

**MINUTES OF THE SPECIAL MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Time of meeting** The special meeting of the Administrative Rules Review Committee (ARRC) was held on Wednesday and Thursday, May 13 and 14, 1992, in Senate Committee Room 22, State Capitol, Des Moines, Iowa.
- Members present** Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle, H. Kay Hedge, John P. Kibbie, Dale L. Tieden; Representatives Ruhl Maulsby, David Schrader and Jane Teaford. Representative Janet Metcalf was excused Wednesday morning.
- Also present were Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Paula Dierenfeld, Administrative Rules Coordinator; Mary Ann Scott, Administrative Assistant; Caucus Staff and other interested persons.
- Call to order** The meeting was called to order by Chairman Priebe at 10 a.m. and he called up College Student Aid Commission Notice of Intended Action to amend 283—10.17(3) as it appears in IAB 4/15/92 as ARC 2959A.
- COLLEGE AID  
10.17** Stuart Vos explained the amendment relating to the Stafford loan program—early disbursement. He noted that the Federal Department of Education asked that the words "of its determination that the borrower was otherwise eligible for the loan and" be added after the word "documentation" in the last sentence of "b."
- Tieden inquired about the involvement of the Department of Education and Vos explained that the loan is made by a local private lender but while the student is in school, the federal government pays interest on the loan for the student.
- Committee Business** Royce called to the members' attention the letters placed before them regarding the sales tax proposed on management consulting services. He pointed out discrepancies between the Revenue Department and Fiscal Bureau as to the potential revenue from this tax. Royce then noted the letter from Land O' Lakes in Minneapolis supporting Agriculture rule 21—71.6 regarding light butter. Discussion focused on whether there were specific standards in the Iowa Code. Royce advised that the Department has authority to establish standards for food products.
- Royce explained another letter regarding a handicapped individual in Des Moines who was cited for failure to display his handicapped placard. The individual voiced complaint as to the lack of procedure for protesting the fine when the individual had the placard in his possession.
- Motion to refer** Pavich moved that the matter of appeals for handicapped parking violations be referred to the Speaker of the House and President of the Senate for referral to the appropriate committee. Motion carried.
- Doyle suggested that Royce call Tom Renda, Chief Judge of the Court System, and inquire about the procedure for protesting a fine under these circumstances.
- IAB mailing** Barry reminded members that they must notify Linda Benson, Printing Division, of any changes in mailing addresses for their IAB during the interim.
- Minutes** Pavich moved to approve the minutes of the meeting held April 13, 1992. Motion carried.

**COMMUNITY  
ACTION  
AGENCIES 22.3**

Rod Huenemann, Bureau Chief, Division of Community Action Agencies, presented a Noticed amendment to 427—22.3(3) published in the 4/15/92 IAB as ARC 2937A. Huenemann briefed the Committee regarding this amendment to community services block grant—specifically antipoverty services to communities and advised Priebe that the Division wanted to alert the appropriate committees of the possible changes in the substate distribution formula before the next legislative session.

Huenemann noted that the allocation was in the federal block grant appropriations bill.

**EMPLOYMENT  
SERVICES - ch 1**

Priebe announced that Employment Services had been removed from the agenda since a Department representative was not available. Royce saw no problem with the adopted amendments to 341—Chapter 1 which were published in IAB 4/29/92 as ARC 2964A. Royce advised that the duties of Bureau Chief and Deputy Director were being combined and the Deputy Director would serve as Bureau Chief in an attempt to narrow down management. No action.

**CE, Funeral  
Directors  
June Agenda**

In general discussion, Tieden recalled numerous complaints from funeral directors regarding excessive continuing education requirements. Royce advised that the funeral directors should petition the Department for rule making with recommendations for an appropriate number of hours. Priebe suggested that this matter be placed on the June ARRC agenda and that the concerned funeral directors be invited. Unanimous consent.

**PERSONNEL**

Clint Davis appeared before the Committee for the following agenda:

**PERSONNEL DEPARTMENT[581]**

Bumping — separations, disciplinary actions and reduction in force; benefits, 7.3(1), 7.12, 11.3(1)"a,"

11.3(2)"d" and "e," 11.3(4), 11.3(5), 11.3(6)"c," 11.3(6)"1," 15.8, Filed ARC 2948A ..... 4/15/92

**7.3 et al.**

Davis briefed the Committee on amendments to rules in ARC 2948A relative to reduction in force or layoffs for noncontract employees. He said the revisions resulted from their experience with cumbersome rules during layoffs last summer. Davis discussed a temporary layoff which would not require a layoff plan, bumping, or recall from layoff. Rules for noncontract employees would be consistent with collective bargaining agreements. Davis clarified that the amount of notice necessary for layoff would remain at 20 days.

Davis also pointed out deletion of flexibility of departments to bypass certain employees in the event of reduction in force in order to retain gains made through affirmative action hiring programs. The revision was necessary because of two U. S. Supreme Court cases which held this would constitute an illegal act. In July 1991, all departments were issued policy statements regarding the cases. Davis explained an analysis made by the Personnel Department regarding the effect of layoffs on affirmative action programs in state government.

Doyle raised question in 11.3(4)"b," with respect to use of social security numbers in determining preference for retention. Davis explained that the intent was for random selection but he would review the matter.

Kibbie expressed concern about considerable revision in 11.3(6)"c"(3)"3-6." Davis responded that the provisions were broadened to include any nonsupervisory employee. Intent was to include in rules language which previously had been "an understanding with the union." In addition, the provisions surrounding the issuance of a recall will be more flexible. Davis

PERSONNEL(Cont) continued that the word "counties" was stricken because recall was not limited to geographic conditions.

Teaford wanted information on policies which gave rise to the U. S. Supreme Court cases and Davis agreed to pursue the matter.

Responding to Tieden, Davis said that some provisions of the rules were mandatory and other areas were permissive, such as the affirmative action exemption. He added that layoffs last summer were in compliance with the rules in place at that time. After further discussion there was consensus for delaying the rules.

Motion  
70-day delay

Kibbie moved to delay for 70 days the effective date of amendments to 7.3(1), 7.12, 11.3(1)"a," 11.3(2)"d" and "e," 11.3(4), 11.3(5) and 11.3(6)"c," and that 15.8 be excluded from the motion. Motion carried.

AGRICULTURE

In attendance from the Agriculture and Land Stewardship Department were Walter Felker, State Veterinarian, and Ron Rowland for the following agenda:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Pseudorabies disease, 64.153(1), 64.154, 64.155(2) to 64.155(4), Filed ARC 2958A ..... 4/15/92

Standards for light butter, 71.6, Notice ARC 2884A (carried over from April agenda) ..... 3/18/92

Also in attendance were Allan C. Myers and Arthur Small, Keith Myers, Inc., Grundy Center; Terry Poley, Hilltop Feeder Pig, Inc.; Chester A. Miller, Miller Feeder Pig Co.; Jeff Schnell, Iowa Pork Producers Assn.; Bernard Curran, Joe M. Seng and Tomas Nengit, Veterinarians.

Ch 64

Felker explained amendments in Chapter 64 relating to pseudorabies disease.

Regarding movement of feeder pigs, Priebe questioned language in 64.154(4), first unnumbered paragraph, which stated: "The sale must be a valid two-party transaction without commission, brokerage fees, or other finder's fees paid by the seller or buyer to a third party." Felker responded they were trying to preserve the intent of the term "moved farm-to-farm." They saw a need to establish a rule to provide that if a third party becomes involved to where the traceability of the pig becomes questionable, the pig must be identified by tagging. Discussion focused on who is a dealer. Priebe and Felker discussed statutory provisions. Felker pointed out that the Code recognizes the need to identify pigs and ensure that they are not moved indiscriminately. Felker informed Priebe that hogs sold must travel with Certificate of Inspection signed by a veterinarian.

Tieden and Felker discussed methods of identification.

Felker responded to Maulsby that many hours have gone into writing these rules and if exceptions are made for one type of sale or movement, they would have to be made for others as well. He spoke of the possibility of getting pigs from an infected herd and the consequences if it is not identified.

Small, representing Keith Myers, Inc., contended that the Department was changing the law by rule when referring to "farm owner or operator." He referred to Iowa Code section 166D.10 which provides "moved from farm to farm". Small spoke of the significant impact on his client's ability to do business and he urged the Committee to object.

**AGRICULTURE**  
(Cont.)

Chairman Priebe recognized Myers who recalled his trip to Des Moines in July 1991 to discuss this issue with the Department. He had requested a meeting with the Pseudorabies Committee but received no response. Myers recognized the need for identification to track feeder pig herds. He had no problem with ear tagging commingled herds and mentioned the active role his family had played in eradication of hog cholera and other disease control. These records are available for inspection at any time. Myers stated that he had been advised that the original exemption was not intended for feeder pig dealers. He then quoted from Iowa Code section 163.30. He concluded the rule was unnecessary since mechanism was in place to trace pigs back to the farm of ownership.

Kibbie and Myers discussed problems with identification and Myers pointed out that under the Code, a purchaser signs an agreement that pigs will not be commingled.

Felker reiterated that a regulatory nightmare would exist if the pigs could not be traced.

Bernard Curran, a veterinarian and member of the Iowa Pseudorabies Advisory Committee, saw the rules as part of the evolution of the Iowa Pseudorabies Medication Program. He voiced support of the Department in defining farm-to-farm movement.

Tieden reasoned that the ARRC must determine if the rule in question had exceeded the law.

Felker interjected that the attorney general's office had no problem with the rule.

Small reiterated his request for objection to the rule.

**Motion**

Tieden moved to object to 21—64.154(4)"b." Discussion followed. Priebe stated his opposition was limited to the first unnumbered paragraph.

Tieden asked to amend his motion to include only the first two unnumbered paragraphs of "b."

Doyle noted the words "or other owner" in the last sentence of the first paragraph of "b."

Schrader was interested in legal grounds on which to base the objection. Small argued that the rule exceeded the statute. Schrader read from the Code and declared that it contained a reasonable interpretation of "movement from farm to farm."

Further discussion followed on interpretation of movement from farm to farm.

**Defer**

There was unanimous consent to temporarily defer Tieden's motion to allow Royce time to research the statute. [See p. 5204]

**71.6**

Rowland reviewed 71.6 on standards for light butter which was carried over from the April agenda. No recommendations.

**INSURANCE**

Jo Page with the Insurance Division presented new Chapter 70, Utilization Review, relative to managed health care, published as Filed rules in IAB 4/29/92, ARC 2976A. There was brief discussion. No action.

**RACING AND  
GAMING**

Charles Patton represented the Commission for the following agenda:

**RACING AND GAMING COMMISSION[491]****INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"**

Greyhound racing — occupational license fees; exotic wagering; simulcasting; manufacturer's, distributor's, vendor's and occupational licenses; riverboat minimum standards; minimum age for wagering, 7.3(5), 7.3(10)"a," 7.3(18)"d" and "k," 7.3(19)"g," 7.3(20)"d," 7.3(21)"d," 8.1, 8.2(4)"h," 8.2(4)"l" to "n," 8.12(2), 12.9, 22.10(3), 22.14(1), 22.14(3)"a" to "i," 22.18, 25.12, 26.10(6)"c,"

Notice ARC 2955A ..... 4/15/92

Exotic wagering at racetracks, 8.1, 8.2(4)"h," 8.2(4)"l" to "n," 8.12(2), Filed Emergency ARC 2956A .. 4/15/92

There was brief discussion but no recommendations were offered.

**Committee Business  
Meeting Dates**

Before recessing for lunch at 11:55 a.m., the following ARRC meeting dates were confirmed: June 9 and 10; July 14 and 15; and August 11 and 12

**Recess**

Chairman Priebe reconvened the meeting at 1:30 p.m.

**PUBLIC HEALTH  
71.3**

Carolyn Adams and Rose Vasquez represented the Department to review amendments to rule 71.3, Emergency Information System on Pesticides for use by Health Care Providers during Medical Emergencies, published as Notice of Intended Action in IAB 4/15/92 as ARC 2950A.

Vasquez indicated that the amendments would implement Iowa Code Supplement subsection 139.35(7).

Maulsby questioned whether the rule followed legislative intent. Vasquez agreed the health care provider was in the "driver's seat." Adams interjected that the manufacturer must be registered with the Department of Agriculture and the law required the Department of Public Health to establish rules for this emergency information system. This system provides the mechanism for those registered manufacturers selling products in Iowa to protect their trade secrets.

Vasquez informed Tieden that "real-time human exposure" appeared to have a technical meaning.

**PROFESSIONAL  
LICENSURE**

The following agenda was before the Committee:

**PROFESSIONAL LICENSURE DIVISION[645]****PUBLIC HEALTH DEPARTMENT[641]"umbrella"**

Barber examiners — investigation of complaints or malpractice claims, alternative procedures and settlement, and informal settlement; discipline, 20.203, 20.204, 20.212, Notice ARC 2951A ..... 4/15/92

Behavioral science examiners — licensure of marital and family therapists and mental health counselors, ch 30, Notice ARC 2941A ..... 4/15/92

Chiropractic examiners, amendments to ch 40, Notice ARC 2978A ..... 4/29/92

Speech pathology and audiology examiners — investigative and informal settlement procedures, 301.103, 301.110, Notice ARC 2936A ..... 4/15/92

The Division was represented by Susan Osmann, Harriet Miller, and Kathy Williams. Also present were Dr. Kenneth Mueller, Chiropractic Board; Janelle Cowles, Chairperson, and Martin Edwards, Board of Behavioral Science Examiners.

**Ch 20**

Osmann presented amendments to Chapter 20, Barber Examiners, in ARC 2951A. There were no questions.

**PROFESSIONAL LICENSURE(cont'd)** Tieden brought up his concern that continuing education for morticians was excessive. Osmann suggested that these morticians convey their sentiments to the Board and ask for time on their agenda.

**Ch 30** Cowles presented rules for new Chapter 30.

In response to Priebe, Cowles stated that decision to allow oral examinations was determined by the Board. Osmann added that most of the practice Acts do not designate the specific type and the Board establishes by rule what the examination includes. She emphasized that "oral" examinations were not a common practice. The potential for fraud with oral examinations was discussed.

Responding to Tieden, Osmann replied that there was no reciprocity under these rules. However, interstate endorsement allows them to look at other states' licensing qualifications on an individual basis without having a legal agreement.

In reply to Kibbie, Osmann stated that the 300 clock hours for practicum/internship would be in addition to educational requirements, which could include clergy. [30.3(1)"c"(1)"6"]

**Ch 40** In review of Chapter 40, Tieden questioned deletion of specific percentages for a passing grade in 40.13(8). Mueller pointed out that the amendment would allow the examinations to be based on the curve and provide more latitude. Williams expanded on this by commenting on the impossibility of creating different examinations with the same degree of difficulty.

**Ch 301** Osmann presented proposed amendments to Chapter 301 regarding speech pathology and audiology examiners. Metcalf inquired why "administrative hearing officer" was stricken in 301.103(1) and Osmann responded that they would no longer consult with an administrative hearing officer in an investigation but would rely on an assistant attorney general.

**ELDER AFFAIRS** Ron Beane represented the Department for the following agenda:

**ELDER AFFAIRS DEPARTMENT[321]**

Department defined, 1.7, Filed ARC 2962A ..... 4/29/92

Department fiscal policy, 5.16(1), Filed ARC 2963A ..... 4/29/92

**1.7** There were no questions on 1.7.

**5.16** In review of 5.16(1), Doyle suggested adding a comma after "real property" for clarity. Beane agreed to send a letter to the Administrative Code Editor requesting the change.

**EDUCATION** Kathy Collins, Legal Counsel, was in attendance from the Department for the filed rules in IAB 4/29/92 as ARC 2977A, new Chapter 31, Competent Private Instruction and Dual Enrollment. Also present were approximately 30 interested persons.

Collins reviewed changes adopted by the State Board as recommended by the Department following the Notice process. She noted that changes were minor and the Department saw no justification for repeating the Notice process. Collins said that corrections were made in areas where the rules did not "match" the law.

**EDUCATION  
(Cont.)**

Collins summarized as follows:

In rule 31.2(299), on reporting requirements as to competent private instruction, they were divided into mandatory and permissive because of complaints that the Noticed version exceeded Iowa Code section 299.4. Housekeeping items were included here to ensure a smooth testing or portfolio process.

In subrule 31.3(1), significant change was made regarding qualifications to supervise a program of competent private instruction. Proposed rules stipulated either an elementary or secondary certificate and the middle group was covered by both ends. The new law authorizes supervision by a licensed practitioner but the licensure need not match grade level. The requirement remains that a person must hold a license in order to supervise a program unless it is a parent, guardian or legal custodian. The requirement has been relaxed to allow anyone licensed for K-12.

With respect to subrule 31.3(2) regarding teacher's duties, prior rules required face-to-face meeting between the licensed practitioner supervising the program and the family in a home school setting. Commenters raised several concerns about this, including public schools who were providing home school assistance programs. The Department divided home school assistance program and the straight home schooling program. Therefore, "meeting" twice a month has now been changed to "consulting." Much consulting takes place by telephone and since supervision is of the program, some face-to-face requirements were reduced.

Referring to subrule 31.3(3), Collins saw a need for some quality control measure as to the number of families or children any licensed teacher could serve—25 families or 50 children. The limitation becomes the general rule but exceptions can be made by Dr. Lepley of the Department.

Collins admitted the Department had been criticized for retaining some constraints in the area of testing—31.4(2) Three different alternatives will be allowed—public school, accredited private school or nonaccredited private school. An avenue is available for testing in the home when supervised by a licensed person specified by the AEA, school district or nonpublic school. Collins recognized that it was only fair to assume that the child should be tested in the environment where they study and work.

Collins clarified that school districts may provide texts or materials for children under private instruction, but only if available—31.4(4)"b."

Tieden referred to 31.4(2)"c" and asked if it allowed for testing to occur by a nonaccredited school using approved standardized tests. He had received questions on this matter. Collins answered in the affirmative.

Collins continued her comments by addressing portfolio assessment in 31.7(4). Many concerns had been expressed in this area—specifically that a person must have a subject matter endorsement to review and sign off on a student's progress. The Department was adamant that this provision should not be changed. Collins noted that secondary educators tend to focus in their area of expertise. This is not a problem in the elementary area. Although at the present time there are fewer students in home schooling at the secondary level, the Department sees valid reason to retain the subrule.

# EDUCATION (Cont.)

Collins discussed modifications relative to the number and availability of evaluators. AEAs will be training portfolio evaluators and will have evaluators qualified in every subject matter. The obligation for an evaluator for each subject area was removed. Under the new rules, parents maintain contact with one evaluator who will be responsible for locating those with particular subject matter endorsement. Collins noted that the Department had not addressed responsibility for payment.

In 31.3(2), Metcalf expressed concern about disparity in requirements for contact with the student—twice per 45 days of instruction but four times per quarter if instruction is provided by the public school and the private nonaccredited school. Collins responded that the public school is able to count these children and they have an obligation to provide the highest quality program possible. These duties are the minimum, and if a family is concerned about a child's progress or how to present a lesson, telephone contact will be available. Metcalf was concerned that the outside teacher would see a child face-to-face only once each quarter.

Chairman Priebe called for comments from the audience and recognized Jim Poyzer, a home school parent.

Poyzer commended Collins and the Department for many improvements in the rules since the first draft. His concerns centered on limitation on the number of children and families that can be accommodated by the licensed practitioners. Poyzer disagreed on the need for qualifications for training portfolio evaluators and thought the Department could make exceptions. He urged delay of these rules until the next legislative session.

Mary Syversen, a home schooler for eight years, echoed Poyzer's comments and read from written testimony that is on file in the office of the Administrative Code Editor. Her three major areas of concern: Limitations placed on supervising teachers; Christian schools and portfolio evaluators; specific subject matter endorsement for the evaluator; and restrictions on home testing. Syversen urged objection to the rules.

Don Nevins, President of Network of Iowa Christian Home Educators, Redfield, referred to quality control with respect to limitations and was under the impression the quality control came from testing evaluation of the portfolio or from possessing a certified teacher's license and not by limitations. He was interested in conditions to be met before Dr. Lepley would consider exceeding the limitations. He prefers the educators should set the limits with which they feel comfortable. He also expressed concern about portfolio as previously mentioned by others.

Pam Beesley, wife of a Glidden minister, had taught their children at home while residing in Missouri. However, she said she was being labeled incompetent to home school her children by Iowa standards. Beesley voiced frustration that those in home schooling were not notified of the Rules meeting. She viewed the rules as imposing more control even though home schooled children score much above the norm. She opposed AEAs providing trained teachers to assess student portfolios and selling the concept as a convenience to parents. Beesley was vehemently opposed to any testing which was behavioral or attitudinal in certain areas. In conclusion, she saw no need for the rules.

Tieden informed Beesley that the Department was carrying out legislative intent.

**EDUCATION  
(Cont.)**

Priebe interjected that since the March meeting and hearings on the proposed rules, considerable changes and fine tuning had been made on the final version.

Collins stressed that by law if children are taught at home by other than certified teachers the children's portfolios must be evaluated by certified teachers or administered standardized testing.

Kibbie echoed Tieden's remarks and reminded those in attendance of the history of the law, House File 455. He emphasized the need for compromise and practical experience before the legislature can revise the statute.

Colleen Moeller echoed concerns about testing and favored an option free of attitudinal evaluation. She cited the freedom granted under the U. S. Constitution and recommended delay of the rules until the next legislative session.

Tieden failed to understand the concerns regarding testing since there was flexibility in choice. Moeller had been advised by an attorney of the Home School Legal Defense Association that all tests offered to them contain "attitudinal question."

Teaford quoted the second unnumbered paragraph in 31.7(2) which provides an option for the parent, guardian or legal custodian to request permission from the Department Director to use a different test.

Question arose as to why they must seek permission and Priebe stated that guidelines were needed. He suggested notifying an ARRC member or someone on the Education Committee of the legislature in the event permission was denied.

Barbara Phelps, who worked with a Waterloo home school program at the Walnut Ridge Baptist Academy, had problems with distance traveled because of the number of times the licensed practitioner must meet with the families during each quarter.

Collins responded to Tieden that the accredited nonpublic school can send the teacher to the family which she understood was the general practice.

Phelps pointed out a discrepancy in that if she were working independently, she would have to see the family half the number of times required by working through the Christian school. Priebe assured her this would be brought to the attention of the Education Committee during the next legislative session.

Bob Cox, a home schooling parent, could foresee escalating costs resulting from the rules. He opposed penalizing home schoolers financially when statistics confirm their success.

Collins responded that any costs for testing could be eliminated by requesting dual enrollment; video tapes mentioned are optional; and no costs would be involved with training evaluators of portfolios by AEAs.

Linda Dykstra had moved to Iowa from a state that did not regulate home schooling. She opposed portfolio requirements and contended the rules exceeded the law. Dykstra requested that the Stanford Achievement Test designed for Christian schools be included in the rules as an option.

EDUCATION  
(Cont.)

Kathy Hardy, licensed teacher and home educator, read from written testimony on file with the Administrative Code Editor. Hardy viewed the rules as allowing the DOE total control over private education. Collins informed her that Bob Jones University would not be accepted as a testing administrator. She then advised Hardy of the procedure to follow in petitioning the Department or Board for changes in the filed rules.

Clarence Townsend told the Committee of his work with two small Christian schools. He complained about the voluminous rules to implement such a short Act. Townsend pointed out that grade 12 was above the compulsory grade level and that portfolio assessment should be lowered to grade 10. He urged delay of the rules into the next legislative session.

Dwight Duckstein, member of the Board of Iowa Home Educators Association, spoke of concerns outlined in his letter to Senator Priebe which was on file in the Administrative Code Office. He asked the Committee to object to 31.7(1) since changes were made in testing requirements, he contended it was an oversight to retain baseline testing in the portfolio option.

Ed Dickerson commented that he had been a home schooler for eight years and a lobbyist for the Iowa Home Educators Association for three years. He had also served on the Committee that made recommendations to the Department regarding the rules. Dickerson maintained that the status of baseline testing in the statute was ambiguous at best. He spoke of the progress on both sides of this issue and was grateful for time and effort that had gone into the rules. Dickerson commended Collins and the Department for their fairness approach. He was anxious to continue to perfect the program.

Hedge inquired about a possible shortage of trained evaluators. Collins had no idea as to the number of teachers who would be willing to become portfolio evaluators. The Department had asked AEAs to identify anyone willing to complete the training and public schools were beginning to train their staff in portfolio evaluation.

Schrader complimented all involved in reaching the compromises on these rules and recommended to Committee members that no action be taken. He had voted "no" on House File 455.

Maulsby and Kibbie echoed comments on progress in home schooling over the past three years. If problems arise there will be someone to listen.

Chairman Priebe urged opponents of the rules to work with the Department and petition for change. He thanked all who participated. No Committee action taken.

Recess

Chairman Priebe recessed the Committee at 4:20 p.m. to be reconvened Thursday, May 14 at 8:30 a.m.

**Reconvened** Chairman Priebe reconvened the meeting Thursday, May 14, 1992, at 8:30 a.m. All members and Staff in attendance with the exception of Senator Kibbie, who was excused.

**AGRICULTURE** Priebe announced that the agriculture rule on pseudorabies that was deferred yesterday would be discussed at 11:30 a.m.

**HUMAN SERVICES** Representing the Department were Mary Ann Walker, Kathy Ellithorpe, Deb Bingamen, Vivian Thompson, Stan Monroe, Cynthia Tracy, Carl Meisel and Gary Gesaman. The following agenda was reviewed:

**HUMAN SERVICES DEPARTMENT[441]**

Locations for filing Medicaid and ADC applications, 40.3, 40.4(2), 76.1(1), 76.1(3), Notice ARC 2942A . 4/15/92

Federal surplus food program guidelines, 73.4(3)"d"(2), Notice ARC 2974A ..... 4/29/92

Mothers and Children (MAC) — exemption from establishing paternity for children covered by Medicaid,

75.14(1)"c," 75.14(4), 75.14(6), Notice ARC 2975A ..... 4/29/92

Review form for children in foster care and subsidized adoption, 76.7, Notice ARC 2935A ..... 4/15/92

Chiropractors — removal of requirement for repeat X ray, 78.8, Notice ARC 2973A ..... 4/29/92

Intermediate care facilities for mentally retarded, 82.1, 82.2, 82.3, 82.10(1), 82.15(1)"b,"

82.16, Notice ARC 2961A ..... 4/29/92

**40.3 et al** Walker presented amendments to 40.3 et al. No comments or recommendations.

**73.4(3)** In ARC 2974A, Walker informed Priebe that the income eligibility guidelines were set at 185 percent of the federal poverty guidelines. Since inception of the program, they have followed the guidelines used for the school hot lunch program. Priebe took the position that 185 percent was too high since many single people work for less than \$242 per week. Meisel interjected that with this particular program, the federal guidelines allowed the state to set their own income guide limits.

Schrader commented that these commodities were received from the federal government at no cost to the state and he wondered if all the commodities could be distributed with lower guidelines. Meisel did not believe anyone was denied commodities because of the broad base of recipients. No action taken.

**75.14** In review of amendments to rule 75.14, Tieden referred to the preamble, end of third paragraph, and wondered what kind of pressure would be applied when the pregnant woman fails to cooperate in establishing paternity. According to Walker these women would be exempt from cooperation throughout their pregnancies and during the 60-day postpartum period. After that, the individual could be denied Medicaid.

Priebe noted the change from "local" to "county" in 75.14(4) and Walker informed him there would be county offices in every county—some would operate less than full time. No Committee action.

**76.7** No questions or comments on ARC 2935A.

**78.8** No recommendations were offered for amendment to 78.8.

**Ch 82** According to Walker, amendments to Chapter 82 would add federal regulations which should have been included in 1988. These rules would not shift any costs to counties. Teaford questioned detail in the rules. Gesaman defended the

**HUMAN SERV. (Cont.)** language intended to support any adverse action. Walker advised that pending rules for June would address cost containment.

**ENVIRONMENTAL PROTECTION COMMISSION** The Commission was represented by Victor Kennedy and David Wornson for the following agenda:

**ENVIRONMENTAL PROTECTION COMMISSION[567]**  
**NATURAL RESOURCES DEPARTMENT[561]"umbrella"**  
 Revolving fund loans for wastewater treatment, 92.11(2)"c," Notice ARC 2953A, also  
Filed Emergency ARC 2952A ..... 4/15/92  
 Financial responsibility for underground storage tanks — compliance date extension, 136.2(4),  
Notice ARC 2954A ..... 4/15/92  
 Economic Impact Statement, Underground storage tanks, amendments to ch 135 (carried  
 over from March agenda) ..... 2/5/92

92.11 No questions were posed on 92.11

136.2(4) Wornson explained proposed amendment to 136.2(4) which responds to federal requirements to extend the deadline for small operators of underground storage tanks to show financial responsibility. Tieden inquired if there were any problems with extending it now when the date stricken was October 26, 1991. Wornson responded that the rule was primarily nonoperational in Iowa.

Ch 135  
ECONOMIC  
IMPACT There was brief review of the Economic Impact Statement for Chapter 135 which was carried over from the March meeting. Wornson described the Statement as "fairly speculative" even though they tried to be as accurate as possible.

**NATURAL RESOURCE COMMISSION** In attendance for the Commission were Kevin Szcodronski; Randy Clark; and Lon Lindenberg and Randy Edwards, Conservation Officers. The following agenda was taken up out of order:

**NATURAL RESOURCE COMMISSION[571]**  
**NATURAL RESOURCES DEPARTMENT[561]"umbrella"**  
 Agency consent for the sale of goods and services, 1.11, Notice ARC 2968A ..... 4/29/92  
 Hunting, trapping, and fishing license violations — habitual offenders, 15.6(1), 15.6(3), 15.6(4),  
Notice ARC 2966A ..... 4/29/92  
 REAP — county and private grants, 33.30(5), 33.30(6), 33.50(4), Notice ARC 2967A ..... 4/29/92  
 Trapping limitations, 110.5, 110.6 Notice ARC 2965A ..... 4/29/92

Ch 33 Amendments to Chapter 33, REAP, were explained by Szcodronski. No questions or comments.

1.11 Clark presented new rule 1.11 intended to comply with Iowa Code Supplement section 68B.4. No recommendations.

15.6 Clark told the Committee that amendments to rule 15.6 would improve the license revocation and suspension program. He pointed out that the definition of "License" had been expanded to include "reciprocity agreements with neighboring states." With this rule, the Commission will have authority to revoke the reciprocity agreement of a license holder from a neighboring state who violates Iowa's hunting or fishing laws. Lindenberg noted that Iowa was one of the leaders in habitual offenders concerning fish and game.

NRC (Cont.)

Royce inquired about the possibility of a procedure similar to one followed by DOT with drivers' licenses whereby an offense in one state is also considered an offense in the state of licensure. Lindenberg agreed to consider such an approach.

Lindenberg referred to Iowa Code section 109.135 for the penalty for hunting while license is under suspension.

Hedge asked what was considered an "occupied building" in 15.6(3)"b"(4) and was informed it was one with people or livestock.

Clark responded to Schrader that most of the appeals he has dealt with involved one incident with multiple violations that accounted for five points. He added that the rule was directed at repeat offenders but the point system would affect multiple offenses on the same day. Lindenberg clarified for Schrader that failure to have a fishing or hunting license would be only one point, not three—most violations were one point. Lindenberg noted that approximately 2100 entries were in the computerized system with only 89 classified as habitual offenders. Discussion focused on types of offenses and points assessed for these violations.

Lindenberg and Doyle discussed new legislation to address wanton waste of fish and game.

Schrader was interested in the cases that were being appealed and Clark responded that none had gone to hearing since the Commission was reviewing discrepancies on calculations.

There was discussion of the fact that there are no signs posted to clearly indicate size limits for fish.

Department officials reminded the ARRC that conservation officers were still unable to access habitual offender files through radio systems in their vehicles because Public Safety has not completed their role in the process of computerization.

110.5, 110.6

No questions or comments on ARC 2965A, trapping limitations.

REGENTS BOARD

Robert Barak, Deputy Director of the Board of Regents, briefed the Committee on the following agenda:

**REGENTS BOARD[681]**

Suspension of parietal rule at the University of Iowa, 2.2(5), Filed ARC 2938A ..... 4/15/92

Prohibited interest in public contracts, 8.9, Filed ARC 2939A ..... 4/15/92

2.2(5)

Amendment to 2.2(5) regarding temporary suspension of the parietal rule was discussed. Doyle reiterated his suggestion of previous years that the provision be rescinded and readopted if needed. Barak cited bondholders as the reason for keeping the provision in the IAC but under suspension.

8.9

There were no questions or comments on 8.9.

Recess

The Committee was in recess from 9:45 a.m. to 10 a.m.

REVENUE AND  
FINANCE

Carl Castelda, Melvin Hickman, Susan Voss and Larry Cook were present for the following agenda:

## REVENUE(Cont.)

## REVENUE AND FINANCE DEPARTMENT[701]

Computation of tax, determination of a sale and a sale price, taxable sales, exempt sales, receipts exempt from use tax, local option sales and service tax, 14.3, 15.1, 15.9, 16.14, 16.47, 17.8, 32.1, 107.3(2) to 107.3(4), 107.9, Filed ARC 2945A ..... 4/15/92

Sales tax on computer consulting, flying service, storage of household goods, solid waste collection and disposal service, sewage service for nonresidential commercial operations, consultant services, aircraft rental, sign construction and installation, swimming pool cleaning and maintenance, taxidermy, mini-storage, dating services and limousine service, 18.34(3)"d," 26.21, 26.42, 26.71 to 26.80, Notice ARC 2943A, also Filed Emergency ARC 2944A ..... 4/15/92

State income tax withholding from pensions, annuities and nonwage payments; lump sum distributions from retirement plans, 46.1(2), 46.1(2)"a," "b," "d," and "e," Filed ARC 2970A ..... 4/29/92

14.3 et al.

Castelda explained ARC 2945A and informed Tieden that he could foresee no financial gain or loss for the state with the rules which respond to a Supreme Court decision. Tieden inquired about the "Quill issue" (tax on mail order sales) and Castelda said this issue was recently argued before the U. S. Supreme Court and decision could be made within the next 30 days.

46.1(2)

There were no questions re 46.1(2).

18.34 et al.

Emergency rules pertaining to new sales tax on certain services were before the Committee. Castelda stated that the rules encompassed a dozen issues and basically addressed the expansion of sales tax into new services effective April 1, 1992. He spoke of the difficulty for the Department to draft the rules in the short period of three weeks and to alert the public. The area of garbage and sewer was difficult since only nonresidential service will be taxed. The Department has provided a formula to be used for this.

Hickman explained there were certain exemptions for solid waste that were not applicable to mixed solid waste. The Department plans to include examples in the rules.

Castelda informed the Committee that the Department had been petitioned for a declaratory ruling by a CPA firm—McGladrey and Pullen.

Priebe was cognizant of the problems experienced by the Department and it was his understanding the law might be repealed.

Castelda described the tax on certain consulting services as a controversial issue. He noted the public hearing was scheduled for May 21 at 10 a.m. and five organizations had already signed to participate. According to Castelda, the emergency rules were basically information they found from the state of Connecticut which has a statute similar to Iowa's. In other states tax on consulting services is very broad based with no exclusions.

Discussion focused on the consulting tax. Licensed accountants have taken the position that consulting falls under the sanctions of their board. Boards have very broad authority over these professions (CPAs, attorneys). The Department has taken the position now that if the work is subject to sanction, review or control by the professional licensing board, then there should be no tax.

Priebe was informed that a farm manager who consults with farmers on planting grain in certain fields, for example, would be subject to tax.

Castelda reasoned that the statute was subject to challenge as to its constitutionality.

## REVENUE(Cont.)

It was the Department's intention to rescind the rules following the hearing and adopt other emergency rules including additional examples and clarification based on their experience with the new law. The Department was hopeful that the General Assembly would repeal this tax. They disagreed with the Fiscal Bureau's 9 million dollar estimated revenue. The Department has issued only 42 sales tax permits with an additional 110 to process and their estimated revenue was less than 3 million dollars.

Responding to Metcalf, Castelda said the first tax returns were due May 20. When the tax was imposed, the GA included a general exemption for services that were provided under contracts in effect prior to March 1.

Regarding the sewer tax, Metcalf noted that the city of Des Moines did not separate their sewer accounts by residential and commercial. Castelda pointed out that this law was effective on April 1 and grace periods were not allowed. Hickman interjected that the Department was asked if an estimated payment could be made and their advice was in the negative.

Castelda said the Agency would recommend taxing both commercial and residential garbage and sewer to replace money lost from the consulting tax. He pointed out all other utilities were subject to tax.

No formal action.

SECRETARY OF  
STATE

Sandy Steinbach presented amendments to adopted rule 721—21.12 relating to satellite absentee voting stations published in IAB 4/15/92 as ARC 2947A.

21.12

Tieden asked if there were adequate safeguards against voter fraud and Steinbach replied that it would be addressed in the same manner as it would be at the polls. Absentee ballots could be challenged before they are counted prior to election.

DOT

Robert Studer and Fred Walker represented Transportation for the 70-day delay on rule 761—40.6, relating to liability for highway damage, filed in IAB 2/5/92 as ARC 2742A.

The Committee had contended that the rule exceeded the statute (§321.475) which limits damages to those resulting from illegal operation or excess weight. Department officials were willing to rewrite the rules.

Motion  
Delay into GA

Schrader moved that rule 761—40.6(321) be delayed until adjournment of the next General Assembly. The delay would be lifted when the revision was before the Committee. Motion carried.

## UTILITIES

Allen Kneip, Cindy Dilley and Diane Munns were in attendance for the following agenda and there were no recommendations:

## UTILITIES DIVISION[199]

## COMMERCE DEPARTMENT[181]"umbrella"

Deregulation, reregulation, and service regulation of communications services and facilities, 5.1, 5.2, 5.6,

5.7, Filed ARC 2957A ..... 4/15/92

Gas and electric service — payment agreements, 19.2(4)"c"(21), 19.4(10), 19.4(16)"h," 20.2(4)"z," 20.4(11),

20.4(16)"h," Filed ARC 2940A ..... 4/15/92

Energy adjustment clause, 20.9(2)"b"(5), 20.9(2)"e," 20.9(3)"a" to "e,"

Notice ARC 2972A ..... 4/29/92

## AGRICULTURE

Chairman Priebe called up the Tieden motion to object to 21—64.154(4)"b" which was deferred on Wednesday. Present for the continued discussion was Walter D. Felker, State Veterinarian.

Priebe opined there was agreement on movement from farm to farm. He suggested that a new rule be drafted to provide that a farmer selling the pigs and the receiver sign off that the pigs were loaded on a truck and went directly to the receiver. Felker commented on the difficulty of getting the signatures on the same paper.

Hedge interjected that if the intermediary has problems with the paperwork, ear tagging was still an option.

Schrader indicated that he would vote against this objection because of insufficient grounds. It was his opinion that the rule was consistent with the Code.

*Objection*

The motion to object to 64.154(4)"b," unnumbered paragraphs one and two was before the Committee. Motion carried. Schrader was recorded as voting "no."

The following objection was prepared by Royce:

At its May 14th, 1992 meeting the Administrative Rules Review Committee voted to object to the provisions of 21 IAC 64.154(4)"b", unnumbered paragraphs one and two on the grounds they are beyond the authority of the department. These provisions appear as part of ARC 2958A, published in IAB Vol. XIV, No. 21 (04-15-92).

The language at issue establishes a definition for the term "moved farm-to-farm". In essence the provisions allow pigs to be moved from farm to farm, without the requirement of ear tagging, only if the transfer is by a farmer to a farmer, without the use of any third party brokers or agents. The definition implements the provisions of Iowa Code section 166D.10, which states in part: "[A] native Iowa feeder pig moved from farm to farm within the state is exempt from the certificate of inspection's identification requirements [tagging] if the owner transferring possession and the person taking possession state on the certificate of inspection that the feeder swine will not be commingled with the other swine for a period of thirty days."

It is the feeling of the committee members that the statute is explicit on the terms of the exemption. First, the pig must be moved intrastate, from farm to farm. Second, both the transferor and the transferee state that the pig will not be commingled with other pigs for thirty days. The department would add a third criteria not even hinted in the statute. The committee believes that the terms of the statute are clear on its face and that the department may not add additional qualifications of its own.

## CORRECTIONS

Present from the Department were Fred Scaletta and Jeanette Bucklew; Warden Crispus Nix and Deputy Warden Paul Hedgepeth, Iowa State Penitentiary, Fort Madison. The following agenda was considered:

## CORRECTIONS[201]

Iowa state penitentiary visitation, 21.2, 21.5, Notice ARC 2807A (carried over from March agenda) ..... 2/19/92  
OWI programs, 47.1 to 47.4, Notice ARC 2934A (carried over from April agenda) ..... 4/1/92

**CORRECTIONS**  
**47.1-47.4**

Proposed amendments to 47.1 to 47.4, addressing OWI programs had been carried over from the April agenda.

Metcalf questioned rescission of 47.4(4) which required job readiness training for inmates. Bucklew pointed out that employment was covered as part of the programming in 47.4(6) and 47.4(12). She continued that one of the criterion for discharge was a satisfactory work record for at least 90 days. Metcalf wanted assurance that parolees had some skills when discharged from correctional facilities.

Bucklew noted anticipated changes following the Notice. Legislation in 1989 allowed people sentenced to the OWI program to be placed directly in the community facilities without the admission process through Oakdale. In 1990, the Legislature allowed the Department to have a continuum of programming—some OWI offenders who previously would have been sent to an OWI Program would go to prison because they represent a great risk to the community. Also, a new option has been created for repeat offenders who have participated in OWI programs with success and have been out in the community. Instead of going directly into the program, they may be incarcerated for 21 days in prison as "shock-type" therapy. Bucklew emphasized that the bulk of offenders would go directly into the community OWI programs.

**21.2, 21.5**

Amendments to Chapter 21, governing visitation at Iowa State Penitentiary (ISP) at Ft. Madison including the John Bennett Center and Farms 1 and 3 were before the Committee. Scaletta cited budget cuts and staff shortages as reasons for reduction in visiting hours and visiting rooms at the ISP. He referred to his memos to the Committee dated March 25 and April 15, 1992, which addressed changes to be made following the Notice. Visiting hours will be 12 Noon to 7:45 p.m. and closed days will be Monday and Tuesday instead of Tuesday and Wednesday.

Scaletta advised that the rules were being challenged and litigated at the end of May and he requested the ARRC to take no position at this time.

It was clarified that the rules were limited to the penitentiary and its satellites which include John Bennett Center and Farms 1 and 3.

Hedgepeth explained their procedure for determining visitation. Records revealed there were few visitors after 5 p.m. (about 110 for the entire year for 69 inmates) and a total of 7,000 visitors for the year, excluding the farms.

Scaletta clarified that the inmates will be allowed the same number of visitors and visits.

In view of possible litigation, Schrader recommended that adoption of the rules be delayed. Royce interjected that if the court authorizes the Department to make the change, the ARRC would have no legal grounds to object to the rules. Their only power would be to delay prior to the effective date of the rules.

Schrader questioned Royce as to whether a court decision takes away the Committee's objection power. Royce did not recall this situation but he took the position that if a court of law holds a rule to be lawful, the ARRC could not object to it as being unlawful.

State Representative Jack Holveck spoke in opposition to the change in the rule that cuts the visiting from 56 to 37.75 hours. He alluded to the legislature's

**CORRECTIONS  
(Cont.)**

commitment to shoring up family structure and contended the rules convey the wrong message. He cited location of the prisons as creating hardship for families who must travel long distances.

Nix responded that they now have 39 vacancies in staff job openings and are 200 work orders behind in maintenance. He spoke of the great need for money to improve the aging facility. Nix pointed out that Iowa's visiting hours are far more lenient than Kansas, Missouri and Minnesota.

Patricia Hulting, an attorney, whose office represents an inmate in the penitentiary noted that the Department of Corrections had been under an injunction since 1986 regarding change in the visiting hours. She declared they had no authority to take this action. She did note that each institution is different and has different needs. Hulting felt that additional security staff would be needed with increase in the number of visitors during shorter hours.

Pam McKee spoke in opposition to change in visiting hours since the interaction helps the inmates prepare for integration into society.

Bill Douglas, Director of Criminal Justice Ministries (CJM), questioned the reduction of number of visits at John Bennett Minimum Security from 12 to 5.

George Petersen, member of CJM, favored Sunday morning visiting privileges.

Barbara Jones, Co-director of Iowa CURE, echoed previous statements and said without the opportunity to visit, family relationships will deteriorate.

Hedge inquired about the statistics mentioned by Hedgepeth regarding visits. Hedgepeth reiterated that for an entire year, 69 inmates had visitors after five o'clock. One hundred ten people visited those 69 inmates and he cited percentages from various locations.

Bob Cook, Co-director of CROSS Ministries, concurred with reasons visiting hours should not be changed.

Renee Hall, concerned citizen, opposed restricting visiting hours, and favored ways to keep families together.

Jean Bassinger, member of CJM, attended a "Truth in Sentencing" hearing conducted by Attorney General Bonnie Campbell. Bassinger inferred that Campbell had visited with all of the wardens and they agreed that keeping families and friends in contact with those in prison was important.

Doyle inquired why the John Bennett rules were being changed. Nix cited reduction in number of visiting hours. Hedgepeth had no statistics on the number of families of inmates living in the Ft. Madison area.

Sherry Smith, wife of an inmate, pointed out that each visitor does not get 12 visits, but each inmate is allowed 12 visits per month. Twice each year she plans a week's vacation to spend at Ft. Madison to be with her husband. The change in the rules would preclude this.

Hedgepeth recognized that all problems would not be resolved.

Nix emphasized that he has a practice of making exceptions for those who drive great distances.

**CORRECTIONS**  
(Cont.)

Doyle asked about authority to waive the rule and Hedgepeth responded they were able to make exceptions.

Doyle opined there should be preference for a spouse. He inquired of Smith if she had problems because someone else had used her husband's visiting hours. She responded that she had not, but if visits per month were reduced to five this would be a problem. Nix indicated that distance and the frequency of visits are criteria he follows in making exceptions.

Hedgepeth responded to Hall and Petersen regarding problems of inappropriate activities that occur in the visiting room.

Chairman Priebe informed the audience that these rules were proposals under Notice and until they were published as adopted and filed, the ARRC could not take any action. He stressed that interested persons could attend the ARRC meeting when the adopted rules were on their agenda.

No agency representatives were requested to appear for the following:

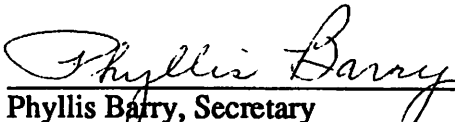
**TRANSPORTATION DEPARTMENT[761]**

Motor vehicle division change of address, 1.8(5), 400.6(2), 400.17(1)"a," 405.12(1)"a"(1), 405.15(1)"a"(1), 410.2(1), 500.3(4)"a," 500.3(6), 500.12, 505.3(2)"b," 505.3(4)"a," 505.3(5)"c," 505.3(7)"c," 505.4(12)"b," 505.6(2)"b," 510.5, 510.6(1)"a," 511.4(1)"a," 513.3, 523.2(1), 523.7, 523.8(4), 525.5(1), 525.7, 525.14(4), 528.4(1), 528.7, 528.11(4), 529.2, Filed Emergency ARC 2946A ..... 4/15/92  
Farm trailer inspection and registration exemption, 400.1(3), Notice ARC 2960A ..... 4/29/92

Chairman Priebe adjourned the meeting at 12:30 p.m.

The next regular meeting was scheduled for June 9 and 10, 1992

Respectfully submitted.

  
Phyllis Barry, Secretary  
Assisted by Mary Ann Scott

APPROVED:

