

MINUTES OF THE SPECIAL MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Monday, March 7 and Monday, March 21, 1983.

Place of Meeting: Senate Committee Room 116, State Capitol, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Chairman, Senator Berl Priebe, Vice Chairman, Senators Edgar Holden and Dale Tieden; Representatives Betty J. Clark and Ned Chiodo. Also present: Joseph Royce, Committee Counsel, Kathryn Graf, Governor's Administrative Coordinator; Phyllis Barry, Deputy Code Editor, and Vivian Haag, Administrative Assistant.

Convened Chairman Schroeder convened the meeting one day earlier than the statutory date of March 8, 1983.  
NATURAL RESOURCES The following Natural Resources agenda was before the Committee:

NATURAL RESOURCES COUNCIL[580]

Definitions, amendments to 2.1: flood plain management program, ch 4; flood plain or floodway construction, 5.7, 5.30, 5.31(2), 5.54 ARC 3562.....N.....2/16/83

Mike Smith, INRC Rulemaking Coordinator and Jack Riessen, Chief Engineer, appeared for review of the above.

2.1 At the request of the chair, Smith gave an overview  
ch 4 of 2.1, chapter 4, and amendments to chapter 5. He  
ch 5 called attention to a letter from Cedar Falls director of planning, where concern was expressed that an INRC policy had resulted in lower property tax assessment evaluations by \$1.3 million. The INRC had disapproved an application to rebuild a house destroyed by fire which was located in a Cedar Falls floodway. As a result, the Board of Adjustment lowered the land valuation of about 100 properties. Later, the INRC reversed their position in the case.

These rules clarify the rare occasions when rebuilding on a floodway would be prohibited by INRC. Priebe understood that the new rules would substitute a threshold, allowing a 25-percent increase in floor space (as opposed to 60%) without obtaining approval. Smith admitted that to be correct, but added, "If undeveloped floodways had existed when you put a regulatory program into effect, this problem would not exist. Many floodways were built up in the 20's, 30's and 40's before the legislature established a regulatory program."

Smith continued that INRC takes the position that the former method was so liberal that it did nothing to encourage the upgrading of the existing development.

3-7-83

NATURAL  
RESOURCES  
COUNCIL  
(cont'd)  
5.7(1)d

Priebe reasoned that 5.7(1)d-reconstruction-was a local matter and INRC should not be involved. Smith was willing to review that aspect. He explained that "fifty percent of market value" pertains to the federally subsidized national flood insurance program. Improvements exceeding 50% of the value of a building must be approved by the city. Participating communities are required to have minimal floodplain ordinances. INRC is attempting to coordinate state and federal regulations.

Schroeder cited a potential problem with Cargill Elevator which is located on the Missouri floodplain. Smith said the rules basically address older commercial or residential structures that need major renovation. He called attention to key words "when approval is required" which "doesn't say a permit will not be forthcoming from INRC." General discussion of the preamble to the rules. Smith explained the difference between the 100- and 500-year floods.

The INRC regional flood is defined in existing rules--roughly, it represents the largest flood of similar size drainage areas on record. This criterion would apply only to maximum damage structures, hospitals, nuclear waste facilities, schools, and public buildings of importance that would be used for flood evacuees.

2.1(26)

In re 2.1(26), Tieden was advised that INRC had adopted Soil Conservation Service language. Schroeder wondered if barge fleeters would be affected. Smith indicated that there was potential jurisdiction but INRC would be willing to provide exemption to barge fleeters. He opined that an appropriate time would be during the merger of DEQ and INRC.

Tieden preferred use of "The highest flood on record" rather than "100-year flood." Smith responded that protection would depend upon the type of records that had been kept and he stressed that some areas of the state lack records. Smith added that the "100-year flood record" had become a national standard, used by most states and the federal government. Universally, the courts have upheld that 100-year standard. Schroeder suggested that INRC contact grain elevators. Smith agreed to refer the matter to the Natural Resources Council.

EMPLOYMENT  
SECURITY  
(Job  
Service)

Jim Hunsaker III, Administration Officer, Joseph Bervid, Counsel, and Ralph W. Wilkinson appeared on behalf of Job Service for review of:

EMPLOYMENT SECURITY[370]

Claims and benefits, federal supplemental compensation program, 4.50 ARC 3557 .F..... 2/16/83  
Benefit eligibility conditions, 4.22(1)g(2) and (3), 4.22(1)g". "z" and "aa" ARC 3556 .H..... 2/16/83

4.50  
4.22

No questions were posed re amendments to 4.50. Benefit eligibility conditions, amendments to 4.22, set out requirements in regard to the federal supplemental compensation Act and to the extended benefit program. Bervid called attention to paragraph g, which would require union members, in addition to registration at the hall, to make other efforts to find



3-7-83

EMPLOYMENT  
SECURITY  
Continued

work when regular unemployment benefits have been exhausted. Schroeder thought there was inconsistency. Discussion of the matter of seeking "identical employment." Bervid pointed out that it was a minimum standard--nothing prohibits individuals from doing more. He recalled that many unions have prohibited members from searching for work outside of their union hall. They can be subject to fine, etc. Schroeder favored a statute to outlaw such a practice. General discussion. Clark cited an example of a mass lay-off by a factory where people would not be hired by another company. Tieden was doubtful people could be forced to search for employment. Job Service officials pointed out that unemployment benefits could be denied to violators. Bervid concluded that the Department had generally opposed this particular change but it was mandated by the federal government. When a conflict exists between state and federal, the law permits Job Service to follow federal provisions.

Committee  
Business

Barry sought Committee guidance with respect to editorial format used to alert IAC readers that the effective date of rules has been delayed. Her present policy of adding notes to each rule greatly increases printing expense. Barry was of the opinion that inclusion of the pertinent information in the history of the affected chapter of rules would suffice.

Motion

Tieden moved to accept Barry's suggestion for publishing notification on delayed rules. Motion carried unanimously.

CONSERVA-  
TION  
COMMISSION

Roy Downing and Nancy Exline were present for review of Conservation Commission rules as follows:

.CONSERVATION COMMISSION[290]  
Parks and preserves, camping and electricity fees, 45.4 ARC 3518.....N.....2/2/83  
Land and water conservation fund grants-in-aid for local entities, 72.4 ARC 3519.....N.....2/2/83

According to Exline, the Attorney General had advised Conservation Commission to continue setting out camping fees by rule. Exline advised Schroeder that \$1.50 adequately covers the cost of electricity. General discussion.

ENVIRON-  
MENTAL  
QUALITY

Mark Landa, Jerry Tonneson, Robert E. Campbell and Bruce Henning were present for Department of Environmental Quality. The following agenda was before the Committee:

.ENVIRONMENTAL QUALITY DEPARTMENT[400]  
Reuse of solid wastes, ch 39 ARC 3545 .F.....2/16/83  
Emission standards for contaminants, open burning, 42(4) ARC 3544 .N.....2/16/83

ch 39

Campbell told the Committee that chapter 39 establishes conditions for reuse of coal combustion residue without obtaining a permit. Tieden was informed that the definition of "wetlands" was consistent with that in the Iowa Code.

4.2(4)

Chiodo inquired as to whether the City of Des Moines was in compliance with the ban on open burning. Tonneson stated there had been very few violations. Noncompliance areas are in the central business district and the SE portion of the city. The EPA has been requested to reclassify certain areas in Des Moines.

ENVIRON-  
MENTAL  
QUALITY  
Cont'd

Tonneson explained to Chiodo that particles from leaf burning are very small and may travel great distances. Chiodo insisted that if Des Moines is presently meeting standards, the area for ban on leaf burning should not be expanded. He questioned exclusion of Ankeny and Polk City if standards are not being met.

Tonneson pointed out that census had established an urbanized area making enforcement difficult. Chiodo reiterated, "If we are not in violation, the area should not be expanded, but reduced." He saw the need for a logical approach for suburbs which are equal distance from Des Moines. Tonneson indicated there were 10 monitoring stations in the area and there was a 5-mile open area between the city limits of Des Moines-Ankeny. Tonneson offered to discuss the matter further with Chiodo after the meeting. Schroeder suspected that industry had contributed to high particulate count. He also called attention to use of fireplaces in winter months. Tonneson said the controls were applied to industrial sources of air pollution, but additional work was needed. They have worked with Des Moines on the unpaved roads problem. Chiodo suggested a ban established on a radius basis.

Schroeder requested information as to how much the particulate count was lowered with the leaf burning ban. Tonneson noted that the leaf burning prohibition was part of the state implementation plan and that EPA can withhold highway and sewage construction grant funds if the plan is not implemented.

COMMERCE  
COMMISSION

Dan Fay, Alice Hyde, Dave Conn, Virginia Sheffield, and Bill Haas were present for Commerce Commission agenda as follows:

COMMERCE COMMISSION[250]

Bonded warehouses, licensed grain dealers, amendments to chs 12 and 13 ARC 3566 .F..... 2/16/83  
Electric plants, inspection plan, 20.5(5), 25.3 ARC 3565 .F..... 2/16/83  
Notice of scheduled service interruptions, 20.7(13) ARC 3555.....A..... 2/16/83

12.8(4)

Schroeder observed that 12.8(4) was "open-end" and thought there should be guidelines and limitations. Holden quoted from §543.11 which he thought was quite clear. He wondered by what authority the Department had exceeded it. Fay indicated there was provision in the law to allow Commission to set the bond to be utilized in trouble situations. He briefly reviewed the types of bonds and said additional rulemaking was pending. No Committee action.

20.5(5)  
25.3

Tieden was advised that Iowa Public Service had expressed some opposition to amendments to 20.5(5) and 25.3. No recommendations were offered by the Committee.

20.7(13)

Hyde noted oral presentation re scheduled service interruptions will be March 24. She agreed to contact Representative Mullins who had expressed concern about interrupted service without adequate notice. Graf reasoned that if the rule was necessary an hour limitation might make it easier for companies to avoid notification. She cited an example of hog confinement units where suffocation could occur. Graf was advised that Commerce had received a couple of comments from utilities with concern

3-7-83

COMMERCE  
COMMISSION  
Continued

that the rule would also cover load management programs. Hyde was sure that the question would be considered. She had no information with respect to cost. However, Hyde was sure that utilities would be heard from if the rule was a burden. Holden wondered what had prompted the Commission to propose the amendment. It was Hyde's understanding that the Commission initiated the rulemaking as a result of customer complaints. Priebe saw no need for the amendment. Chiodo and Clark expressed support for the rule.

Tieden was excused to attend another meeting at 9:06 a.m. Hyde discussed various means of customer notification-- mass media, phone, and the mail. No other comments.

HEALTH  
DEPARTMENT

The following rules were before the Committee:

HEALTH DEPARTMENT[470]  
Homemaker-home health aide services, 80.3(2)"d" and "f", 80.4(1), 80.5 ARC 3533 ..F.....2/2/83  
Psychologists, disciplinary action, 140.212(5) ARC 3549 ..F.....2/16/83  
Optometry, examination to practice, 143.5(4) ARC 3539 ..F.....2/16/83  
Optometrist, notice of address, 143.8, 144.112(14) ARC 3540 ..F.....2/16/83  
Speech pathologists and audiologists, license, 155.3(3)"d" ARC 3534 ..F.....2/2/83  
Intermediate care facilities for mentally retarded, administrators, 64.9(1)"b" and "c" ARC 3522 ..N.....2/2/83  
Medical examiners, license to practice, continuing education, 135.3(6)"i", 135.103(1), 135.103(2), 135.107, 135.108.  
135.501(10), 135.502(1), 135.502(2), 135.506 ARC 3531 ..N.....2/2/83  
Hearing aid dealers, license, declaratory rulings, 145.5(4), 145.12 ARC 3532 ..N.....2/2/83

Health Department representatives present were Mark Wheeler, Peter Fox, Irene Howard, John B. Wild, John DeBiak, Susan Brammer, Assistant Attorney General, and James Krusor, Medical Examiners Board.

Ch 80

There was brief discussion of amendments to chapter 80, Home-maker-health aide services. Clark was informed that the word "received" in line 3 of 80.3(2) was being deleted by amendment in process. No other questions.

Ch 135

Chairman Schroeder called for review of amendments to 135-- medical examiners. According to Krusor, the rule changes would allow biennial licensure, renewal, and reporting of continuing medical education according to date of birth coincidental to odd-even years. Also, fees are adjusted accordingly. Royce agreed to assist Krusor in preparing clarifying language for 135.107(1).

135.107(1)

Discussion of the twenty-five dollar per month penalty assessment in 135.107(1). Krusor asked permission to implement the Noticed rules under emergency provisions after Thursday's Board meeting since renewals are sent in April. No opposition was voiced.

No questions raised with respect to rules 140.212(5) and 143.5(4).

In the discussion of requirements in 143.8 and 144.112(14), Schroeder was assured that licensees are obligated to notify the Department of their address at their own expense. Committee members thought the provision could be clarified and Fox agreed.



3-7-83

HEALTH DEPARTMENT Continued Fox indicated the Department planned to rescind the amendment to 155.3(3)d. Brammer explained that the proposed change to 64.9(1)b and c would resolve a conflict with Code Chapter 135E re administrators of ICMFR.

Motion Referral to Legis. It was Schroeder's opinion that the common practice should prevail--the matter should be referred to Human Resources Committees of the legislature. Priebe moved that a letter be sent to the appropriate standing committees. Motion carried.

DeBiak, responding to Graf's question as to whether they could foresee problems, said those involved were very competent individuals, despite conflict with the statute. DeBiak doubted there were unlicensed nursing home operators. Brammer interjected that the Board of Nursing Home Administrators had urged the Department to make the change.

Hearing Aid Dealers In re 145.5(4)b, Clark thought the license examination to be more important. Royce commented that, in terms of the examination, the option was quite fair. He opined, "You are never more qualified to take the exam than immediately after completing the education."

Fox stated the amendments to 145.12 would be withdrawn. No further comments.

Committee Business Priebe moved that the minutes of the February meeting be approved. Motion carried.

REVENUE DEPARTMENT Carl Castelda, Michael Cox, Ben Brown and Don Cooper appeared on behalf of Revenue Department for review of:

REVENUE DEPARTMENT[730]  
Inheritance tax, special use valuation, 86.8 ARC 3535.....F.....2/2/83  
Notice of appeal, 2.2 ARC 3563.....N.....2/16/83  
Determination of net income (corporation, franchise), safe harbor leases, 53.7, 59.7, filed emergency ARC 3537.....FE.....2/16/83  
Assessment practices and equalization, 71.1 to 71.9, 71.12(1) to 71.12(4), 71.12(6), 71.12(7), 71.13 to 71.17 ARC 3564.....N....2/16/83

No questions re inheritance tax, 86.8.

2.2 Discussion of 2.2 and notation that the "ten-day" requirement was statutory. Department officials would have no problem with a legislative change to extend the time. The provision applies only to counties for final equalization notice.

ch 71 Chapter 71 amendments requested by the State Board of Tax Review were reviewed. New language in 71.12(2) was intended to clarify the method of equalizing residential and commercial assessments, according to Cox.

71.3 In re 71.3, Schroeder wondered why the USDA weather service reporting rainfall statistics, etc. were not included. Cox explained that the Department was awaiting completion of a study by Iowa State University on moisture and stress days. Cash value and productivity value of land were mentioned briefly. No recommendations were offered for 53.7 and 59.7.

Recess Chairman Schroeder recessed the Committee for 15 minutes.

Reconvened Meeting was reconvened at 10:20 a.m. by Schroeder.

FAMILY FARM William Greiner was present for review of:  
AUTHORITY

IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]  
Beginning farmer loan program, minimum loan, 2.14 ARC 3559, also filed emergency ARC 3558 .FE..... 2/16/83  
Soil conservation loan program, issuance of bond, 4.4, filed emergency ARC 3520 .FE..... 2/2/83

Greiner provided a brief overview of beginning farmer loan program for minimum loans. No formal action.

BOARD OF  
PAROLE

Robert G. Tangeman appeared on behalf of the Board of Parole. The following agenda was before the Committee:

PAROLE, BOARD OF[615]  
Authority to parole, 4.1 ARC 3551 ..... N..... 2/16/83  
Final parole revocation hearing, 7.6(2) ARC 3554 ..... N..... 2/16/83

4.1

Brief review of 4.1 which incorporates more of the statutory language it is intended to implement.

7.6(2)

Schroeder was advised the rule would not affect early releases. Amendment to 7.6(2) was being proposed as requested by the ARRC. No other questions.

Committee  
Business  
April & May  
Meetings

There was brief discussion of meeting dates for April and May. It was agreed that the meetings would be held Monday, April 11, 7:30 a.m. and May 17--if necessary, May 18. Filed rules would be considered on May 17.

PLANNING &  
PROGRAMMING

Dave Patton, Attorney for Division for Human Resource Coordination, and JoAnne Callison, State Youth Coordinator, represented Planning and Programming for review of youth affairs, volunteer component, 14.5, ARC 3570, also filed emergency, ARC 3569, IAB 2/16/83.

According to Patton, an action grant which would have provided extra federal money was denied but applicants were aware of limited funds. Callison explained the point system for selection of applicants. OPP officials wanted to ensure that responsible people who have experience in volunteer programs will be chosen.

Priebe suspected that "some very qualified people would not have a chance"--those who have had the program would have the "inside track." Callison emphasized that they are seeking those experienced in working with youth in volunteer situations. She said they were hopeful there would be a good balance between rural and urban areas.

Concern was expressed that most of the program would be generated in Des Moines. Callison assured ARRC that was not probable. Responding to Schroeder, Callison thought about 20-25 applications would be received and 14 grants would be made. Applicants from last year would not necessarily receive priority. Schroeder requested them to reconsider that provision. Tieden expressed support for the program. Priebe was advised that counties could submit projects. Although he still opposed the 25-point factors in 14.5(4), Priebe would withhold judgment until implementation of the program.

3-7-83

PLANNING & PROGRAMMING Continued Callison reminded members that the Volunteer program was new and parallels the Youth Conservation and Governor's Youth Opportunity Programs.

List for Committee Schroeder requested Callison to provide the ARRC a list of communities which had received grants in the last two years for the other two programs.

PUBLIC SAFETY Muriel Godbersen, David W. Kirchner, and Connie White appeared on behalf of Public Safety for review of the following:

PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT AND  
DISABILITY SYSTEM TRUSTEES[690]  
Organization and procedure. 1.1, 1.3, 1.100 to 1.127 ARC 3538 ..N.....2/16/83

Clark raised question as to whether the definition of a child was consistent throughout the Code. White said that change was based on 1982 Acts, ch 1261, §1 which she quoted. The rules were basically a restatement of the statute for convenience.

Questions were posed with respect to the frequency of agencies being relocated from building to building.

No action taken.

NO AGENCY REPRESENTATIVES No agency representatives were requested to appear for the following:

AUDITOR OF STATE[130]  
NOW accounts, 8.1(1), 8.1(5), 8.1(6), 8.2(1), 8.2(3), 8.2(4), 8.3, filed emergency after notice ARC 3529 ..FEAN.....2/2/83

CIVIL RIGHTS COMMISSION[240]  
Rules of practice, 1.15(1), 1.15(3) to 1.15(9) ARC 3571 ....F.....2/16/83

COLLEGE AID COMMISSION[245]  
Iowa guaranteed student loan program, amendments to ch 10 ARC 3530 ..F.....2/2/83

FAIR BOARD[430]  
Interim events, policy, 7.2(1)"c" and "d" ARC 3546 ....N.....2/16/83

INSURANCE DEPARTMENT[510]  
Limited benefit health insurance coverage, 36.6(10) ARC 3521 ....F.....2/2/83

FAIR BOARD Priebe asked that Fair Board officials appear before the Committee at the next meeting.

ARTS COUNCIL Sam W. Grabarski represented the Arts Council for review of:

ARTS COUNCIL[100]  
Youth arts alternative program, forms, 2.3(17), 3.10 ARC 3568, also filed emergency ARC 3567 ..FE.....2/16/83

2.3(17) Grabarski emphasized that emergency amendments to chapters 2 and 3 were limited to a program intended to benefit juveniles housed in social services centers, detention centers or half-way houses. Schroeder raised question as to use of "...formats" that have proved successful..." in 2.3(17). Grabarski assured Schroeder that preferential treatment would not be a problem. However, he was amenable to clarification. The Committee preferred substituting "design model" for "formats."



SOCIAL  
SERVICES

Judith Welp, Mary Louise Filk, Suzanne Boyde, Gloria Conrad, Don Kearney and Bob Schoene were present for Social Services rules as follows:

## SOCIAL SERVICES DEPARTMENT[770]

Adult correctional institutions, visitors, 16.3(9) ARC 3524 ...F..... 2/2/83  
 Furlough eligibility, 17.6(1)f ARC 3547 ...N..... 2/16/83  
 Interstate compact for the supervision of parolees and probationers, 27.4(2), 27.4(4) ARC 3548 N..... 2/16/83  
 ADC, granting assistance and unemployed parent, 41.4(1)f, 42.1(1)c ARC 3536 ...N..... 2/16/83  
 Food stamp program, 65.1(3), 65.3, filed emergency ARC 3525 ...FA..... 2/2/83  
 Intermediate care facilities, submission of claims, address change, 81.1(1), 82.15(1), filed emergency ARC 3526 ...FA..... 2/2/83  
 Mitchellville training school, rescinds ch 102, filed emergency ARC 3527 ...FE..... 2/2/83  
 Resources, eligibility, 130.3(3)f, filed emergency ARC 3528 ..... 2/2/83  
 Resources, adverse service actions, 130.5(4), 130.5(5) ARC 3560 ..... 2/16/83  
 Social services block grant, local purchase planning process, 131.8 ARC 3561 ...N..... 2/16/83  
 Sheltered work and work activity centers, accreditation, 155.1(17), 155.2(3), 155.2(4) ARC 3523 N..... 2/2/83

16.3(9) Welp noted two changes had been made in 16.3(9) since it was published under Notice of Intended Action--more information will be required when a strip search is requested. Also, the second sentence was reworded. In response to question by Schroeder, Welp was unsure of problems encountered by visitors with surgical steel plates. General discussion.

17.6(1)f Welp announced that 17.6(1)f would be withdrawn until comprehensive revision on furloughs will be addressed. According to Welp, proposed amendments to subrules 27.4(2) and (4) were clarifying procedures to be followed when a compact client violates conditions of supervision. Tieden was under the impression that interstate compacts could not be amended. Welp agreed to check the matter. Schroeder suggested adding "of the compact" after "parole procedures".

chs 41 & 42 Review of amendments to chapters 41 and 42. Graf inquired whether anyone would be "cut out" of assistance. Welp replied "Hopefully not." Clark referenced a situation in Cerro Gordo County and asked if a student carrying five hours would be eligible for assistance. Welp replied that assistance based on hours had not worked well in the past.

ch 155 No questions were posed re food stamp program; ICF claims, chapter 102 and 130.3. Welp summarized amendments to 130.5 and no recommendations were offered. Welp stated that rule-making on 131.6 would be terminated because of much opposition. Discussion of amendments to chapter 155 pertaining to accreditation of sheltered work and work activity centers.

Priebe was interested in the impact of the rules on older facilities. Schoene explained nonaccreditation interim approval and procedure for extensions. No further questions.

TRANS-  
PORTA-  
TION  
DEPT.

The following rules of the Department of Transportation were before the Committee with Carol Padgett in attendance:

## TRANSPORTATION, DEPARTMENT OF[820]

Abandoned vehicles, reimbursement to police authority, [07.D] 2.2(5)a and "b" ARC 3541 ...F..... 2/16/83  
 Motor vehicle dealers, manufacturers and distributors, [07.D] amendments to ch 10 ARC 3543 ...F..... 2/16/83  
 Vehicle registration and certificate of title, [07.D] amendments to ch 11 ARC 3542 .....F..... 2/16/83

There was brief discussion but no formal action.

## Recess

Chairman Schroeder recessed the meeting at 12:00 noon to be reconvened March 21, 1983, 7:30 a.m.

3-21-83

Reconvened Meeting was reconvened by Chairman Schroeder at 7:30 a.m., Room 116, State Capitol. Members present: Schroeder, Priebe, Holden, Tieden and Clark. Members absent: Chiodo. Also present: Royce, Graf, Barry and Haag.

CONSERVA- Conservation Commission rules were temporarily deferred to  
TION await arrival of Department officials. Royce had advised  
COMMISSION Bob Barratt who had another commitment that it would be unnecessary to appear at this meeting. [See page 1909]

FAIR Jerry Coughlan appeared on behalf of the Fair Board for  
BOARD review of:

FAIR BOARD[430]  
Interim events, policy, 7.2(1)"c" and "d" ARC 3546...*A*..... 2/16/83

7.2(1)c In answer to query by Priebe, Coughlan said the interim director was Ed Eichelberger. Priebe failed to understand how he could grant a variance without the Board's approval--7.2(1)c.

Schroeder suggested allowing "the Secretary and the interim director to grant variances to nonprofit or charitable groups." Priebe thought that was too broad and recommended adding "and it shall be reviewed by the Board at the next meeting." Coughlan was amenable to initiating the amendment right away.

AGRICUL- Bette Duncan, Legal Counsel, and Michael Mamminga, Meat &  
TURE Poultry Division, represented Department of Agriculture for  
DEPT. review of:

AGRICULTURE DEPARTMENT[30]  
Meat and poultry inspection, ch 43 ARC 3592 ...*F*.....3/2/83  
Weights and measures, gasoline price, 55.48(3)"c", filed emergency ARC 3591...*FE*.....3/2/83  
Weights and measures, 55.48(3)"c", ARC 3373 terminated ARC 3593 ...*AT*.....3/2/83

Duncan reported that no one had appeared at the public hearing.

ch 43 Schroeder wondered if chapter 43 would create problems for the industry. Priebe asked how state regulation differed from federal re meat inspection--also, cost involved. Duncan did not have the information readily available.

Mamminga pointed out that state inspectors are more responsive than federal authorities to smaller operators. The review process for grants and inspections for official plants are done on the basis that small existing facilities operate with limited funds for capital improvements. State officials try to help small facilities meet less stringent state guidelines. Mamminga estimated over \$700,000 for statewide meat inspection.

43.8 Schroeder could envision problems for shippers with respect to 43.8. Duncan responded that the provisions had been carried over from previous rules and she did not envision problems.

Schroeder referred to 43.8(3) and expressed opposition to use of acid on condemned carcasses which would preclude salvage for pet food.



3-21-83

AGRICULTURE Mamminga said carcasses to be salvaged for pet food must  
DEPARTMENT first be examined for suitability by a veterinarian who is  
Continued paid by the establishment. If not suitable, animals are  
destroyed or denatured. No formal action.

Schroeder requested that chapter 43 be reviewed extensively to ensure "conformity with today's problems." Duncan indicated she would ask Dr. McCracken to respond to Schroeder's concerns.

No comments re weights and measures amendments.

CONSERVA- The following rules were before the Committee:

TION  
COMMISSION  
CONSERVATION COMMISSION[290]  
Use of firearms, restrictions. 8.1(3) ARC 3579 ..F.....3/2/83  
Docks, 33.1(9), 33.1(10) ARC 3583 .....X.....3/2/83  
Dock management areas, 34.3, 34.4, 34.5 ARC 3578 ..X.....3/2/83

Roy Downing was the Conservation representative.

Docks Schroeder called on Downing who explained that chapter 33 governs private docks off riparian lands and chapter 34 addresses lands which have docks.

Firearms Committee wanted assurance that peace officers or conservation officers would not be hampered in their duties by firearms restrictions in game management areas. Downing was requested to convey their concern to Bob Barratt.

REAL ESTATE Gene Johnson, Ken Smith and Frank Thomas, Attorney General,  
COMMISSION appeared for review of Real Estate agenda as follows:

REAL ESTATE COMMISSION[700]  
Discipline and hearing procedure, ch 4 ARC 3594 ....X.....3/2/83

4.36 Johnson told the Committee that the proposed comprehensive rules on disciplinary and hearing procedures were developed by the AG office in cooperation with the Commission. Thomas noted that 4.36 would be changed to ensure that the Commission was not dictating to the Court.

Clark pointed out grammatical errors in 4.17 and 4.32(3).

Holden recalled that Real Estate rules become a very significant part of real estate test questions. However, Johnson thought it would be unrealistic to anticipate that these rules would be incorporated to any degree.

Discussion of the advantages of model rules on disciplinary hearings for all licensing agencies. Royce responded there had been an attempt, several years ago, to require this by statute. He reasoned that the REC submission would be an excellent example to follow. He added that Montana has directed its AG to create model disciplinary rules which each agency must implement.

Graf had talked with Professor Bonfield as to the possibility of the Administrative Committee of the Bar Association developing uniform procedure. She also praised the REC for their effort.

REAL ESTATE According to Johnson, 4.24, first paragraph, last sentence,  
 COMMISSION would be stricken. Tieden observed "quite a bit of leeway"  
 Continued in item 1 of 4.3.

In re 4.30(1), final decision, Thomas told Tieden there was a possibility that some members would have to be excused because of too much knowledge about a case.

General discussion of what constitutes a quorum. Priebe pointed out that the ARRC maintains a majority of the membership constitutes a quorum. It was noted some agencies have specific statutory guidelines on the subject.

- 4.3 Holden questioned use of "a high standard of professional service" in 4.3, paragraph 1. Further, in 7, he wondered what the impact would be upon the profession as a whole. He declared, "You could be competent but have the whole profession upset with you." Thomas said their intent was to reflect the facts that are considered by the Commission in determining disciplinary sanction. After discussion, members concurred that the words "or upon the profession as a whole" should be deleted from 4.3, paragraph 7. Thomas was amenable.
- 4.4 In 4.4(117), last sentence, Holden was told it would be a matter of public record after the hearing.
- 4.5 Holden was informed that the last sentence in 4.5 would be changed by deleting "alternative to,".
- 4.13 Holden thought paragraph 2 in 4.13 should read "Insufficiency of evidence." In re 4.18, requirement to submit answer within ten days, Holden was informed that was being reviewed and supreme court decisions will impact on the rule.
- 4.29(1) Thomas explained to Holden that 4.29(1) refers to hearsay and the agency is given opportunity to look at other information and evidence. Members were advised that 4.34 would be re-written.
- PUBLIC SAFETY Wilbur Johnson, Fire Marshal, and Connie White were present to review fire marshal, exits and fire escapes, 5.50 to 5.66, 5.100 to 5.105, ARC 3584, Notice, IAB 3/2/83.
- Committee was advised that much of the language was repetitious of the Building Code. Johnson noted that changes had been made upon recommendation of the various Building Associations and he reviewed them.
- 5.50(10) Tieden asked for inclusion of date certain in 5.50(10). Priebe suggested deletion of "have the authority to" from 5.50(9). Johnson agreed.
- 5.50(11)b Tieden was advised that definition of basement in 5.50(11)b was from the Building Code. Johnson explained the difference between "dwelling" and "lodging house"--a lodging house being



PUBLIC  
SAFETY  
Continued

basically for short-term rental and a dwelling, a personal home.

5.50 (1) d Johnson agreed to change "dwelling" to "housing" in 5.50 (1) d and to define "tenant." Also, White commented they had neglected to include the tables which were referenced in the rules. The Committee authorized inclusion in the adopted version without additional Notice. Firebreak requirements were discussed. *Not published until 5/11/83 IAC*

Clark had been contacted by constituents concerning the spread of fire within buildings.

5.52 Schroeder raised question of possible use of batteries for exit signs. According to Johnson, warehouse regulations, which are found in 5.52, are directed by OSHA.

In a matter not before the Committee, Schroeder noted lack of panic bars in the Wallace State Office Building and urged that appropriate action be initiated to correct the deficiency. Johnson reminded Committee members that when building code legislation was enacted, the fire marshal was not administrator of the Code--that has since been changed.

5.65 (2) In re 5.65 (2), Schroeder opined that the Wallace Building would not meet the qualifications. According to Johnson, Wallace and Veterans Auditorium would be covered under "existing buildings."

Johnson assured Holden that 5.52 (6) provides an option. In 5.100 (4), it was noted that "apply" should be "comply."

There was discussion of 5.65 (2) b pertaining to location of exit doors--one pair for each five rows of seats. White commented that the public hearing would be held Tuesday, March 22, 1983.

No other questions or comments.

OCCUPA-  
TIONAL  
SAFETY &  
HEALTH

Charles Strutt, Mary Olson and John Rossi were present for review of the following:

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION[610]  
Procedure for hearings before review commission. 1.1(14), 1.7(4), 1.7(15), 1.7(16), 1.12, 1.20(2), 1.30(2), 1.31(4), 1.34(8)"b",  
1.38, 1.55(2), 1.62(1), 1.65(2), 1.100 to 1.102 ARC 3574 ..... 3/2/83

1.101 (1) Rossi and Strutt said that the rules were primarily for clean up and clarification. Schroeder raised question re new language in 1.101 (1). He referenced the AIDEX plant at Council Bluffs and was uncertain whether the Department or intervenor would know the ramifications. He wondered about injuries which might occur from unknown exposure and if the Department was placing itself in an "untenable position."

Strutt stated that the Review Commission becomes involved after the Bureau of Labor has made an inspection. Petitions can be made to handle a case on an emergency basis. He explained

3-21-83

OCCUPATIONAL that use of "other parties or intervenors" was "proof of  
SAFETY AND service" on the parties.

HEALTH

REVIEW

Continued

Rossi added, "We are trying to establish a basis for an expedited hearing by obtaining meaningful information. No other comments.

REVENUE

DEPARTMENT

Carl Castelda and Michael Cox appeared on behalf of Revenue Department for review of:

REVENUE DEPARTMENT[730]

Practice and procedure — protests, declaratory rulings, 7.8, 7.25 ARC 3588 *F*.....3/2/83  
Sales and use tax — bonding procedure, permits, sales in interstate commerce, property becomes part of realty,  
11.10(1)"c", 11.10(3), 12.3, 17.8, 19.10(2)"m" ARC 3589 *F*.....3/2/83  
Returns and payment of tax, 12.1, filed emergency ARC 3587 *FE*.....3/2/83  
Sales, services and use tax, 14.1 to 14.3, 15.1(3), 16.1, 18.31(2), 19.2, 26.1 ARC 3581, also filed emergency ARC 3580 *NH*.....3/2/83  
Property tax credits and exemptions, 80.1(1)"a" and "f", 80.1(2)"a" and "k", 80.1(4)"a", 80.2(1)"a", 80.2(3)"a", 80.3(6),  
80.5(2), 80.5(8), 80.5(10), 80.6(5), 80.6(6)"a", 80.7(1) to 80.7(3) ARC 3590 *N*.....3/2/83

Castelda said amendments to 7.8 and 7.25 implement the Administrative Procedure Act and provide process within the agency for someone to seek declaratory relief to a contested case proceeding where Department would not issue request. Discussion of 7.25. Graf recommended addition of language that would refer to an area where trade secrets might be involved with the ruling. Castelda was amenable.

Castelda reviewed sales and use tax bonding procedure permits, sales in interstate commerce rules. No recommendations for 12.1.

Castelda reported there would be a correction in 19.2(422, 423) published in the 3/16/83 IAB.

Priebe and Clark expressed disappointment in the complicated bracket system for application of tax. Priebe had requested an AG opinion on the matter. General discussion with Castelda indicating that it would benefit the merchant.

In reviewing 80.1(2)a, Holden took the position that a loop-hole would be created by the proposed deletion. Cox stressed that it was intended for the homestead to be occupied at least six months a year. In Holden's opinion, that "occupancy" should be defined. General discussion.

Motion

Holden moved that a letter be sent to legislative Ways and Means Committees, calling this to their attention. General consensus was to allow implementation of the change before taking any formal action. Motion withdrawn. The Department was willing to seek a resolution of the issue.

SOCIAL  
SERVICES

Appearing for the Social Services Department were Judy Welp and Elizabeth Hagerty. Welp summarized their proposals and no formal action was taken.

SOCIAL SERVICES DEPARTMENT[770]

ADC, unemployed parent, 42.4(4) ARC 3597 *N*.....3/2/83  
General provisions, state supplemental assistance, 130.2(5) ARC 3598 *N*.....2/2/83  
Children in need of assistance or children found to have committed a delinquent act, 141.5, 141.6 ARC 3599 *N*.....3/2/83



## RECESS

Chairman Schroeder recessed the meeting for five minutes.

BOARD OF  
NURSING

Ann Mowery, Executive Director, represented Board of Nursing for the following:

## NURSING, BOARD OF[590]

Advanced registered nurse practitioners, ch 7 ARC 3596.....*F*.....3/2/83  
 Licensure to practice — registered nurse, amendments to ch 3, filed emergency after notice ARC 3585 *FEAN*.....3/2/83  
 Licensure to practice — licensed practical nurse, amendments to ch 4, filed emergency after notice ARC 3586 *FEAN*.....3/2/83

Also present: Kay Myers, Iowa Nurses Association.  
 In Mowery's presentation of chapter 7, the qualifications and scope of the anesthetists and anesthesiologists professions were differentiated. Mowery explained that RN nurse anesthetists have 2 years of training and anesthesiologists are M.D.'s. There was brief discussion of liability and insurance for these professionals.

Mowery called attention that the rules also include midwives. She noted the Board had worked closely with the Medical Society and Nursing Associations. Royce assured the Committee that the Board was within statutory authority.

Myers expressed importance of quality of care provided by nurses.

7.2(1)e

Mowery was amenable to deletion of 7.2(1)e because of potential misinterpretation. Royce and Graf agreed to assist Mowery in clarifying 7.2(5)b and 7.2(7) and to eliminate conflict with the Code.

7.2(5)b

7.1(8)

Holden referred to 7.1(8) and questioned legality of publishing the fee schedules in the final version only. In his opinion, that was a substantive change which could provoke considerable response. Holden moved to object to subrule 7.1(8). Motion carried with 5 ayes.

Royce drafted the following:

*Filed version 3/2/83*

The committee objects to the adoption of subrule 590 IAC 7.1(8), relating to fees, on the grounds that its adoption without notice or public participation violates the provisions of section 17A.4, the Code. The original notice of intended action, published September 1st, 1982, did not contain this provision.

It is the opinion of the committee that the scope of any particular rule-making procedure is limited by the items appearing in the published notice. In this case the notice contained only a twenty-five dollar fee, while the adopted rule contained six separate fees. To determine whether the adopted rule is within the scope of the notice of intended action, Professor Arthur Bonfield offered the following test:

- 1) The extent to which an individual concerned with the adopted rule should have understood that the notice of intended action could have affected their interests;
- 2) The extent to which the subject matter or issues involved in the adopted rule differ from those involved in the notice of intended action;
- 3) The extent to which the effects of the adopted rule differ from the effects that would have occurred if the notice of intended action had been adopted.

In this case, the adoption of multiple fees is so far removed from the original proposal of a twenty-five dollar fee that there is only a remote connection between the two; they both relate to fees. This is insufficient to meet the test cited above. This objection may be overcome by repromulgating subrule 7.1(8) through the rule-making process.

3-21-83

BOARD OF NURSING  
Continued  
Holden took issue with the Board's reason (in preamble) for deleting 7.2(3)b, with respect to determination of competency, from the Notice version (9/8/82 IAB). According to Mowery, the Board selects the certifying body. Royce saw need for a rule to address those individuals who could become qualified without the certifying body.

Since the Senate had convened, it was agreed to include Department of Transportation with agencies not required to appear.

COMMERCE  
COMMERCE COMMISSION[250]  
Rates charged and service supplied by telephone utilities, accounting, amendments to chs 22 and 16 ARC 3602. F.....3/2/83

SPECIAL REVIEW - ch 20 IAC --Mainlines--new subdivisions

ch 20  
Schroeder announced that no changes had been made in the filed rules before ARRC. The special review scheduled for chapter 20 IAC--mainlines, new subdivisions, was deferred until the April meeting.

BOARD OF NURSING  
Discussion returned to Board of Nursing rules. Holden contended that "board approved guidelines" referenced in the last sentence of 7.1(1) would have to be adopted and the Committee agreed that the words "board adopted rules" should be substituted. Holden thought 7.2(2)c should also be clarified.

There was consensus of the ARRC that it would be appropriate to file necessary amendments on an emergency basis with an effective date coinciding with chapter 7 of Nursing Board rules. Graf and Royce were willing to assist Mowery. No formal action taken on amendments to chapters 3 and 4.


No Reps  
No agency representatives were required to appear for the following:

ARCHITECTURAL EXAMINERS, BOARD OF[80] F  
Registration, rules of conduct, disciplinary action. 1.1(1), 1.2, chs 2, 4 and 5 ARC 3573. F.....3/2/83  
AUDITOR OF STATE[130]  
Leasing of personal property, ch 13 ARC 3600. F.....3/2/83  
HEALTH DEPARTMENT[470]  
Premortuary college educational requirements. 147.1(3)"b" ARC 3601. F.....3/2/83  
MERIT EMPLOYMENT DEPARTMENT[570]  
Pay for internship appointments. 4.5(1)"g", filed emergency ARC 3595. FE.....3/2/83  
PUBLIC INSTRUCTION DEPARTMENT[670]  
Approvals, 16.4, 16.5 ARC 3572. F.....3/2/83  
TRANSPORTATION, DEPARTMENT OF[820]  
Interstate registration and operation of vehicles. (07.F) 1.3(1)"a", 1.3(5)"a", 1.3(5)"a"(2), 1.6, 1.9, 1.15 ARC 3575. F.....3/2/83  
Truck operators and contract carriers, marking of equipment, (07.F) 3.3(1)"c" ARC 3576. F.....3/2/83  
Interstate motor vehicle fuel permits and transport carrier registration, (07.F) 7.2, 7.3(6), 7.4(6)"a" and "b", 7.4(8) ARC 3577. F.....3/2/83

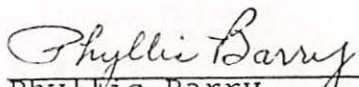
Recess  
Committee was recessed at 10:25 a.m. until call of the Chair.

March 24  
Chairman Schroeder reconvened the Committee briefly, March 24, 9:00 a.m. There being no further business, meeting was adjourned. Next meeting tentatively scheduled for Monday, April 11, 1983.

APPROVED:

  
CHAIRMAN

Respectfully submitted,

  
Phyllis Barry  
Assisted by Vivian Haag