

MINUTES OF THE REGULAR MEETING  
of the  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, April 14, 1981, Wednesday, April 15, 1981,  
Thursday, April 16, 1981, and Tuesday, April 21, 1981.

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

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

Tuesday Meeting: Chairman Schroeder convened the meeting at 7:45 a.m.

CONSERVATION  
COMMISSION

The following Conservation Commission rules were before  
the Committee:

Use of firearms, Mines of Spain Area, 8.2	ARC 1899	N	4/1/81
Waterfowl hunting on Forney Lake and Riverton Area, 14.1	ARC 1900	N	4/1/81
Waterfowl hunting on Lake Odessa, 15.1	ARC 1901	N	4/1/81
Migratory game bird regulations, 105.3	ARC 1902	N	4/1/81
American ginseng, regulated harvest and sale of, ch 21	ARC 1903	F	4/1/81
Waterfront lands, ch 55,..... leases, progress report.....			3/4/81

Dr. Allen Farris, Chief of Fish and Wildlife; Roy Downing,  
Lands and Water Division; and Dean M. Roosa, State Ecolo-  
gist, represented the Department.

8.2 Subrule 8.2 prohibits use of firearms in the Mines of  
Spain area south of Dubuque. According to Farris, this  
was necessary as a condition of the land purchase.

Schroeder was of the opinion Conservation could have  
posted the perimeter of the land and avoided rulemaking.  
Farris cited the specific powers--section 107.24--as  
authority for the rules. Schroeder preferred an excep-  
tion to allow use of firearms by law enforcement officials  
in the line of duty. Farris disagreed with Schroeder  
about the listing of exceptions.

Farris added the Banner Mines area, north of Indianola,  
would be covered by the rule.

14.1 Changes in 14.1 increase fees for reserving blinds in the  
controlled portions of Forney Lake and Riverton Area from

CONSERVATION  
COMMISSION  
Cont'd  
14.1(4)b

\$3 to \$10. Priebe thought 14.1(4)b to be discriminatory. In his opinion, \$5 for each additional hunter in the blind would cause adverse comment. In response to Schroeder, Farris indicated special notice on the increase had not been sent to hunters--it would be mailed with the usual distribution.

105.3

According to Farris, the rules basically adopt federal regulations--two changes; Green Island of Jackson County will be added to areas where steel shot will be required and certain handicapped individuals will be permitted to hunt from stationary motor-driven land vehicles. [105.3(5)]

105.3(10)

Clark recommended clarification of language in lines 5 and 6 of 105.3(10).

ch 21

Roosa explained the ginseng dealer, not the digger, would be regulated and Iowa must remain an "exporting state" as mandated under federal law. He added that approximately 1500 to 2000 lbs. were harvested in Iowa at \$130 per dry pound.

Clark noted changes had been made after the Notice process. Royce responded there was a reasonable relationship between the Noticed and Filed version.

ch 55

Downing apprised the ARRC that the Commission had set a date for meeting with interested individuals re waterfront lands--ch 55--delayed at the March meeting. Also, a request for a public hearing had been received. Contacts had been made up and down the river and Downing had received calls on the matter. He pointed out the amendment deals only with fee changes. Committee members favored the public hearing. Priebe concurred with Schroeder that the 70-day delay should not be lifted.

Downing advised the Committee their legal counsel opined a public hearing could be held only for the amendments to ch 55 -- the rule before the Committee. This would not preclude an informal meeting to review the entire chapter, however.

Downing preferred an "informal workshop" to a formal hearing. Priebe requested the informal hearing be held in the area most affected. Downing was amenable. Downing assured Tieden the rule was not an "overlap of federal requirements."

Committee members requested Royce to attend the public hearing.

Williams urged more communication between the industry and the Conservation Commission but added that Downing had been very cooperative.

ARCHITECTURAL EXAMINERS The following rules were before the Committee:

ARCHITECTURAL EXAMINERS, BOARD OF[80]

Description of organization, ch 1: examinations, ch 2: continuing education, ch 3 ARC 1907 .N.....4/1/81

ARCHITECTURAL EXAMINERS Appearing on behalf of the Board of Architectural Examiners were Lois Kalleen, Executive Secretary, and W. David Frevert, Board Member.

ARD

Cont'd

2.1(2)

Clark and Tieden, being interested in conservation of space and paper, requested removal of verbage "as if fully set out herein", and use of "such" where unnecessary. Clark expressed opposition to the parenthetical insertion re gender in 3.1

3.1(3)

Chiodo interpreted 3.1(3) as allowing continuing education credit for merely performing usual day-to-day work with exception of "A."--educational programs. It was his position CE should be an intellectual exercise. In response to Chiodo, Frevert said the 24 credit requirement was a judgment of their board.

3.1(4)B

Holden thought the Committee and the Legislature should be concerned about the weakness in the whole continuing education system and he discussed possibility of repealing the law. He pointed to 3.1(4)B as being wide open for abuse--allowing credit for attendance at seminars and conventions.

The Committee expressed reluctance to support the rules in their present form. No further questions.

COMMERCE  
COMMISSION

The Commerce Commission was represented by Judy Friedman, Utility Analyst, Alice Hyde, Asst. Counsel, John Murphy, Utility Analyst, Arthur E. Zahller, and Diane McIntire, Assistant Counsel. Telephone utilities, rates and service, ch 22, Notice, ARC 1924, and supplemental energy conservation plan, ch 28, Filed, ARC 1889, were reviewed.

ch 22

Schroeder requested clarification with respect to the reference to "section 166" in "F" of the preamble.

McIntire indicated Commerce expected a great deal of input from industry on the rules which had been developed in-house. She had no knowledge of consumer group interest.

Holden failed to see the necessity for such detailed rules. There was general agreement the rules would be rescheduled at a later date for extensive review--possibly in June.

ch 28

In response to comment by Clark re 28.1(2)a(1-3), Murphy was amenable to restructuring the language when the rules are amended again.

No further discussion concerning Commerce Commission.

HEALTH  
DEPARTMENT

4-14-81

The following Health Department rules were before the Committee:

HEALTH DEPARTMENT[470]		
Residential sewage treatment, ch 12, notice terminated	ARC 1870...N.T.	3/18/81
Radiation emitting equipment, operating procedures and standards, ch 42	ARC 1871...N.	3/18/81
Nonpublic waterwells, 45.1(6), 45.2, 45.3, 45.5(2) to 45.5(4), 45.6(4), 45.6(5), 45.7(1)a,		
45.8(1)a" (2) and (4), 45.10 to 45.12, fire emergency	ARC 1872...F.F.	3/18/81
Advanced emergency medical care, 132.12	ARC 1916...N.	4/1/81
Medical examiners, prescription drugs, 135.1(21), 135.251	ARC 1917...F.	4/1/81
Medical examiners, license costs, 135.102(1), 135.103(1), 135.103(2), 135.106(1) and (2),		
135.108(1) to (3), (6), (8) and (9)	ARC 1883...F.	3/18/81
Physicians assistants, 136.5(4)	ARC 1918...F.	4/1/81

Present for review were Peter Fox, Licensing Division Supervisor, John A. Eure, Radiation, Mark Wheeler, Hearing Officer, Donald C. Flater, Michael Magnant; Marilyn Holland, Program Director, American Society Radiologic Technologists; Cindy Windsor, Iowa Society Technologists; Richard Feeney, Program Director, Radiology Technology Training Program, University of Iowa Hospitals, and James Krusor, Board Member, Medical Examiners.

ch 42

Wheeler called on Eure to answer questions on ch 42. Eure commented the rule establishes minimum training standards for operators of radiation emitting equipment and supplements radiology rules.

Wheeler said a statement had been received from the Iowa Medical Society and a public hearing was scheduled for this afternoon.

Eure said two adverse comments were received; (1) recommended that it be made clear the Health Dept. was not certifying or licensing diagnostic radiographers and (2) opposed inclusion of numerical hours of required training.

Chiodo viewed the rules as "bordering on licensing." Clark was informed that "associated training" would be the clinical experience received in the doctor's office. [42.1(1)a] Oakley declared it was difficult to establish standards without some form of proof--certification or licensing. He recommended statutory change to place the burden on the Department and those operating the equipment or to provide licensing. He opined the present law places the Department in a difficult situation.

Schroeder asked how the rules compared with those of other states and he was informed 16 states license technologists. He asked Wheeler to provide Royce a summary of action at the public hearing. Eure said the regular rules were taken from the model states rules and modified to conform to Iowa law.

ch 45

No recommendations were offered for amendments to chapter 45.

132.12

Krusor, responding to Schroeder, said the experimental EMT-D program at the University of Iowa was correlated with a study conducted in Seattle to determine if heart attack victims

HEALTH  
DEPARTMENT  
Cont'd

could be afforded equal chance of survival in remote and urban areas.

In answer to Tieden, Krusor explained the training would be offered to communities who request it.

ch 135, 136 No recommendations were offered on amendments to chs 135 & 136.

HOUSING  
FINANCE  
AUTHORITY

George Cosson, Legal Counsel, Housing Finance Authority, appeared for consideration of loan programs, assumption of mortgages, 2.10, Filed, ARC, 1897, IAB 3/18/81. Chiodo wanted to know the policy on implementing the "due-on-sale" provisions. Cosson replied it would apply at the time an individual buying property did not qualify under the income guidelines. However, with the economy in its present condition and the innovative financing techniques being developed, the Authority preferred a rule so that if a bond repayment date could not be met, there would be a way to obtain the cash and make that principal payment. Chiodo cautioned against implementation of the "due-on-sale" clause for any reason other than that "laid out" in the rules.

Recess

Schroeder recessed the meeting at 9:35 a.m. to be reconvened Wednesday, April 15, at 7:30 a.m.

Reconvened

Chairman Schroeder reconvened the meeting Wednesday, April 15, 7:30 a.m. with all members present. Also present: Joseph A. Royce, Staff, and Brice Oakley, Rules Coordinator.

BOARD OF  
NURSING

The following persons were in attendance for review of the Board of Nursing filed rules pertaining to practice for RN's and LPN's, ch 6, ARC 1908, 4/1/81 IAB: Lynne Illes, Executive Secretary, JoAnn H. Erickson and Elizabeth Kinney, Board members Tim Gibson, Tina Preftakes, and James B. West, Iowa Medical Society; Sister Mary Brigid, Mercy Medical Center; Juanita R. Theile, Grandview College, Evelyn Gore, Kay Myers and Daryl Frey, Iowa Nurses' Association; Coy Baker, Rick Gonzalez and Michele Bourlard, Iowa Methodist School of Nursing; Joan Fisher, Iowa Methodist Hospital; Mary Jo Christiansen and Susan D. Moon, Iowa Methodist School of Nursing; Bonnie Ballard, Iowa Federation of Licensed Practical Nurses; Cheryl Somers and Dorie Erwin, Creston; Richard Berglund, Naurine Jacobs and JoAnne Hannasek, Iowa Hospital Association.

ch 6

Illes explained changes made after Notice which included standardizing the format for definitions. Other changes reflect the majority of concerns voiced by the public. Three major areas were patient rights, supervision by a licensed practical nurse and the LPN being allowed to initiate and

BOARD OF  
NURSING

administer medication intravenously. Three rules were deleted and two have been referred to a panel of nursing leaders or experts for further study.

Berglund, General Counsel, Iowa Hospital Association, introduced Naurine Jacobs, Legal Counsel, who spoke of their concerns in the areas of patients' rights, "take home" medications, supervisory accountabilities, the expansion of the scope of practice of the licensed practical nurse to include initiating and administering intravenous medications, and serious problems of vagueness and overbreadth occurring throughout the rules.

Ervin, in behalf of nurses in rural S.W. Iowa, spoke of supervision of the LPN under minimum standards. In many rural hospital settings, there may be one or two registered nurses in charge who depend upon the LPN to give care. She encouraged the Board to define "immediate supervision" as being available within 2 to 3 minutes.

Illes pointed out LPN's lack educational preparation in the areas identified in 6.3(3)d--all being acute care units. A crisis situation would be an exception. Priebe contended at some place, authority had to be delegated.

6.3(3)d

Holden interpreted the provision as applying to any situation. Illes said it was the Board's intent to identify the areas. She continued that the concern was not raised at any of the public hearings or in written comments.

Theile gave a brief presentation in support of the rules. Priebe thought the rules were very limiting.

Clark inquired as to the difference between a nursing and doctor's diagnosis and Illes assured her the definition was gleaned from the Code of Iowa.

West, representing the Iowa Medical Society, acknowledged the importance of the nursing profession. He took the position the rules were too broad and should be clarified. West referred to 6.1(9) and 6.4(1) and pointed out the Practice Acts exempt persons employed in physicians' offices.

Illes explained the issue had begun with them trying to afford protection to the category of industrial nurse. As other problems surfaced, the rule was written in broad form to cover any setting.

Tieden inquired if Illes disagreed that it should not apply in the doctors' offices. Illes said a nurse in a doctor's setting could issue a 48-hour medication, even though she is not permitted to practice pharmacy.

BOARD OF  
NURSING  
Cont'd

Myers recalled the legislative mandate to 5 boards last year to correlate efforts re drug dispensing. According to Myers, four of the five boards agreed to the definition; Board of Medical Examiners did not agree.

In response to Royce, Illes said, under the Practice Act, the Board has the authority to define nursing, not other professions.

Clark failed to see a problem since the Doctor is "still in charge." Myers thought the rule afforded some protection for the public.

West interjected to correct the record with respect to the legislative study committee in 1980--it reached no conclusion and finally, the society believes it to be totally inappropriate for the Board of Nursing to attempt to decide what should take place in the physician's office.

Myers encouraged support of the rule that would limit LPN's practice in acute care areas without supervision. Schroeder compared LPN's with technicians and thought LPN's could handle the jobs.

Clark was in total agreement that rural people deserved comparative care with city residents. Logistically, it was impossible.

Illes reminded the Committee that in past years they had cautioned the Board about exceeding the law with rules. She continued, in this issue, they seemed to have reversed their position. Holden said if that were in the law, a rule would be unnecessary.

Tieden suggested including a definition for "immediate area".

Sister Brigid emphasized the importance of properly trained RN's in intensive care units.

Illes made the point crisis intervention could occur--within 30 seconds.

Somers had grave doubts about minimum standards.

MOTION TO  
DELAY  
ch 6

Priebe moved a 70-day delay on chapter 6 for further study. He favored delaying ch 6 into the General Assembly after that time. Clark said it was conceivable the Code needed revision in the area.

Illes stressed much time and effort had been expended in developing the rules during the last 4 years.

BOARD OF  
NURSING  
Cont'd  
Vote  
Motion

Priebe motion to delay ch 6 for 70 days carried viva voce.

Licensing

Holden moved that the ARRC notify the Speaker of the House and the presiding officer of the Senate that a very serious jurisdictional problem exists in the health care fields and that the appropriate committees be apprised. Further, that they seriously consider putting all health care providers under one licensing board, no more than one representative on that board, and that all licensed professions be under the supervision of that one board.

Vote

Short form voting was requested and the motion carried viva voce.

Recess

Schroeder recessed the Committee for five minutes at 8:55 a.m.

DEQ

The meeting was reconvened to consider the following rules of Department of Environmental Quality:

ENVIRONMENTAL QUALITY DEPARTMENT[400]  
Emission standards for contaminants, nonattainment area 4.3(2)"c"(2), (3) ARC 1894 .N..... 3/18/81  
Emission standards for contaminants, ch 4 ARC 1895...N..... 3/18/81

Odell McGhee, Hearing Officer, appeared on behalf of the Dept. He explained that Notice ARC 1895 would be terminated. The Committee was informed that the federal Environmental Protection Agency was reviewing air quality standards for particulates and other pollutants. It was anticipated revisions would be made at the end of this year. Iowa rules are not more restrictive.

Brief discussion of nonattainment areas and their impact on cities.

No formal recommendations were made.

SOIL  
CONSERVA-  
TION Notice  
5.30-5.33

Ken Tow, Larry Vance and Clif Stilley appeared for special review of rules 780--5.30 to 5.33, ARC 2008, filed emergency, to be effective April 24--this being necessary to avoid undue delay of the program. [The rules will be published in IAB 4/29/81]

Tow discussed the history of the rules and the public hearing which had been held. The Soil Conservation Committee examined its options and selected the weighted schedule. The program has provided a strong disincentive against removal of any practice. Before GA action last year, any noncompliance required 100% refunding of the public funds by recipients. Tow referred to two court cases on the subject.

Schroeder questioned whether the plan was equitable. He preferred a "simple, straight-line deduction." Tow said that Cherokee, Jackson, Tama, Hamilton and Benton counties supported the weighted plan and Clay, Clayton and Guthrie preferred



SOIL  
CONSER-  
VATION  
Cont'd

"straight-line depreciation." Davis County was neutral.

Priebe opined too much money was being placed in terraces and not enough in grass.

Schroeder stressed the importance of preserving the soil, however he maintained if a 20-year project could be completed in 10 years, only half of the money should be refunded.

General discussion of the adoption process by the Department, with some members questioning the emergency filing. Some Committee members reiterated their preference for the "straight-line" approach. Vance contended the reason for Soil Conservation Commission action was because of dissatisfaction on the part of the ARRC when the subject was before them in January. Tow emphasized it was not their intent to circumvent the review process.

Royce advised members that, procedurally, the agency had complied with §17A.4. An option available to the Committee would be to object on the merits of the rule.

Deferred Temporarily Schroeder asked that Soil Conservation be deferred temporarily to allow discussion of the following Revenue Department Rules:

REVENUE DEPARTMENT[730]  
Organization, public inspection, 6.1(2), 6.1(3)" ARC 1891 .N..... 3/18/81  
Administration, records, 11.4, 38.2, 51.3, 57.3, 63.3(5) to 63.3(8), 81.4(11) to 81.4(13) ARC 1913 .N..... 4/1/81  
Assessment practices and equalization, 71.1(3), 71.1(4), 71.11, 7.12(2), 7.12(3) ARC 1914 .N..... 4/1/81  
Iowa estate tax, ch 87 ARC 1892 .....N..... 3/18/81  
Generation skipping transfer tax, ch 88 ARC 1915 .N..... 4/1/81  
Assessor education, courses, 124.3 ARC 1890 .N..... 3/18/81  
REVENUE DEPARTMENT[730]  
Taxable sales, design charges, 16.4(1) ARC 1910 .F..... 4/1/81  
Taxable and exempt sales determined by usage, 18.10, 18.11, 18.13, 19.3(3), 19.7 ARC 1911 .F..... 4/1/81  
Qualified organization, licensed activity, 94.3 ARC 1912 .F..... 4/1/81

Rules of the Revenue Department, originally scheduled for April 16, were rescheduled for April 15 and Carl Castelda, Gene Eich and Ben Brown represented the Department.

ch 71 In 71.1(3), Schroeder inquired as to reason for striking "in excess of ten acres" and Castelda replied it would implement a law change with respect to primary use of the property.

71.11(44) Holden pointed out "and not located on agricultural land" in the second paragraph of 71.11(44) was superfluous language. Eich disagreed.

ch 88 Castelda reported that ch 88 was a reflection of current agency policies.

Tieden was concerned about taking revenue rules ahead of schedule and queried if there had been comments received.

In re 16.4(1), the Department had been contacted by IMA as to whether the tool and die process was taxable.

REVENUE  
Cont'd

Castelda indicated they had consulted the sod industry regarding ch 18 amendments.

94.3

In re 94.3, the Department referenced the AG's opinion which holds salary is a form of compensation and not an allowable deduction for gambling purposes as a business expense.

Discussion of possible legislation germane to the area of gambling. Members cited instances of the present law being circumvented. Castelda was aware of this, but pointed out Revenue is a collecting agency only, although they had been charged with enforcement as well. Castelda agreed to provide Chiodo correspondence on the matter.

Discussion by Priebe about the workload of rules during the legislative session. His concern was that he lacked time to divide between legislature and administrative rules. Oakley commented part of the problem was lack of Committee support staff.

SOIL  
CONSERVA-  
TION  
Cont'd

Discussion returned to soil conservation rules. Tow summarized the action on the rule noting it had been mailed to 500 commissioners over the state. Nine meetings had been held and 100 soil districts were represented, resulting in much comment.

5.30-5.33

Further discussion of Committee alternatives with respect to the rules. Oakley opined delay of the rules would prevent the payments from being made and, in effect, there would be no program this year. He saw no advantage in a 70-day delay for further study. Schroeder commented lack of rule would not preclude continuation of the program.

Tow explained the significance of the April 24 date was that no checks would be distributed until the rules were in effect, thus implementing the 1980 legislation. He said requests from Soil Districts were being received.

Tieden wanted the opportunity to make personal contact with his constituency concerning the rules. Discussion of maintenance agreement and repayment. Vance commented that the chances of using a recall procedure were very remote. No formal action taken.

Staff  
Salary

Priebe moved that the Committee advance Royce one merit pay step, effective with the next pay period. [4-10-81] Short form voting requested. Motion carried viva voce. The Committee Secretary was directed to take appropriate action to implement the increase.

Recess

Chairman Schroeder recessed the Committee at 10:03 a.m. to be reconvened at 7:30 a.m. Thursday, April 16, 1981.

Reconvened  
DEPARTMENT  
OF PUBLIC  
INSTRUCTION

Chairman Schroeder reconvened the meeting Thursday, April 16, 1981, at 7:45 a.m. in Committee Room 116. All members were present, as well as the staff and the Rules Coordinator. Rules of the Department of Public Instruction were before the Committee--approval for elementary and secondary teachers--16.4, 16.5, ARC 1718, Filed 1/7/81--effective date delayed 70 days from 2/16/81.

Orrin Nearhoof, Director, Teacher Education and Certification, was in attendance from DPI.

Discussion of proposed legislation on the subject [SF521, with amendment by Senators Priebe, Tieden and Holden, which had been adopted].

Schroeder suggested this meeting could be recessed until April 22 and then a 45-day delay could be imposed.

Motion to  
defer  
16.4, 16.5

Priebe moved to defer further action on 16.4 and 16.5 until call of the chair on or before April 26. Motion carried viva voce.

Oakley was interested in knowing the basis for the anticipated 45-day delay. He thought the legislative intent should be perused. Schroeder reiterated his position that the rules were unreasonable because of differing criteria.

Administra-  
tive  
Searches

Royce addressed the Committee concerning a question of administrative law. The AG's office requested possible legislation be enacted to govern search warrants for administrative searches. A real problem is developing since there is no state-wide policy. It was suggested by Tieden that the matter be submitted to the Judiciary Committees.

Minutes

Chairman Schroeder called for corrections or additions to the minutes of the March meeting. There being none, they were approved as submitted.

Recess

Chairman Schroeder recessed the meeting for 10 minutes.

SOCIAL  
SERVICES

The following Social Services rules were before the Committee:

SOCIAL SERVICES DEPARTMENT[770]  
Fair hearings and appeals, 7.0(15), 7.8(1), 7.8(2) ARC 1890 ..... 3/18/81  
AID, unemployed parents, 42.6 ARC 1876 ..... 3/18/81  
Food stamp program, ch 65 ARC 1919 ..... 4/1/81  
Food stamp program, administration of, 65.3, filed emergency ARC 1874 ..... 3/18/81  
Food stamp program, utility allowance, 65.8 ARC 1920 ..... 4/1/81  
Iowa veterans home, 134.1(6) ARC 1878 ..... 3/18/81  
Juvenile justice county base program, 141.5(2), 141.5(3) ARC 1879 ..... 3/18/81  
Homemaker-home health aide services, ch 144; chore service, ch 149 ARC 1921 ..... 4/1/81  
Adult protective services, 156.3(1) ARC 1922 ..... 4/1/81

See page 1450 for names of those in attendance.

SOCIAL  
SERVICES  
Cont'd  
7.1(15),  
7.8(1),  
7.8(2)

Discussion of amendments to chapter 7 which address the right to appeal when an income tax refund is attached by the department. In answer to Schroeder, Welp said there are approximately 1200 appeals each year. Welp explained to Clark that 7.1(15) included a combination of federal regulations and state law. Members questioned need of the optional form in 7.8(2). Department officials prefer the form as an aid to the appeals officers since it provides continuity.

42.6

According to Welp, 42.6 re computation of self-employment defines work hours. Clark was curious as to how "self-employed" people could be considered "unemployed". Welp said an individual would be considered unemployed if they work less than 100 hours per month. In response to Tieden, Welp doubted DSS would have records of actual hours the self-employed were unemployed. Welp continued that statistics are gathered from job service reports.

ch 65,  
134.1(6)

No recommendations were offered for amendments to chapter 65 and 134.1(6).

141.5(2),  
141.5(3)

Welp explained amendments to 141.5(2) and 141.5(3) which update the reporting procedures and clarify reimbursable expenses in the juvenile justice county-based program.

Chiodo inquired if 141.5(3)c were a change and Cogley replied a departmental policy was being set out in their rules.

Richards relayed the position of the Story County Board of Supervisors--a major concern being cost increase. She recalled that in order to avoid those cost increases from falling heavily on local property taxes and county funds, the legislature enacted a state reimbursement provision. [232.141] She felt confident it was not legislative intent to pre-empt the whole field of provider services. The thrust of the juvenile code revision was to expand services at the local level.

About 1½ years after the mechanism was instituted, DSS re-evaluated its position and decided certain types of items (approximately 85% of amounts submitted for reimbursement in Story County) would no longer be accepted. The rationale for the decision by the Dept. was based on a phrase in 232.141(2) which had been in the Code since 1966. Story County contends the logic used by DSS is not sound--ch 234 does not limit services to children in custody of DSS. The process is effectively narrowing the scope of juvenile court jurisdiction.

Perkins said the DSS had sent memos to counties outlining reimbursement policies. She contended that payment for foster care ordered by the court is assumed by DSS.

SOCIAL  
SERVICES  
Cont'd

Priebe supported placing children in private homes and eliminating Toledo Childrens' Home.

Perkins said the court could place children in foster care other than in the juvenile homes.

Priebe asked how much money the DSS had shifted from foster care to another division. Welp could not provide information.

Perkins pointed out the funds referred to in [ch] 141 were for foster care. She recalled that \$306,000 was reverted but she doubted they were foster care funds.

Oxley indicated they have a title XX foster care contract for sheltered services and had received no money for their detention services. Linn County detains in a secure facility. Their shelter house is a separate facility. It was McCarty's interpretation there was no distinction between reimbursement for detention and foster care. Linn County is experiencing additional cost and since the rule would exclude detention care, shelter care and other kinds of court-ordered care, the county would have to absorb the additional burden.

Perkins, responding to Chiodo, indicated DSS reimburses for foster care, but not detention. At this point, it is the DSS policy that detention is outside their definition of shelter care.

Responding to Tieden, Perkins said an AG opinion had not been issued on the detention issue. Welp added the Board had set a hearing date.

It was the opinion of McCarty there was no statutory distinction between detention and shelter care in terms of reimbursement.

Motion - Priebe moved that ARRC request an economic impact statement on  
Economic [ARC 1879] amendments to ch 141 to determine the impact on  
Impact counties.  
Statement Motion carried viva voce.

Belitsos spoke his opposition to DSS interpretation of the County Base reimbursement program. He had submitted the problem to their state representatives.

Committee discussed possibility of requesting an AG opinion. Richards commented she had requested one.

Oakley pointed out the matter was the subject of preliminary litigation. He was aware that control was an important consideration on the part of DSS as it should be in the legislature. The Governor's office concurred but would take no position before hearing the specific arguments.

ENERGY  
POLICY  
COUNCIL

Chair temporarily deferred review of Social Services and discussion moved to Energy Policy Council rules as follows:

ENERGY POLICY COUNCIL[380]  
 Declaratory rulings, 9.4 to 9.12, ~~notice terminated~~ ARC 1887.....*NT*..... 3/18/81  
 Declaratory rulings, 9.4 to 9.12 ARC 1888.....*N*..... 3/18/81  
 ENERGY POLICY COUNCIL[380]  
 Class "A" energy auditors, 5.1 ARC 1905...*F*..... 4/1/81

Doug True, Deputy Director, and Badruddin Karachiwala represented Energy Policy Council for review. Also present: Gretchen Fett, Northwestern Bell Telephone, Advisory Committee Member.

No questions were raised on amendments to chapter 9. Re Class "A" energy auditors [ch 5], Schroeder noted suggestions made by ARRC were not incorporated in the final rules. True advised the Committee that the filed version was unanimously agreed upon by the Advisory Committee and Council after careful consideration was given to all the facts. They concluded there should be two classes of energy auditors--Class "A" and Associate Class "A".

True explained the program was designed to furnish trained and tested persons to audit energy consumption in hospitals, large office buildings, etc. True added that this is the first program established in the state and 200 have been trained for examiners. Other states have similar programs. Ch 5 is in effect right now and EPC is trying to have a diversified interest in the private sector, examine what has been done, and recommend changes. For the most part, changes have provided opportunity for those desirous of becoming auditors.

Royce observed the course work and test alone were not sufficient to guarantee desired quality.

Schroeder contended an associate would look for the same things as the auditor and he opposed the distinction. He favored allowing test scores to be the determining factor in allowing an individual to become a Class "A" auditor.

No formal action taken at this time. [See page 1454]

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Resumed

There was review of Social Services rules with discussion centering on fee schedule for homemaker-health aide and chore services. Chairman Schroeder indicated that due to the fact that the General Assembly had convened, it would be necessary to interrupt this meeting periodically for various members to return to their respective chambers.

Department representatives and other interested persons included: Judith Welp, Hearing, Policy and Analysis; Cris Perkins, Bureau of Children Services; Gene Fitzsimmons, Bureau of Adult Services; Mary Helen Cogley, Adult Services; Jean Groen, Eldora; Donna Tuttle, Ames; Melba Moseley, Mason City; & Roselyn Kem, Des Moines, Iowa Council for Homemaker-Health Aide Services; Neil Carolan, Ames; Mary Richards, Story County Attorney; George Belitsos, Youth Shelter, Ames; Carolyn Willey, Wayne County Homemaker Health-Aide Services; Jean Chandler, Lucas County Health Services; Jean Oxley, Linn County Supervisors; and Bill McCarty, Linn County.

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Tuttle brought to attention her main concern with respect to the fee schedule set out in ARC 1921. Prior to the December 1, 1980 budget reduction, DSS was not paying for services above the eligibility guidelines--at that time, \$500 per month income for 1 person households. It was her understanding, in 1982, that DSS would pay for services in a 1 person household with income less than \$400. Tuttle questioned service to those above the \$400 income guideline. DSS is bringing into focus the fee scale which would consider assets and resources as a new factor. Department officials indicated the Council has asked for this factor because there are some people who may have \$30,000 in CD's or rather large farm contracts, for example. However, when HHA was under Title XX, this was prohibited.

There was discussion of delaying the review until Tuesday.

Tuttle was doubtful that those who might happen to have \$3000-\$6000 liquid assets and were living on \$100 a week could afford to "dip into those" for homemaker service because they rely on the interest-generating money to supplement social security. She could foresee this group becoming care facility candidates sooner and opposed the concept. Tuttle was willing to put some of her comments in writing and place them in the mail if that would help. Oakley requested copies submitted to his office.

Oakley was amenable to visiting with HHA representatives after the meeting.

Tuttle estimated \$3000 would be scarcely enough for burial expenses and one month of "nursing home" care.

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Priebe asked what Tuttle thought the maximum should be--Tuttle said she was addressing minimums. Priebe was well aware of ICF cost but maintained legislature needed a workable figure.

Tuttle indicated \$10,000 to \$12,000 was a more realistic minimum but favored alternatives. Prior to Title XX, assets as well as life expectancy were considered in a formula which would turn assets into a divided amount of annual income. Re the fee schedule--all agencies have sliding fee scales which go up in increments of 50 cents an hour, rather than \$2 an hour.

Tuttle contended every agency has a fee scale which begins where Social Services aid discontinues--the top for each county would vary. The majority of their provider agencies were in the \$7-\$9 per hour range, which would be prohibitive to counties. --constituents with fairly meager income would be paying the full cost of service very rapidly. Tuttle asked, "Why should those counties be considered in the same rate with a provider who has the higher cost?"

Tieden said the state department had to have some restraint over the maximum cost. Chiodo queried, "restraint, by economic burden?"

Tuttle saw no cost control in the rule--Tieden asked if a hearing were scheduled and Welp replied in the negative--none had been requested.

Priebe inquired if this method were similar to ICF's. Tuttle said costs which were reimbursable were governed under service guidelines and no interest costs were reimbursed.

Welp said to determine resource levels, DSS doubled the SSI figure of \$1500 and added about \$500 for each additional family member. DSS could not offer the service without having a fee schedule. Under Title XX, clients received protective service without regard to their income and resources. With the probability it would be funded entirely out of state funds--DSS could not continue offering services without individual resources. Welp said this was the first year for total state financing of the program.

Salaries of homemaker-health aides were discussed--Tuttle said in Cerro Gordo County, salaries start with the minimum wage and range up to \$5 an hour, for "individuals who have been there a dozen years."

Chiodo made the point legislature would be appropriating 3½ times the money which actually reaches the aides. Priebe wondered why the program was removed from Title XX.



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Fitzsimmons responded Title XX funds were limited. DSS combined chore and homemaker services. Some districts ran out of chore funds and the state was obliged to continue this service out of the homemaker funds.

Priebe could not see why DSS would totally fund with state funds when they could get federal match. Until the funds are gone, why not stick with it. Clark said you either do that or take some other funds out of Title XX. Priebe contended DSS had said "this is the low-priority program".

As to the total dollars last year, Fitzsimmons told Priebe state funds on the homemaker program were \$1,580,000 with a total of \$6,320,000--a \$1 to \$3 match. This year, the DSS is asking for \$6,774,150.

The DSS would realize \$340,000 from fees. Tuttle predicted that projected fee income would never materialize.

Clark wanted further clarification on fee schedule. Welp said service would be offered at actual cost.

Discussion of "protective service" cases outside eligibility guidelines--Clark wondered about care for clients through the Dept. of Health. Welp said the resources in the fee schedule were nonexempt. As to exemptions, homestead, personal effects, furniture, household goods, life insurance up to \$30,000, pre-paid burial funds, one vehicle are not counted as resource.

Clark was unaware of anyone in her county who could or would pay \$8 an hour for service, even though the Dept. has declared them "protective" and in need of service.

Tuttle took the position it would be advantageous for the counties to use their own fee scales. She anticipated their Assn. would be working with provider agencies to include assets as a new facet in their fee scales.

156.3

Clark questioned the deletion of home service in 156.3. Welp said DSS has listed the services an adult protective client can receive without regard to financial or categorical eligibility. She reiterated a fee will be charged for homemaker chore services.

Fitzsimmons added the goal of DSS is to serve the poorest of the poor with the income available. They were opposed to "tight eligibility guidelines."

Willey pointed out a different approach was needed in the rural areas. In Wayne County, they served 92 persons or families with \$17,000.

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Tieden recalled that 3 counties had complied with the budget cut mandate by coordinating efforts so no one was denied services. He acclaimed that practice.

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Chiodo thought Tieden's suggestion coincided with the alternative Tuttle recommended--allowing counties to set their own scale.

Tieden favored an impact statement. Welp asked if lower fees would help. Tuttle responded in the affirmative.

Clark contended the maximum \$16 fee would be prohibitive. Kem spoke of higher rate--\$14.75--for homemaker-health aid provided by DSS personnel as opposed to private nonprofit agencies--in Polk Co., rate is \$6.20 an hour.

It was noted that DSS personnel are fulltime employees realizing fringe benefits.

Tuttle explained 87 percent of their paid hours were basically spent in the home. She was aware of instances where the "down-time" amounted to 35 percent. Department officials said state paid homemakers perform other duties such as supervising conferences and meetings as well as paper work.

Others waiting to make presentation agreed that Tuttle had covered the main points.

Kem estimated that in Polk County about 1200 of the elderly and ill--2/3 over 80 years of age--cannot comprehend the \$200 utility bill, the 89¢ loaf of bread, and the current \$4 or \$6 fee--they will refuse the service and become nursing home care patients.

In answer to Tieden, Welp indicated they would hold a hearing if one were requested.

Recess

Chairman Schroeder recessed the meeting at 10:30 a.m. to be reconvened Tuesday, April 21, at 8:00 a.m.

Reconvened

Chairman Schroeder reconvened the meeting at 8:00 a.m. Tuesday, April 21, 1981, Senate Committee Room 116. Priebe and Chiodo absent.

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Discussion of the sliding scale re homemaker-health services program was resumed. The following individuals were in attendance: Judith Welp, Mary Helen Cogley and Eugene Fitzsimmons, representing Department of Social Services; Pat Howell, Jean Groen and Jo Thornton, Ia. Council for H-HHA Services.

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In response to Schroeder, Welp commented that Fitzsimmons would provide figures on the various levels of service. Schroeder was of the opinion the variation was too great.

Fitzsimmons reported an average hourly cost of \$7.37 for the total number of people served. Tieden questioned the \$16 fee discussed at the last meeting. Cogley pointed out that the Catholic Charities in Dubuque provide specialized services to the handicapped, resulting in a \$28 an hour figure. However, Fitzsimmons had been advised by Larry Jackson the Dubuque agency would discontinue that service.

Welp advised the Committee DSS purchases services in the \$4 to \$28 range--DSS services are \$14. A public hearing had been scheduled in Des Moines for the first part of June and she opined comments would center around the scale.

Cogley distributed a chart of comparative figures for the 7 different agencies providing the services. It was noted that the Health Department also operates with a sliding fee scale.

Howell discussed the criteria for the sliding fee scale and assured the Committee it had been effective for 18 years.

There was discussion of relying entirely on local services--and the effect that would have on the scale. Clark could foresee much variation among counties. Holden wanted to consider the resource requirements. The impact of the pending appropriations bill was considered.

Schroeder mentioned the possibility of DSS preparing figures on the difference between purchase of service as opposed to the existing system.

Motion to defer Tieden moved to defer any further action relating to the fee sliding scale until after the public hearing. Motion carried viva voce.

No further action re Social Services.

Re the energy audit, ARC 1905, Schroeder presented an objection prepared by Royce. The matter of energy policy rules with respect to energy auditors was considered briefly.

Holden moved to object to rule 5.1 on the grounds that the rule was unreasonable.

The following formal objection was drafted by Royce:

The committee objects to subrule 380 IAC 5.1(3) on the grounds it is unreasonable. The subrule appears as item four of IAC 1905 in III IAB 20 (4-1-81). It provides for the certification of associate and class "A" energy auditors; allowing only registered architects and engineers to qualify for the position of a class "A" auditor.

The committee feels that establishing a special category for architects and engineers is an arbitrary distinction having little relation to the actual function of an energy auditor. It is the training and testing requirements of rule 5.1 that should determine who may qualify as a class "A" auditor, not the type of license held by the applicant. If incompetent people can pass the training and testing requirements, those requirements are inadequate and should be upgraded. A licensing requirement should not be the primary tool to measure an applicant's competence because it serves to limit the number of available applicants, without establishing the competence of the applicant to perform the specific task of energy audits.

A rigorous program of testing and training is the fairest way to evaluate applicants. Eligibility is determined purely by the intelligence and diligence of the applicant. While licensing requirements may have some validity as eligibility criteria, they are too inflexible. No matter how competent an applicant might be, if he or she does not hold the required license there will be no hope of attaining the position. This is a common problem with all licensing provisions. In the case of subrule 5.1(3) this problem is aggravated because the subrule actually requires a license (registration) to qualify for another license. This "double licensure" requirement virtually eliminates whatever advantage of practical experience the applicant may have, and overemphasizes the importance of purely academic credentials.

### Objection 5.1(3)

Vote Motion carried with 4 aye votes. Priebe and Chiodo absent and not voting.

Committee briefly perused the pending May 12 agenda. It was noted that filed rules published in the 4/15/81 IAB would be effective May 20, 1981.

No repre- No agency representatives were called to appear for any of the  
sentatives following:

EMPLOYMENT SECURITY[370]	
Employer's contribution and charges, 3.17(11), 3.70(12), 3.74 ARC 1880	3/18/81
GENERAL SERVICES DEPARTMENT[450]	
State communications, ch 3 ARC 1893	3/18/81
HEALTH DEPARTMENT[470]	
Treatment of infant eyes, 2.1 ARC 1898	4/1/81
Physicians assistants, 136.5(4) ARC 1918	4/1/81
Chiropractic examiners, 141.1(9), (16) and (17), 141.1(2) and (3), 141.13(1), (3), (4) and (11), 141.24(3), (5), (6), (7) and (7), 141.62(4), 141.64(1), 141.73 ARC 1868	3/18/81
Chiropractic examiners, reports and records, 141.66 ARC 1869	3/18/81
License to practice electrolysis, 149.3 ARC 1884	3/18/81
NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS[600]	
Licensing, recitals 2.2(4) ARC 1923	4/1/81
PHARMACY EXAMINERS, BOARD OF[620]	
Prescription pricing, 6.7 ARC 1906	4/1/81
PLANNING AND PROGRAMMING[630]	
Weatherization assistance program, ch 19, filed emergency ARC 1909	4/1/81
REGENTS, BOARD OF[720]	
Traffic and parking at Iowa state university, 4.25, 4.29, 4.31 to 4.40, 4.42, 4.43, 4.50 ARC 1891	3/18/81
SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805]	
Substance abuse treatment programs, licensure standards, 3.4(1), 3.22(12)* ARC 1885	3/18/81
TRANSPORTATION, DEPARTMENT OF[820]	
Drivers license, duplicate, (07,C) 13.6(5) ARC 1904	4/1/81

Committee briefly perused the pending May 12 agenda. It was noted that filed rules published in the 4/15/81 IAB would be effective May 20, 1981.

Adjourned Schroeder adjourned the Committee at 8:40 a.m.

Respectfully submitted,

Phyllis Barry  
Phyllis Barry, Secretary  
Assistance, Vivian Haag

APPROVED:

CHAIRMAN