without notice and public  
 participation immediately after January 1, 1981 since they were not  
 retained by the statute when chapter 455B, The Code, was amended  
 extensively. Royce concurred that an emergency filing was needed.  
 Schroeder indicated that it seemed unlikely that there would be any  
 opposition to this approach.

chs 1,3, In re definitions, chapters 1, 3 and 4 correct deficiencies.

4

Oakley commended DEQ on the use of a good preamble adding to the  
 clarity of the rules.

Chem McGhee informed the Committee of the joint effort planned by their  
 Tech Advisory Committee and the Agriculture Department in transferring  
 Agriculture chemical rules from DEQ to Agriculture January 1, 1981.  
 Oakley added that the AG has held the rules will follow the agency  
 by operational law.

HEALTH Keith Rankin, Executive Secretary, Barber Examiners, in re Notice  
 DEPART- Terminated, 152.101(1), ARC 1479, IAB 10/29/80, explained that the  
 MENT requirement for continuing education would remain at 8 hours.

Schroeder explained that the Health Department official who would  
 review subrule 203.4, certificate of need, ARC 1442, IAB 10/15/80,  
 had to attend another meeting and would return later. The matter  
 was deferred.

REAL Present for review of 3.6(5), increasing continuing education to  
 ESTATE 5 hours, ARC 1510, IAB 10/29/80, were Gene Johnson, Director,  
 COMMIS- John Pogge, Chairman, and Kenneth Smith, Administrative Assistant,  
 SION Real Estate Commission.

Schroeder was concerned that there was no provision for a grace  
 period. Correspondence courses are accredited to allow bedridden  
 individuals to comply with CE requirements. Johnson advised the  
 Committee that provision had been in the rule previously.

Holden thought increase from 7 to 12 hours was unnecessary. He  
 preferred delay to give time for the legislature to study. Holden  
 reminded members that the Professional and Occupational Regulation  
 Commission had been requested to study the whole spectrum of con-  
 tinuing education. Oakley was of the opinion that the Commission  
 would not be perusing the matter until the first six months of 1981.

REAL ESTATE COMMISSION Cont'd Holden was interested in preventing further legislative action until a report was available, even if a year from now. He continued that using the Real Estate Commission as an example would substantiate fears about CE from the beginning. CE is not doing the job originally intended.

In response to Tieden, Johnson said the Commission approves the CE programs, and they are scheduled before the Professional and Occupational Regulation Commission in 1982 fiscal year. Johnson commented that, at the Commission meeting next week, several of the courses would be reviewed.

MOTION TO DELAY Lost Holden moved to delay subrule 3.6(5) 45 days into the next general assembly and commented that regardless of the vote, he would propose legislation that would prevent increasing the continuing education requirements until the review of the concept has been completed by the Professional and Occupational Regulation Commission. Roll call was: Schroeder, no; Priebe, absent and not voting; Holden, aye; Tieden, aye; Clark, no; Patchett, no. Motion lost.

HEALTH DEPT. Cont'd Discussion returned to Health Department rules re certificate of need, 203.4, IAB 10/15/80. Harvey Siegelman represented the Department. Clark questioned language in 203.4(3)b(1)i. Siegelman responded the "twelve months" was for the convenience of an applicant who might not have bookkeeping set up on a calendar year.

203.4(3)a(2)iii Schroeder raised question re the exemption to the University of Iowa Hospitals and Clinics. Siegelman explained that three universities are identified, but only one in Iowa. There was discussion with Oakley commenting it was a difficult area of rulemaking re health and delivery systems.

11:15 a.m. Priebe returned. He queried how the Health Department had the authority to advise hospitals re depreciation of CT scanners. He thought the rule should be withdrawn and discussed possible objection. Siegelman said that had been in the Code for over a year, and commented that the Internal Revenue Service, the third-party intermediaries (Blue Cross/Blue Shield), and commercial companies have requested that there be a specific and identified depreciation schedule. Priebe thought the Department might have usurped some of the powers of Internal Revenue. Siegelman said he would seek legal guidance. Holden made the point that it had nothing to do with Internal Revenue.

203.4(2)i In re 203.4(2)i, Tieden asked for explanation of EMS level II Trauma Service. Siegelman responded there was a specific category for evaluation lists. Tieden was of the opinion "area hospital" should be defined. Siegelman's response was "a community" and there would be no overlap. Oakley cited the rules as an example of an inadequate preamble.

203.4(6)b(2) Clark suggested rewrite to remove "such" and other repetitious language. Siegelman was amenable.

HEALTH  
DEPARTMENT  
Cont'd

Schroeder suggested the Department apprise hospitals of ARRC concerns before adopting of rules. Siegelman advised there had been a public hearing but no comments were received.

TRANSPOR-  
TATION  
DEPARTMENT

Royce informed Schroeder that Engineering Examiners representatives would be unable to appear before the Committee. Discussion moved to Department of Transportation rules as follows:

TRANSPORTATION, DEPARTMENT OF [S20]

Administrative rules, [01,B]1.1, 1.2(1), 1.2(2), 1.2(3)"b", 1.2(4)"a", 1.2(4)"i"(1), 1.2(5)"b"(2), 1.2(5)"c",  
1.3(1), 1.4(1), 1.4(4)"b", 1.4(6), 1.4(8) ARC 1482 ..... 10/29/80  
Allocation of farm-to-market road funds, [06,Q] ch 16 ARC 1497 ..... 10/29/80  
Financial responsibility, [07,C]14.4(3)"a", 14.4(5)"b", 14.4(6), 14.5(2)"c" ARC 1480 ..... 10/29/80  
Vehicle registration, [07,D] 11.1(4)-11.1(6), 11.7(1), 11.25, 11.35, 11.41, 11.42, 11.46, 11.59 ARC 1431 ..... 10/15/80  
Motor vehicle inspection, [07,E]21.2(1), 21.2(2), 21.2(5), 21.3, 21.3(3), 21.3(6), 21.3(9), 21.4(2), 21.4(4),  
21.5, 21.7(1), 21.9(1), 21.12(1)-21.12(4), 21.13(1), 21.13(3), 21.15(1), 21.15(5), 21.15(8)"a", 21.15(8)"c"(2) ARC 1430 ..... 10/15/80  
Functional classification of highways, [08,C]3.15(2), 3.15(3) ARC 1484 ..... 10/29/80

Appearing on behalf of the DOT were Julie Fitzgerald, Financial/Operational Analyst; Jon McCoy, Administration; Jim Cable; Carol Coates, Carol Padgett, L. E. Schellhase, Vehicle Registration; Lowell Richardson, Secondary Roads; and Bill Kendall, Norris Davis, Driver License.

- 1.2(5) According to Fitzgerald, subrule 1.2(5) would be rescinded as a result of critique by the Transportation Commission of all DOT rules.
- ch 16 In re 16.1(4)b, Priebe wondered if that were standard procedure and Richardson said it was set up to allow equal opportunity for all counties. Priebe contended the rule did not so state.
- 14.4(6) Holden wondered if the practice could be construed to affect a vehicle sold out of state. Kendall responded the rule derived from a court case, which had ruled an inspection was required. General discussion of automobile inspections.
- amendments to ch 11 Coates commented the amendments to chapter 11 address legislative changes which had been made. Discussion of "red title" sale of automobiles.
- ch 21 In review of amendments to chapter 21, Coates indicated most changes were minor. In re 21.4(2)a(1), Schroeder commented there were buildings which would not qualify on the minimum space requirements. Coates said that rule had not been changed. Holden questioned the reason for exception to pulling the wheels from 4-wheel drive vehicles for brake testing. This would be provided in amendment to [07,E]21.13(1). Schroeder reminded Holden that was statutory because of inherent problems with removal of wheels on 4 wheel drive vehicles. Holden did not approve of the exemption. Holden asked for explanation of 21.3(3). Coates said the reason for the change was uniformity.
- 3.15(3) Cable, representing the state Functional Classification Review Board, commented the rule implemented a change requested by the Administrative Rules Coordinator to extend the authority to call meetings to members of the Board.



RAILWAY  
FINANCE  
AUTHORITY

McCoy, Administration Director, DOT, noted the rules on general applicability, ch 2, ARC 1483, IAB 10/29/80 implement several procedures of the new Railway Finance Authority.

RAILWAY  
FINANCE  
AUTHORITY

In general questioning, Tieden inquired about bonding and problems faced by the Iowa Housing Finance Authority, which is unable to sell bonds. McCoy responded the bond rate would be determined by the market, and he agreed there was a possibility they could have the same problems as the Housing Authority.

2.3 Oakley was of the opinion the severability clause was unnecessary. McCoy agreed to check.

SUBSTANCE  
ABUSE  
ch 3

Randy Ratliff represented Substance Abuse for review of amendments to chapter 3, licensing standards, ARC 1471, IAB 10/15/80. In reply to Schroeder, he said editorial changes had been made at ARRC request.

Recess for Lunch Chairman Schroeder recessed the Committee at 11:55 a.m. for lunch to be reconvened at 1:30 p.m.

Reconvened Committee was reconvened at 1:30 p.m.

REVENUE  
DEPARTMENT

The following rules were before the Committee for review:

REVENUE DEPARTMENT(730)  
Sales and use tax, 6.1(2), 6.1(3), 8.1(6)"d", 11.6(2), 12.10, 12.11, 15.6, 15.19, 16.4(1), 16.35, 16.37, 17.1(5)"f" and "t", 17.14(1), 18.6, 18.7(1)"a", 18.15, 18.18, 18.42, 26.2, 26.21, 26.48, 30.1(1), 30.10(1), 34.3, 34.4, 31.5(6) ARC 1512 //..... 10/29/80  
Individual income tax, 38.9, 40.4, 40.9, 49.14, 40.17(3), 43.3(3) ARC 1513 //..... 10/29/80  
Penalty and interest, 44.3 ARC 1514 //..... 10/29/80  
Corporation tax, 52.5(2), 53.2(3), 53.8, 53.9 ARC 1515 //..... 10/29/80  
Franchise tax, 58.5(2), 59.2(1)-59.2(3), 59.3, 59.6-59.9 ARC 1516 //..... 10/29/80  
Motor fuel, special fuel, 63.8, 63.17, 63.25(2)"c", 64.3, 64.4, 64.14, 64.18, 65.0(4), 65.12, 65.15, 65.17 ARC 1456 //..... 10/15/80  
Real estate transfer tax, declaration of value, 79.2(2), 79.2(10), 79.5(4), 79.5(5), 79.6 ARC 1517 //..... 10/29/80  
Cigarette tax 81.10(1), 81.15, 82.6(5) ARC 1518 //..... 10/29/80  
Gambling, 91.1, 94.2 ARC 1457 //..... 10/15/80

Appearing on behalf of the Revenue Department was Carl Castelda. He declared, as part of the Department's legislative package, there will be two items dealing with trade-ins involving tangible personal property.

15.6(1) In re 15.6(1), The Department has explained its position in greater detail. There could be some problems and legislation was being offered.

18.7(1)a According to Castelda, 18.7(1)a was clarification of a new exemption in sales and use tax since 1979 relating to wrapping paper. In some cases, meat lockers sell wrapped meat and in others, they provide the service. In the statute, there is a distinction on the sales tax consequences between the two activities.

Schroeder asked Castelda if the Department would recommend legislative clarification. Castelda indicated that was not part of their legislative recommendations, and was not aware of problems. Schroeder thought that should be included.

26.48

The Department learned that some vulcanizing was nonrelated to the rubber industry. Statutory research verified that fact and new language was included in 26.48.

REVENUE  
DEPARTMENT  
15.9(1)

Discussion returned to 15.19(1), trade-ins involving tangible personal property only. Priebe questioned Revenue's authority to collect use tax on trade-ins as discussed in the example given in 15.9(1)b. Schroeder contended casual sales to be exempt. Priebe was of the opinion the law had been written to allow tax payment only on the cash difference. The law is specific. Castelda pointed out that, in trades of equal value and lesser value, the trade-in exemption does not apply. Committee members did not agree and Priebe stated he would object to the rule if it were filed in the present form. Castelda agreed to research further.

Eisenhauer commented the interpretation was as a result of an attorney general's opinion. Castelda said the attorney general's opinion was issued in May, and he thought the agency was being placed in a difficult position.

18.6(2)

Clark requested clarification as to what DSS guidelines the Department would be using. Castelda responded those which define poverty level. Committee members preferred the DSS guidelines be included with the Revenue rules. Castelda was amenable. Clark's interpretation of 18.42(1) was the only newspaper publishers exempt from tax were out of state. Castelda admitted that to be true. He made mention of impact of satellite communications upon the newspaper industry. The Department, in his opinion, has no alternative until the law is changed but to rely on their statutory research.

18.18

General Committee agreement the rule would be difficult to enforce.

Priebe in the chair.

Holden and Priebe requested rewrite of 15.19(1) to clarify what was meant by "trade up" and "trade down" in the example.

38.9  
40.17

Due to the current economic situation, indexing will not be implemented. There was discussion of 40.17(3). Clark said it was her understanding that unemployment compensation was tax free. Revenue officials advised the Committee the federal government changed that in 1979 to allow taxing over \$20,000 income. There was discussion of amendments to chapter 40.

Castelda explained that amendments to chapters 44, 52, 53, 58, 59 implemented statutory changes.

In re 79.5(5), Bruner commented it was difficult to write the rule in simplified language. Clark requested removal of superfluous language in 81.15(i). Castelda was amenable. Clark thought "undue hardship" to be a loophole. Castelda explained the standard, which had been used for several years, was based on Internal Revenue Code standards.

**REVENUE DEPARTMENT** Cont'd According to Castelda, amendments to chapters 63, 64 and 65 implement Acts of the 68GA, 1980 Session, chapters 1112 and 1113; rule 91.1 updates portions of the rule relating to gambling activities which are exempt from sales tax; and 94.2 clarifies issuance of licenses to qualified organizations, not to the location of the event.

**Recess** Vice Chairman Priebe recessed the Committee at 3:00 p.m. to be reconvened in the Senate Chamber for review of Social Services Department rules.

**Reconvened** The Committee reconvened in the Senate Chamber at 3:05 p.m. with Chairman Schroeder in the chair.

**PUBLIC INSTRUCTION** The following rules of Public Instruction Department were before the Committee:

Driver education, 6.9, 6.10-6.12 ARC 1493 *N*..... 10/29/80  
Teacher certification, human requirements, 13.18(3) ARC 1529 *F*..... 10/29/80  
Approvals, mathematics, 16.17 ARC 1519 *N*..... 10/29/80

Appearing on behalf of the Department was Orrin Nearhoof.

Nearhoof commented there had been little public participation on the rules. In response to Clark, Nearhoof indicated all of the Iowa Colleges and Universities have on file approved human relations programs. After August 31, 1980, a human relations course will be a prerequisite for certificate renewal.

## **SOCIAL SERVICES**

The following rules were before the Committee:

**SOCIAL SERVICES DEPARTMENT[770]**  
ADC, support payments, 41.2(7)"a", 41.7(2)"e"(1) ARC 1448 *F*..... 10/15/80 444  
ADC, support payments, 41.2(7)"d" ARC 1449 *F*..... 10/15/80 444  
ADC, allowable work expense, 41.7(2)"e"(2), 41.7(2)"f" ARC 1450 *F*..... 10/15/80 444  
Supplementary assistance, 54.3(11)"h"(4), 54.3(11)"j", 54.3(12), 54.5 ARC 1451 *F*..... 10/15/80 445  
Medical assistance dental, 78.4(1)"b"(3), "e"(2), "f"(5) ARC 1452 *F*..... 10/15/80 447  
Eligibility for services, 130.3(1)"c"(2) ARC 1461 *F*..... 10/15/80 447  
Mini-XX funds, 131.5 ARC 1453 *F*..... 10/15/80 447  
Yard work, 149.1(5) ARC 1454 *F*..... 10/15/80 448  
Home management services, ch 158 ARC 1455 *F*..... 10/15/80 449  
**SOCIAL SERVICES DEPARTMENT[770]**  
Adult correctional institutions, ch 16 ARC 1522 *N*..... 10/29/80 485  
Penitentiary, ch 17 ARC 1523 *N*..... 10/29/80 489  
Men's reformatory, ch 18 ARC 1524 *N*..... 10/29/80 491  
Women's reformatory, ch 19 ARC 1525 *N*..... 10/29/80 492  
Security medical facility, ch 20 ARC 1526 *N*..... 10/29/80 492  
Riverview release center, ch 21 ARC 1527 *N*..... 10/29/80 493  
ML Pleasant medium security facility, ch 22 ARC 1528 *N*..... 10/29/80 494  
ADC, medical institution defined, 40.1(4) ARC 1505 *N*..... 10/29/80 494  
Medical assistance, 75.1(4), 75.1(10) ARC 1446, also filed without notice ARC 1445 *N* *F* *EXN*..... 10/15/80 446  
Emergency room use, payment, 78.3(12) ARC 1447, also filed without notice ARC 1460 *N* *F* *EXN*..... 10/15/80 446  
Medical assistance, intermediate care facilities, 78.12, 81.1(4)(28), 82.3(4) ARC 1496 *N*..... 10/29/80 495  
Detention homes, sleeping area, 105.11 ARC 1437 *N*..... 10/15/80 416  
Child day care services, 132.4(3)"e" ARC 1506 *N*..... 10/29/80 495  
Rural rehabilitation student loan and grants, rescinds ch 146, filed emergency ARC 1441 *F* *EX*..... 10/15/80 424  
In-home health related care, 148.4(3), 148.4(7), 148.4(8), 148.7 ARC 1507 *N*..... 10/29/80 495

Department representatives present were: Commissioner Michael V. Reagen; Lawrence Jackson, Barbara Jackson, General Administration; Margaret Corkery, Title XX; Gracie Larson, Council Member; Judith Welp, Rules and Manuals Specialist; Robert Peters, District Administrator, Spencer; Dale Schmidt, District Administrator, Mason City; Maryls Kasemier, District Administrator, Waterloo.



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Chairman Schroeder announced to approximately 150 interested persons that Commissioner Reagen would make his presentation first. Names of individuals who participated in the 3-hour public hearing, along with some of their comments, are on file in the office of the Code Editor. By this reference, they become part of these minutes.

Reagen distributed material which had been prepared by the DSS which attempts to put into context the dilemma faced by the Department. The Department anticipates a \$17 million deficit from three sources; unforeseen corrections needs of \$1.5 million, shortfall of aid to dependent children dollars in the amount of \$11.5 million, and Title XX shortfall of approximately \$4 million. On top of that is the executive order to reduce the budget 3.6 percent--3.6 percent equates with \$12 million across the board. In the area of corrections, Iowa is one of 33 states involved in class action condition suits alleging cruel and unusual punishment in state institutions.

He called attention to a letter to Dolph Pulliam, Chairman, Policy-making Board, Council on Social Services, which attempts to lay out dilemma faced by DSS. He continued that what the Department had done was extremely painful and regrettable. Reagen called attention to figures printed on page 10 of the DSS brochure, which lists line item appropriations, budget cuts, balances and projected deficits. Page 16 summarizes proposed reductions by divisions of DSS. The Department serves, annually, 320,000 people, of which 126,000 will be touched in one way or another by the proposed reductions.

According to Reagen, there would be a remaining deficit of \$12.4 and he had no idea how that would be dealt with. He pointed out that everything recommended was in an attempt to be compassionate, at the same time as fiscally prudent as possible. The rule re eligibility for services, 130.3(1)c(2), is an integral part of the budget reduction. In his opinion, filing of the rule was critical since the Council decided to treat all clients in the same manner and not discriminate. DSS has worked with the Department of Health, Commission on Aging, counties and private vendors across the state. After careful study, it was determined DSS would be able to serve 2,976 resulting in 1400 people who would not be served.

In discussing the Title XX program, Reagen said the total amount of money was \$49.6 million and the \$1.6 million cut amounted to 3.4 percent of the program. If the rule, for whatever reason, is not sustained, \$1.9 million will be added to the DSS deficit. Since the Title XX plan is in consideration now in terms of being amended, Reagen said if it were amended and the rule did not pass, DSS has it on good authority that the federal government would not participate beyond the 30 percent median income, which is both in the rule and the plan. That would cost a total of \$3.3 million.



SOCIAL SERVICES Cont'd Reagen called attention to the fact there would be difficult days ahead due to the state's economy. He opined the time had come for integration of services and thought the rule to be a responsible, prudent step forward.

Jackson, of the Department, spoke of the irony of DSS being forced to reduce services when the economic condition creates a greater need. She assured everyone that the budget reduction plan would not affect federal Title XX funds and that the Department staff was aware of the impact on clients. She continued that the staff had found alternatives for 1454 of the 2275 clients who would become ineligible December 1, 1980--i.e., counties willing to continue services, assistance from relatives and volunteers.

Richard O. Wendl, representing Southwest Eight Area XII Agency on Aging, presented a prepared statement to the Committee, wherein he urged a vote against the rule.

Michael Guta, Legal Services, Southwest Iowa, Ottumwa, asked Reagen what could be foreseen for those individuals who, in the future, would be in need of services. Guta addressed the area of developmentally disabled population and contended the Department lacked commitment to Community-based Facilities. According to Guta, Iowa has 150,000 developmentally disabled, 6000 of whom are being served by Title XX funds. He recommended that implementation of the rules be delayed pending legislative review.

Reagen said, in terms of the biennium request, DSS had asked to raise the median income eligibility to 45 percent across the board. It was his hope to restore benefits as funds become available.

Danny Marguez, provider, Chariton, commented he was uncomfortable with the alternatives and thought more definite decisions should be made for the future. He thought the 3.6 percent cut across the board was an "easy way out" for DSS. Responding to Marguez, Reagen referred to 8.31, The Code, and the Executive Order, stating he had no choice in the matter. He pointed out that legislatures, in the past, have knowingly, openly and justifiably under appropriated funds, especially for the DSS for two reasons: (1) General Assembly knew there was money in the state treasury and (2) it is very difficult to predict with precision the exact number of clients to be served, so supplemental appropriations were utilized. With "zero balance" in the treasury, the opportunity for supplementals is not present and other sections of the Code apply.

Representative Charles Bruner challenged the legality. He pointed out that the area in Homemaker Services, since the reduction exceeded 3.6 percent, was an impingement of services. Bruner requested an attorney general's opinion in the matter, and opined litigation could follow if the cuts were made with respect to the Homemaker's program.

SOCIAL Dave Hendricks, Tenco Workshop, Inc., Chariton, announced some clients  
 SERVICES from the Workshop had accompanied him and he invited Committee mem-  
 Cont'd bers to visit with them. He questioned moneys going to Woodward  
 and Glenwood rather than to community-based programs, and thought  
 the fact could be addressed by the legislature.

Reagen agreed that, in terms of developing community-based services, the Department had been slow, but disagreed with Guta that the Department lacked commitment to community-based programs. Reagen continued that when renovation at Glenwood and Woodward was completed, the legislature would probably redirect funds to communities. He concluded, "adjectives and emotions aside, I think we have the same goals." Huisman, Appanoose County, pointed out that local money was not available in "poorer counties."

Donna Tuttle, Homemaker-Home Health Aide Service, Northwood, discussed the impact of the budget cuts on their clients and urged delay of the rules.

Peters, District Administrator, Spencer, advised that meetings had been held in his district re the impact of the 3.6 reduction.

Priebe took the Chair.

Pat Howell, SW Iowa Homemaker-Health Aide Service, Burlington, spoke in support of a delay of the rules.

Darlene Klein, Child Care Center, Knoxville, knew of two women who would realize more income by participating in ADC than by keeping their jobs if the rules were effective. Implementation would result in two-thirds of the clients in Klein's county being dropped from the child care program.

Roberta Kent, Chariton, mother of a handicapped son who attends a workshop, expressed concern for clients who will no longer be eligible for the program.

Victor Elias, Association of Counties, said they were particularly concerned about the thirty percent of median income. (subrule 130.3 (1) c (2)). As a result of questionnaires, the Association determined that for the remaining seven months of the fiscal year counties who assume the bus services would be required to spend \$3.3 million across the state. The Association thought the Committee should be aware of this possible tax shift.

Reagen thought the \$3.3 million to be astounding, especially since the savings amount to date is approximately \$1.6 million. He said there was no intention to shift the burden to the counties.

Ed Weinheimer, Area XIV on Aging, Creston, commented that the 7 counties in southwest Iowa have approximately 60,000 people, of whom 25 percent are in the elderly category. He supported the concept of a 70-day delay to allow for study.

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Vicki Douglas presented petitions protesting cuts to the Title XX program containing 2768 signatures.

Shirley Kiser and Eleanor Noel, Des Moines, Home Health Aide and Mobile Meals, reminded the Committee they had distributed three documents for their perusal. They presented a chart showing guidelines for services over the past years and contended the proposed reductions were inconsistent with legislative philosophy of caring for its elderly and ill.

Reagen presented Council Member Gracie Larson who urged the Committee to consider comments with objectivity. She defended the Department's position and read the resolution which was adopted by the Council.

Karen Thelin, Child Care Services provider, spoke of the importance of individuals being able to retain self esteem.

Mike Johnson, Child Care Barrier Planning Council, a 22-member volunteer organization, presented their statement which noted that the average cost of child care centers was \$10.50 per child per day as opposed to \$70 daily at the Polk County Juvenile Home.

Tom Graf, Day Care Service, viewed the budget cut as having a long range effect on organizations that provide services.

Dan Topp could foresee the dramatic impact on families and children. He was sure implementation of the rules would trigger increased ADC and he urged delay.

Eileen Liddell, Manager of 300 units for the elderly and handicapped, Des Moines Public Housing Authority, assured everyone that her clients could not rely upon volunteers. She estimated 8 or 9 families out of the 300 units were interested in the welfare of their parents. The cutback would necessitate 40 or 50 clients being transferred to nursing facilities.

Dr. William Theisen, U of I School of Social Work, pointed to additional burden which will be placed on social workers. In his judgment the solution recommended was less than desirable for the "working poor." He urged delay of the implementation.

Jill June, Director, Coop Child Care, Story County, recalled that in the past ten years, the state had promulgated many rules that were harmful to hard-working families. She predicted that in ten years, two-thirds of all working mothers will have children under age six.

Rachael Bishop and Joan Morrison, single parents, contended the rules would "pull the rug" from under those seeking training to improve their work status.

Jamie Lewis concurred.

Jennifer Epton, mother of two enrolled in Soul St. Day Care Center, urged delay of the rules.



SOCIAL Tom Johnson, Director, Work Activity Center, Area XIII, Ottumwa,  
SERVICES spoke of the federal edict to de-institutionalize our population  
Cont'd by 50 per cent. He referred to new construction at Glenwood and  
Woodward and contended DSS was opposed to the concept. He favored  
delay of the rules to allow time for every aspect to be studied.

Marie Wilson, Women's Programming, Drake University, addressed the group as to her concern for displaced homemakers.

Senator Priebe read a letter from the Ringgold County Ministerial Association opposing across the board cuts in human services, particularly, the loss of homemaker services, ADC and educational funds.

Henry Poutious, Seniors United for Action, commented on the effect of the budget reduction on senior citizens who want to control their own destiny.

Priebe announced that the public hearing would be concluded today and the Committee would reconvene on Thursday at 8:45 a.m. in Room 24.

Alice Benck, Exceptional Opportunities, Inc., expressed concern for the mentally handicapped adults who have been functioning in the community but will now be faced with return to institutions.

Larry Jackson spoke of problems related to federal regulations attached to a number of state programs.

Reagen reiterated his earlier concerns and indicated approval of the numbers who voiced their opinions on the matter.

Dan Youngblood, ECHO, regretted the state's action in issuing a \$50 tax rebate recently. He urged delay of the cutback.

James Kirby, TENCO, discussed problems faced by his retarded daughter as a result of the budget reduction.

Pat Marsh, Ottumwa, spoke on behalf of her nephew. She was hopeful funds would be available to prevent him from being institutionalized.

Gari Anne Gordon, Betty McClendon and Sharon Decker, Iowa Falls, related their desperation, as heads of their families, being faced with loss of funds to provide child care.

LaRue Olson was concerned that employable handicapps would be forced to give up their employment.

Donald L. Hammen, Home Health Aide and Mobile Meals, Des Moines, viewed recipients of his service as being scapegoats for problems over which they have no control.



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A. Jack Knapp II, Director of a Homemaker Health Aide Service and Human Services Advisory Council representative, serving clients in SW Iowa distributed a statement to the Committee wherein he urged delay of the rules.

He pointed out the Executive Order had been issued without the benefit of legislative input. He continued that that the priority and economic impact on the state should have been considered rather than declaring an across the board reduction.

Peters of DSS reported that clients in Emmet County, because of efforts of providers, would continue to be served. He wanted to inform the Committee of alternatives which had been considered.

Priebe recessed the meeting at 6:00 p.m. to be reconvened Thursday morning, November 13, 1980, 8:45 a.m.

SOCIAL Chairman Schroeder reconvened the Committee Thursday morning, Nov-  
 SERVICES ember 13, 1980, 9:00 a.m., Senate Committee Room 24. All members  
 Cont'd were present (Clark arriving, 9:10 a.m. and Holden at 9:45 a.m.).  
 Review of Social Services Rules was resumed. Schroeder announced  
 the Committee would be given the opportunity to ask questions.

The point was made that many individuals who appeared at the public hearing on Wednesday were not convinced there would be "new found" funds to care for those people removed from a program by the rule implementation.

Reagen reiterated his understanding that, if it were not for the economic situation statewide, there would be no cutbacks on the programs. He was aware of the emotional issue and resulting skepticism. He believed the situation to be much worse than most perceived. He referred to the news that the Legislative Council had discussed a possible \$70 million deficit.

Tieden and Priebe thought there were some inaccuracies in the client impact figures. Larry Jackson, General Administration, explained that the 2189 homemaker client impact figure was derived by subtracting ineligible clients receiving protected homemaker services from the clients who would be ineligible as of 12/01/80. (page 2, Homemaker Services Desk Review Summary) Larry Jackson said those individuals would receive the service without regard to income, because of health situations. Under state and federal rules, they may be declared "protected." DSS was interested in preventing the client's health from becoming jeopardized.

Schroeder was interested in knowing how many district administrators had conferred with their field people. Dale Schmidts, District Administrator, Mason City, said the solutions were not long term, and discussed process used in determining ineligible client status.

Priebe queried whether the Department might be adding to the ADC deficit in order to have adequate funds for Title XX. Reagen said, in a hypothetical situation, DSS would be adding some to ADC but in the next, would be saving totally on the state dollar. He commented that there were legislators advising him to reduce total Title XX plan to the \$2.7 billion level, which is even more dramatic.

Marla Kasemeier, Waterloo, discussed alternatives for the 180 ineligible clients in that district. Priebe asked if the legislature had over appropriated for the Health Department and suggested that should be investigated. Kasemeier indicated the Waterloo District had re-directed moneys and Reagen commented Health Commission Pawlewski had been requested to look at the whole issue of home health care. He admitted there were three "streams of money" and possibly DSS, Health and Aging should prioritize among the three departments. Reagen stated there was consideration to combine homemaker and chore services in order to provide stability for the program. The departments have discussed pyramiding and pooling of funds to more effectively utilize funds. Oakley observed the solution was short-term--the

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human equivalent of deferring maintenance on a building. Priebe asked if DSS was considering changing the Title XX plan. Reagen said the plan could be amended but if the rule were not implemented and the plan were amended, federal officials would not participate beyond the 30 percent median income. Reagen pointed out that the Title XX program was operating on a federal resolution to be continued until the president-elect takes office in January.

Tieden asked for clarification--Reagen said two issues were being discussed; the Title XX plan and the rules the state has for implementation. Almost simultaneously, hearings have been held re amending the Title XX plan. Again using the hypothetical situation, Reagen suggested if the Title XX program were amended to reflect the 30 percent median income (which is the direction DSS is using), and ARRC does not implement the rule, the federal government would not participate beyond 30 percent median income. He repeated his earlier statement that it would cost the state \$3.3 million more.

Patchett was unsure he agreed with the Department's rationale and he was concerned whether or not that particular rule was beyond their statutory authority because the cutback in the homemaker program was far in excess of the 3.6 percent ratable reduction ordered by the governor. He was interested in the Committee voting an objection on that basis.

Reagen reiterated his comment about legislatures deliberately under appropriating funds for Social Services. Due to the lack of funds in the state treasury, Reagen was charged with presenting a "defensible plan" to continue mandatory services and try to remove the deficit at the same time. He mentioned the possibility of litigation on the issue as to what is "precatory" and what is "mandatory." The 3.6 percent budget reduction amounts to approximately \$12 million. Reagen discussed the fact that DSS deficits amount to \$17 million and their proposals would cut \$12 million leaving a balance of approximately \$4.2 million.

Reagen doubted the Department had acted arbitrarily and capriciously. He explained he could not release the various attorneys general's opinions because of litigation. Reagen stated he would abide by those opinions. He concluded there was no other department in state government faced with such a dilemma.

Patchett took the position the reduction made in homemaker services should have been left to the legislature. Reagen admitted the opinions from the AG were informal. General discussion as to whether or not legislators, legally, could request opinions.

In his analysis, Oakley said in order to reduce the deficit and perform mandated services, DSS had not violated the 3.6 percent mandate. Priebe responded that the legislature had approved the governor's plan as submitted by DSS. There was general disagreement about the time frame.



11-13-80  
SOCIAL Patchett again spoke in support of an objection. Patchett had  
SERVICES knowledge there would be an opinion presented December 1, 1980.  
nt'd Priebe made the point that if DSS planned to request a supplemental  
budget for ADC, one should be submitted for Title XX.

The Committee listened to Reagen's requests which will be made to the next General Assembly.

Chairman Schroeder interceded commenting it was time for Committee action. Patchett reminded Committee members that a decision should be made to object or to delay.

Clark thought they were being unrealistic because she did not envision the money becoming available; that would take some time. She said the problem was how to operate without a supplemental appropriation. Clark did not believe the legislature would be able to "generate more income" or raise taxes. She announced solutions to the problem would be found outside of government and she would express her ideas to the press that afternoon.

Chairman Schroeder advised the Committee that Commissioner Reagen had to leave the meeting in order to attend another meeting.

Oakley commented he had asked for a meeting with the governor and his staff to determine where other budget cuts could be made. He said the possibility of a 45-day delay by ARRC would place the executive branch in an almost crisis situation, because of other legislative mandates. Oakley concluded it was his hope the ARRC would sustain the rule, and not vote an objection, or particularly, a delay.

In response to Priebe, Larry Jackson said there were 38 district administrative vacancies, where previously, there had been 19. Priebe questioned cost of Commission on Accreditation of Rehabilitation Facilities [ch 155]. Jackson was unsure DSS had authority to tell any private providers to take a 3.6 percent budget reduction. He did not envision the same cuts being implemented in child care services, because they are mandated. Jackson thought long run solutions would be made after determinations were made between the legislative and executive branches of government.

MOTION Chairman Schroeder called for any motions. Patchett reiterated if the Committee were to have any role in the process, action must be taken. Patchett moved a 45-day delay into the next General Assembly.  
to DELAY Roll call: Schroeder, no; Priebe, aye; Holden, no; Tieden, no;  
45 days Clark, no; Patchett, aye. Motion failed to pass with 4 no votes and 2 ayes.

Motion to Patchett was of the opinion there was substantial evidence  
Object that Department of Social Services had exceeded its statutory au-  
130.3(1) thority and he moved an objection to 130.3(1)c(2) on that basis.  
c(2)

Before voting, Tieden wanted clarification as to legal ramifications.



SOCIAL SERVICES Cont'd Royce advised that, without a doubt, the Administrative Rules Review Committee must state its reasons with clarity to apprise the Department of Committee concerns. Also, it would be helpful to state the method by which an objection could be corrected. Priebe queried whether or not the matter could go to the courts without an objection. Oakley agreed that was a possibility.

In his opinion, Patchett deemed an objection to be appropriate in view of the substantial question between the legislative and the executive branches, coupled with the substantive importance of the issue.

Excused Clark was excused to report to another legislative committee for a vote. Committee stood at ease at 10:53 a.m.

Re-convened Schroeder repeated the question before the Committee was to place an objection on ARC 1461 -- 130.3(1)c(2) -- eligibility for services. Committee was reconvened at 11:10 a.m.

Motion to Object The vote on the Patchett motion to object was as follows: Schroeder, no; Priebe, aye; Holden, no; Tieden, no; Clark, no; Patchett, aye. Motion defeated with 2 "aye" and 4 "no."

Recess Schroeder thanked everyone for the time devoted to the matter and he recessed the meeting for 5 minutes.

Reconvened The discussion returned to the remainder of the Social Services Rules before the Committee with George Kaiser, Broxanne Keigley, and Judith Welp representing the Department. Also present: Ray Cornell, prison ombudsman.

16.7.(2) Welp requested the rules pertaining to corrections be considered first. In response to Oakley, Kaiser explained the primary purpose of the rule was to provide "a person" at the institution who would be held accountable for response to questions from the mass media. Clark suggested clarification and Kaiser was amenable. Oakley had interpreted the language as prohibiting interviews with prisoners.

16.3(9) Patchett had problems with the language "reason to believe" in the first sentence of 16.3(9) since it would give the searcher almost "unfettered discretion" in essentially deciding who may or may not enter an institution to visit. Kaiser indicated confidentiality would be important re the family visitor. General agreement records should be kept with Cornell pointing to 16.3(9)d. Patchett thought "reason to believe" should be more specific. No formal action.

Clark asked if surveillance of visiting rooms permitted vision if items were passed from one individual to another. Kaiser responded in the affirmative.

Patchett raised question as to problem of drug traffic. Ray Cornell, prison ombudsman, estimated more than half of the drugs--lightweight

SOCIAL street type -- primarily at Ft. Madison, were brought in by employees.  
SERVICES He cited low pay as a factor. Iowa is not unique in that respect.  
Cont'd However, they have good control over pharmacy drugs.

16.3(9)  
16.4(1) Discussion of prohibition of letters written in a foreign language or code. Cornell said they frequently have people who are bilingual when speaking but not when reading. Kaiser agreed to honor these situations with a waiver.

16.4(4) Discussion of process used in receiving confidential and nonconfidential mail. Cornell said statute includes the prison ombudsman's  
a, b mail to an inmate in the confidential status, and vice versa. Security methodology does exist.

16.5(2) Re gifts to residents of the institution, Clark suggested revision  
b(2) for clarity and Kaiser was amenable.

16.3(2) Cornell suggested addition of the words "in writing" at the end of 16.3(2).

16.7 Cornell thought 16.7 should be more specific as to nature of the access and confidentiality access and especially to the "print" media and the use of telephones involving the "print" media. Also, he wanted clarification if the warden denies access, to whom he would report that denial and reasons for it being reported.

Schroeder wondered if it would be sufficient if the warden were to make a record, which would be public information. Cornell found that acceptable, but was unsure whether the Des Moines Register (and Tribune) would agree.

16.5(1), Cornell viewed 16.5(1), (2) as placing an additional burden on  
(2) families of inmates. However, he made no recommendation. Kaiser said the rule would not preclude gifts being received. Kaiser preferred language "to encourage inmates to purchase internally to lessen the burden of checking incoming merchandise."

Royce had a concern about the legality of use of private vendors by a state institution. General discussion of the process used by inmates in purchasing items at the prisons. Royce also asked for explanation of method used by an inmate who might want to order an individual publication. Kaiser answered that less restrictive and more specific provisions should be reflected in the next draft of the rules. Keigley distributed copies of major revisions which had been made in standards for cells.

20.3 Patchett took issue with "as deemed appropriate by the superintendent" in 20.3--tours--and pointed out that language was not in the other rules. Kaiser thought that was included to apply to the medical facility. General Committee agreement the language should be removed and Kaiser was amenable.

SOCIAL Schroeder questioned the last sentence of 22.2(1)b re visiting  
 SERVICES restrictions which provided "Both residents shall be members of  
 Cont'd the visitors immediate family. John Golden, assistant attorney  
 22.2(1)b general, noted it was a security rule." Welp was agreeable to review  
 of the matter.

75.1 Patchett asked for derivation of new language in 75.1(4) and 75.1(10)  
 and Welp replied the policy was gleaned from federal regulation.  
 Iowa had not been in compliance but action was taken because of the  
 3.6 budget reduction.

105.11 Patchett queried if 105.11 were a reaction to the Linn County Juven-  
 ile Detention problem. Welp replied in the affirmative. She agreed  
 to research whether or not there would be an advantage to building  
 new detention facilities to accommodate 4 individuals instead of 2.

No other formal actions or recommendations were offered by the ARRC.

Recess Schroeder recessed the Committee for lunch at 12:10 p.m. to be  
 reconvened at 1:30 p.m.

1:35 p.m. Committee was reconvened with Priebe in the chair.

HEALTH Kenneth Choquette of the Department and a host of interested persons  
 DEPT. were present for the ensuing discussion. Rules of the Health De-  
 Non- partment re nonpublic water wells, chapter 45, were before the Com-  
 public mittee. The Committee imposed a 70-day delay at their September  
 Water meeting. Priebe requested Choquette to explain results of public  
 Wells hearings. Choquette distributed copies of suggested changes which  
 ch 45 had been circulated among approximately 450 contractors and local  
 boards of health.

The definition of "major rehabilitation" had been clarified -- 45.1(6).  
 In re applicability of the rules, Choquette said there had been some  
 question about livestock and irrigation wells. He opined the rules  
 were limited to drinking water for human consumption. It was noted  
 there were 54 livestock wells under permit in Iowa.

Priebe requested that proposed wording in 45.2 be amended to sub-  
 stitute "the" for "a" before "source". Holden suggested adding "major".  
 George Shawver, a former legislator, spoke of the impact on wells  
 due to contamination.

Choquette was amenable to suggested modification. He did not en-  
 vision overlapping of permits between Health and Natural Resources  
 Council.

45.5(2) Choquette noted 45.5(2) contained lanugage consistent with DEQ  
 rules re sanitary landfills.

45.5(3) In answer to Priebe, concerning prohibition of wells located in

HEALTH DEPARTMENT Cont'd basements, Choquette said water would be discharging into wells since all basements do not have drains. Priebe indicated he would probably object to the rule. It was pointed out the FHA does not permit wells in basements. General discussion.

Mark Lindy, Black Hawk County Health Department, discussed situation which occurred when a well was located in a basement.

Motion to delay 45 DAYS Schroeder moved to delay chapter 45 of the Health Department rules 45 days into the general assembly because further modification is needed. He preferred Health Department work with Agriculture and County Government to adopt liveable standards. Schroeder was convinced most people were unaware of changes being suggested.

VOTE Question was called and roll call showed the following: Schroeder, aye; Priebe, aye; Holden, aye; Tieden, no; Clark, aye; Patchett, abstained. Motion was adopted. Priebe announced the matter would be referred to the appropriate legislative committees.

Tieden spoke in support of the rules and commended those involved in drafting acceptable guidelines.

Patchett explained he represents a well driller who is in private litigation and thought it would be inappropriate for him to vote.

Schroeder took the chair.

Choquette urged the Committee to offer some direction for the benefit of the contractors who appeared today. General discussion as to what course the legislature might take.

Priebe pointed out the modifications had not been presented as formal amendments and recommended that Choquette follow that procedure. Royce agreed to work with Choquette. Jack Johnson, Water Wells Association, emphasized the rules had generated much interest among contractors.

PHARMACY EXAMINERS Norman Johnson, Executive Director, and Susan Lutz, Board Member, appeared on behalf of the Board of Pharmacy for special review of 6.8(1)(4), IAB 10/15/80, Notice. Also present were William Sueppel, Iowa City attorney, representing Lois Jacobs, an Oklahoma resident.

Sueppel asked the ARRC to review a problem faced by a citizen of Iowa in meeting continuing education requirements --whether or not the action taken by the Pharmacy Board constitutes disciplinary procedure and whether that Board or any other Board has authority to delegate the entire decision making re continuing education to an agency in Chicago. Sueppel introduced Dr. Lois Jacobs, who reviewed her history: Born and reared in Iowa, obtained a degree in pharmacy at University of Iowa and was licensed in Iowa; returned to U of I dental school, licensed in dentistry and completed a residency in anesthesia.



PHARMACY In 1979, the year Continuing Education was enacted, Jacobs had  
 EXAMINERS obtained 6 hours of approved education (patients with pain) and  
 Cont'd 12 hours for a nitrous oxide sedation course through the College  
 of Dentistry, which were acceptable to the Board of Pharmacy.

In 1980, she had 6 hours on patients with allergies, 3 hours as an anesthesia associate, 22 hours on organ preservation during anesthesia, 35 hours at University of Iowa College Of Medicine, ranging from drug interaction to pulmonary embolism. These credits were rejected by the Board of Pharmacy for Continuing Education. Jacobs had received a note with the "appropriate box" indicating the courses were not ACPE approved. She ultimately sought review on an individual basis, and suggested an amendment to the Code to provide "and other courses to be individually reviewed by the Pharmacy Board on an individual basis." Jacobs mentioned receipt of a letter from Norman Johnson wherein he gave her an inactive license, since the courses did not meet the requirements of the American Council of Pharmacy Education in Chicago. Johnson informed her there were 3 providers in the state, i.e. Drake University, College of Pharmacy, University of Iowa College of Pharmacy and the Iowa Pharmaceutical Association. Jacobs was then denied review of her courses by U of I College of Pharmacy who cited lack of authority.

This resulted in her loss of income for three months--\$2500 to \$3000. Jacobs had requested a rule change and a hearing on at least three occasions and was denied.

Sueppel had talked with Dr. Clayton Rollins, Head of U of I Pharmacy Department, who took the position he had no authority to intervene. Rollins referred Sueppel to the Pharmacy Board who in turn evaded the issue.

Holden declared that this discussion reinforced his prejudices against the entire CE program which seemed to be designed to prevent practice of a profession. Holden called on Royce to address the matter of delegation of authority and Royce replied that it was an extremely "gray area." There was not an absolute prohibition against delegation to private groups. He added that clearly, the Board of Pharmacy has the power to accept the seal of the American Council of Pharmaceutical Education, but they have gone beyond that. He had problems with a Board that simply delegated its own power to administer the CE law.

Holden asked about the authority of the Board re issuance of an inactive license and Royce indicated the law was very vague in that respect, too.

Holden asked about active and inactive guidelines. Sueppel said they were for people who possessed a license but for one reason or the other, did not choose to keep active. For example, a person going into retirement. He contended Pharmacy was the only Board where a person became inactive by virtue of not meeting CE

PHARMACY requirements. Further, the penalty for going on inactive status  
EXAMINERS under Pharmacy is that the individual must have one month intern-  
Cont'd ship before reinstatement. Jacobs had been given suspension until  
December 1, so the one-month internship would not be required.

Lutz admitted Pharmacy had selected ACPE for guidelines in Iowa since they have nationally accepted standards and expertise. She emphasized the Board has neither time nor money to individually review each CE program. Johnson distributed a booklet listing 162 approved providers in the U.S. He noted that was designed to help continued competence in the profession. Oakley arrived.

Lutz said Dr. Jacobs could have asked for a course to be reviewed and cosponsored by a provider. Many county pharmaceutical associations use this approach. Lutz said the Board, along with other Boards throughout the country, review programs to maintain certain standards of excellence.

Patchett detected inconsistencies in the agency's position. Johnson explained there was review in their office--Lutz was referring to individual programs that are not ACPE approved.

Sueppel was not opposed to CE per se but favored a mechanism under the rules by which a particular speciality could be approved. Lutz reiterated the time and budget factors.

Tieden discussed the policy of licensing fees to cover departmental costs. Johnson said they had raised their fees so they were commensurate with their anticipated budget. Tieden pointed out this problem existed before the 3.6 budget reduction. Johnson interpreted ch 258A, The Code, to ensure competency in a particular profession. He questioned whether continuing medical education or dental education would impact on competency as a pharmacist. Sueppel said that was the very reason they had requested a hearing for the past 6 months.

Schroeder took the position there was "severe abuse of CE."

Lutz posed the question: "Would anyone in the room want a pharmacist who had not been in the practice of pharmacy filling prescriptions?" Many day-to-day changes in pharmacy cannot be covered by Continuing Education.

Petition Schroeder requested Royce to prepare a petition to Pharmacy for provisions similar to those of dentistry rules. [6.8(1), 6.8(4)] He preferred that Pharmacy act without being petitioned, however. Johnson said there would be a Board meeting next week and the issue would be addressed. Schroeder agreed to wait 10 days before filing the petition. Responding to Holden, Johnson said the case before the Committee today would be referred to the Board for review, also. No formal action taken by the Committee.

BOARD OF Schroeder called up for review the Board of Accountancy rules  
ACCOUNTANCY as follows:

ACCOUNTANCY, BOARD OF[10]		
Annual register, 2.8	ARC 1500	10/29/80
Registration, failure to renew, 6.4(2)	ARC 1501	10/29/80
Permit reinstated, fee, 9.11(3)	ARC 1502	10/29/80
Professional conduct, 11.4(2), 11.4(3), 11.6(3)	ARC 1503	10/29/80
Disciplinary action, published, 12.9(1)	ARC 1504	10/29/80
ACCOUNTANCY, BOARD OF[10]		
Fees, 14.1	ARC 1499	10/29/80

Appearing on behalf of the Board were Stan Bonta, Executive Secretary, and Jerry Perpich, Board Chairman.

- 14.1 Perpich explained fee changes were the first increase since 1975 and correspond to their budgetary request and will be in line with other states.

Holden wondered if they had a plan to keep up with inflation. Perpich said the biggest increase in checking of examinations would be effective November 1981. Bonta said if the request does not coincide with legislative appropriation, fees would be "rolled back."

Priebe in the chair.

Oakley suggested waiting until spring to set fees to coincide with the appropriation. Holden favored a faster process of implementing fees. Oakley said that could be written into the appropriations bill with authorization to bypass notice requirements--or the intent of the legislature could be set out.

- 11.4(2)(3) Priebe thought new language in 11.4(2)(3) was unclear. Bonta commented to lay out all standards would be almost impossible.

Priebe noted lack of a date certain in some of the rules and thought that not consistent with Committee practice. Bonta replied the rules were changing frequently.

Oakley remarked he had spent a couple of hours with Accountancy and he defended their approach. Holden tended to agree with Priebe except the rule applies just to accountants. Generally, ARRC is concerned re matters which affect the public.

Bonta pointed out their basic standards were not being changed.

Holden discussed the requirement for publication of an annual register. [116.3] Royce had sent a letter to the respective legislative bodies requesting that this topic be referred to State Government Committee. Holden requested that a bill be drafted to repeal the provision.



CONSERVATION The Conservation Commission was represented by Nancy Exline,  
COMMISSION Bob Barrett and Roy Conover who reviewed the following:

## CONSERVATION COMMISSION[290]

Manufacturer's certificate of origin, vessels, ch 39 ARC 1489 F..... 10/29/80  
License depositaries, ch 66 ARC 1490 F..... 10/29/80  
License blanks, lost or destroyed, ch 67 ARC 1491 F..... 10/29/80  
Fishing regulations, 108.2(1), 108.2(5) ARC 1492 F..... 10/29/80

## CONSERVATION COMMISSION[290]

Wildlife habitat stamp revenue cost-sharing with local entities, 23.5-23.7, 23.9, 23.12, 23.14 ARC 1486 N..... 10/29/80  
Personal flotation devices, 27.13(5), 27.13(8) ARC 1487 N..... 10/29/80  
Permit and rental fee schedule for state-owned property, riverbed, lakebed and waterfront  
55.1-55.4 ARC 1488 N..... 10/29/80

108.2 Brief discussion of 108.2(1), (5) where one change was made as a result of public comment--artificial lure in Delaware County, Springbranch Creek.

27.13 Exline explained the complex system followed by the U.S. Coast Guard in setting out specifications for various types of flotation devices.

Schroeder recommended that dates certain be inserted.

Exline had reviewed this area with Assistant AG Elizabeth Ostenbaugh. She explained that their problem was similar to that of the Accountancy Board in that changes are being made continuously.

Priebe concurred with Schroeder.

In response to Holden, Exline said CG regulations apply only on the Mississippi and Missouri rivers. Iowa rules govern other state waters.

Exline assured the Committee that the public is well informed by many types of brochures which are readily available.

Chairman Schroeder directed Royce to work with the Department and Oakley in an attempt to reach an equitable solution to the date certain question.

Exline was unable to answer Holden's question as to the number of flotation devices which are rejected.

Ch 55 Exline stated that the original rules applied only to lands which bordered on water. One change expanded the rule to use in areas which are not water-oriented. The amendments include one method used by the Commission to determine appropriate fees if state property is utilized for private purposes--for example, mooring barges for grain elevators located along the Mississippi. The schedule in the rule allows a method of determining the fee that should be paid annually for use of that sovereign property.

Oakley had requested a fiscal note from the Department and he discussed lease fees. He was of the opinion uncommitted funds were being used to fund a position. He continued they were raising fees although there had not been an appropriation. According to Exline, fees were increased to equalize the use of property along the river.

CONSERVATION Committee members wanted assurance that bids for use of state-owned lands would be taken when present leases expire.  
 Cont'd Exline pointed out a meeting was scheduled for December 16 to review the rules.  
 No formal action taken by the Committee.

REGENTS, David Henry, Assistant to the Vice President, Iowa State University; Jack Welenga, Director of Admission, University of  
 BOARD OF Northern Iowa; John Moore, Director of Admissions, University of Iowa; and Karsten Smedal, Director of Admission, Iowa State University, appeared for review of the amendments to 1.1 to 1.3, IAB 10/15/80, ARC 1433, Notice.

According to Henry, existing rules had been clarified and sexist language was deleted.

1.1(1) Schroeder maintained 1.1(1) needed an exception clause. General discussion of grade points and requirements for entrance into the three state universities.

Welenga commented the reason for the entrance requirement was that in some schools, it was easier to obtain a B average than in other schools. Fifty percent of students will still be in the top half of the class. All students who are not in the top half of their class are not denied admission, but other areas are perused--courses, improvement in one year over another, ACT scores, weak or strong areas--etc. Henry said there are few applications from students in the bottom half of a class. Discussion of the school systems which consistently produce a higher level student grade point.

Oakley said the Board of Regents had provided him with a comparison of rules and proposed rules and some analysis. Schroeder asked Royce to send to all of the Committee. As a matter of record, Henry said Regents expect no change in admissions standards.

Recess Schroeder recessed the Committee for five minutes. Reconvened at 3:55 p.m.

BEER AND The Beer and Liquor Control Department was represented by  
 LIQUOR William Armstrong for review of 4.31, class "C" beer establishments, ARC 1436, Notice, IAB 10/15/80.  
 CONTROL

Armstrong commented that 4.31 contains new language pertaining to consumption of beer in class "C" beer establishments. He discussed two AG opinions which held class "C" permittees could offer free samples as a promotion. The position taken by the Department was that this was unfair to the class "B" licensee.

BEER &  
LIQUOR  
CONTROL  
Cont'd

Schroeder asked how many class "C" establishments had given away samples and Armstrong knew of two in Des Moines.

Oakley commented the rule was clearly illegal and legislative change should be sought. He would recommend veto of the rule if it were adopted.

Committee recommended the matter be returned to the Board for further study.

Armstrong quoted from 123.132 in support of the rule.

AGRICUL-  
TURE  
DEPART-  
MENT

Bette Duncan, Legal Counsel, Dr. Dale Brinkmeyer and Dr. James Olson were present for review of the following:

AGRICULTURE DEPARTMENT[30]  
Pesticides, 10.6 ARC 1464...*F*..... 10/15/80  
AGRICULTURE DEPARTMENT[30]  
Livestock importation, 17.1, 17.2(3), 17.3(1), 17.4(1)-17.4(3), 17.5, 17.6, 17.9, 17.10, 17.11 ARC 1466...*N*..... 10/15/80  
Livestock movement, 18.1(3), 18.3(8), 18.3(6), 18.4(5), 18.5-18.8, 18.11 ARC 1466...*N*..... 10/15/80

Duncan said no adverse comments had been received.

17.1(3) Discussion of 17.1(3) which would require disinfecting vehicles before livestock is loaded for shipment into Iowa. Priebe thought the truck should be cleaned when unloaded. Holden did not see that would get at the problem. Schroeder declared the rule was asking the impossible for the cattle industry. Olson explained the rule was intended to prevent spread of infection.

Duncan noted the public hearing on the proposal had not been held.

18.1(3) Schroeder thought addition of "marketing agency" after "individuals" would serve to clarify 18.1(3). Brinkmeyer thought the point well taken. In answer to Priebe, Brinkmeyer said 18.7(7) had been tightened to conform with federal rules.

PUBLIC  
INSTRUC-  
TION  
Recon-  
sider  
ch 6

Priebe moved to reconsider the vote by which the Committee objected to chapter 6 of rules of Department of Public Instruction. Vote on the Priebe motion to reconsider lost 3 to 3. Roll call as follows: Schroeder, aye; Priebe, aye; Holden, no; Tieden, no; Clark, no; Patchett, aye. General discussion with Royce commenting the Committee's power was tied to the effective date of the rule.

Motion

Clark moved to reconsider the vote by which Priebe's motion to reconsider the objection failed to pass the Committee. Vote on the Clark motion as follows: Schroeder, aye; Priebe, aye; Holden, no; Tieden, no; Clark, aye; Patchett, aye. Motion carried 4 to 2.

The issue before the Committee was Priebe's motion to reconsider the vote by which objection was placed on chapter 6 of DPI rules. Vote on Priebe's motion to reconsider was as follows: Schroeder, aye; Priebe, aye; Holden, no; Tieden, no; Clark, aye; Patchett, aye. Motion carried, 4 ayes, 2 nays.



PUBLIC  
INSTRUCTION

Priebe then moved a 70-day delay on chapter 6 adding that there would be 435 standards on discipline if the decision were left in the hands of local school boards. He favored one standard. Vote on the Priebe motion to delay chapter 6 for 70 days was as follows: Schroeder, aye; Priebe, aye; Holden, no; Tieden, no; Clark, aye, Patchett, aye. Motion carried 4 ayes, 2 nays.

No Repre-  
sentatives

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

AUDITOR OF STATE[130]  
Credit cards, ch 7 ARC 1485 *F*..... 10/29/80

COMMERCE COMMISSION[250]  
Rates for cogeneration and small power production ARC 1520 *N*..... 10/29/80  
Outdoor gas lights, 19.3(1)"e" ARC 1440 *F*..... 10/15/80  
Gas and electric utilities, customer relations, 19.4(15)"i", 20.4(17)"i" ARC 1477 *F*..... 10/15/80

INDUSTRIAL COMMISSIONER[500]  
Contested cases, 4.28, 4.32-4.34 ARC 1463 *F*..... 10/15/80  
Declaratory rulings, 5.1 ARC 1467 *F*..... 10/15/80  
Compensation benefits, voluntary payments, 8.6, 8.7 ARC 1468 *F*..... 10/15/80

LABOR, BUREAU OF[530]  
Reporting of fatality or multiple hospitalization accidents, 4.8 ARC 1481 *F*..... 10/29/80  
IOSH-consultative services and training, rescinds ch 6, new ch 8, renumber ch 8 to ch 9 ARC 1508 *N*..... 10/29/80

MENTAL HEALTH ADVISORY COUNCIL[566]  
Alternative diagnostic facility, ch 2 ARC 1462 *F*..... 10/15/80

OCCUPATIONAL SAFETY AND HEALTH REVIEW[610]  
Procedure for hearings, amendments to ch 1 ARC 1458 *F*..... 10/15/80  
Rulemaking, telephone hearing, 1.107, 1.110 ARC 1459 *F*..... 10/15/80

PHARMACY EXAMINERS, BOARD OF[620]  
Drug law examination, 5.7 ARC 1438 *F*..... 10/15/80

PLANNING AND PROGRAMMING[630]  
Federal funds clearing house, ch 11 ARC 1498 *F*..... 10/29/80  
Highway safety program, 12.3(5), 12.3(6) ARC 1511 *N*..... 10/29/80

REGENTS, BOARD OF[720]  
Pay plan, 3.39(1)"b", 3.85, 3.10(15), 3.127, 3.128 ARC 1432 *F*..... 10/15/80

SECRETARY OF STATE[750]  
Forms, ch 4 ARC 1434 *F*..... 10/15/80  
Alternative voting systems, ch 10, filed emergency after notice ARC 1435 *F.F.A.N.*..... 10/15/80

SOIL CONSERVATION DEPARTMENT[780]  
Incentive program for soil erosion control, ch 5 ARC 1530 *N*..... 10/29/80

WATCHMAKERS EXAMINERS[850]  
Quorum, 1.2(4), filed without notice ARC 1443 *F.W.N.*..... 10/15/80

HEALTH-MEDICAL EXAMINERS  
Medical examiners, grounds for discipline, 135.204(18) ARC 1509 *F*..... 10/29/80

## Minutes

Minutes of the October meeting were acceptable as submitted.

## Statement

Priebe asked that the following be included in these minutes:  
"I have never felt more strongly, and Brice, I am not shooting at you as such but you may take it as such. I am very concerned about the undue influence extended by the Executive Branch on the Administrative Rules Review Committee. I really believe we are further abdicating more of our legislative duties to the Executive Branch and I feel the Executive Branch certainly should have their opportunity to recommend rule changes or to veto rules by their administrators of the various agencies. I really felt the Executive Branch today, put some very undue influence on this Rules Committee and I have never felt more strongly in my life."

11-13-80

Statement Oakley assured Priebe he was merely "a guest at your table and I have never presumed to be otherwise and if, at any time, the Committee, as a whole, feels I have overstepped my invitation, I'm sure they'll tell me."

Discussion of December meeting dates. Location would be worked out by Royce and Barry. Discussion of holding January meeting earlier than statutory date.

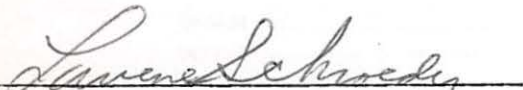
Adjourned Schroeder adjourned the meeting at 4:40 p.m. Next regular meeting scheduled for December 9 and 10, 1980.

Respectfully submitted,



Phyllis Barry, Secretary  
Assistance of Vivian Haag

APPROVED:

  
Chairman