MINUTES OF THE SPECIAL MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Wednesday and Thursday, October 14 and 15, 1981.

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

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

Convened

Chairman Schroeder called the meeting to order at 10:00 a.m. in the Legislative Dining Room. The Board of Dental Examiners was represented by Dr. Gene Hauk, Chairman, and Peter Fox, Hearing Officer, for discussion of the following:

DENTAL EXAMINERS, BOARD OF[320]
Dental assistants engaging in dental radiography, training standards, ch 22 ARC 2139 ..... 9/16/81

BOARD OF DENTAL EXAMINERS
ch 22
ch 42

Royce noted that amendments to chapter 22, Dental Examiners, and chapter 42, Health Department, with respect to radiation were before the Committee and he wondered why the need for two sets of rules. Hauk responded they were unaware of any controversy surrounding the rules. The public hearing was scheduled for November 13, 1981. The president of the Iowa Dental Association had communicated their interest in an exemption for certified dental assistants. Hauk said the Board does not support any exemptions, but would consider other alternatives.

22.4

Chiodo was informed that the Radiation Emission Safety Act of 1979 was the impetus for the rules. In re 22.4, Hauk pointed out the Board preferred an update mechanism for anyone covered by the grandfather clause. In their opinion, a dental radiography assistant should be required to work one year--some have graduated from dental school just prior to entering this program.

In response to Oakley, Fox cited §136C.3(3) as authority for chapter 22 and Oakley recommended that cite be included in the rule. In re 22.7(2), Oakley questioned the authority for the $5 fee. Fox admitted the point was valid but they relied on §136C.3(5). Oakley preferred further discussion and clarification of the matter and offered to confer with Fox and the legal counsel of Health Department prior to adoption of the rules. Holden viewed the rules as being broader than the legislature intended. Schroeder urged that consideration be given to consolidation of rules with respect to radiation.

22.4(3)

Clark, in re 22.4(3), wanted to know the impact on the individual who had two years of experience, dropped out and then returned to work. Hauk responded they would be required to take an examination. Clark requested removal of "said" and "such in 22.5(2), redundant language in 22.7(2), and removal of repetitious langune in 22.8, 4th line.

DENTAL EXAMINERS Continued

Hauk emphasized the rules had strong support from the Board and organized dentistry. However, they will address the questions raised. He responded to Schroeder that 22.4(3) was intentionally strict supervision since only a licensed dentist can authorize use of radiation treatment under the law.

HEALTH DEPARTMENT

Peter Fox and Mark Wheeler, Hearing Officers; Don Flater, Supervisor, Radiation Health Unit and Ken Hawes, Speech Pathology, were present on behalf of the Health Department. The following rules were reviewed:

HEALTH DEPARTMENT[470]

Milk and milk products, eating and drinking establishments, rescinds chs 13 and 14. ARC 1683 terminated ARC 2336 ..N..... 9/16/81

Vital statistics, 96.2, 98.7, 99.7, 100.5, 101.9, 102.10, 104.3. ARC 1639 terminated ARC 2337 ..N..... 9/16/81

Speech pathologists and audiologists, continuing education, 156.2(1), 156.2(2), 156.2(4) ARC 2340 ..N..... 9/16/81

Speech pathologists and audiologists, ethics, 156.112(3) ARC 2341 ..N..... 9/16/81

Reporting requirements, hospitals and health care facilities, 204.1(1), 204.1(2) filed emergency ARC 2362 ..PA..... 9/30/81

Radiation emitting equipment, operating procedures, ch 42 ARC 2335 ..F..... 9/16/81

Speech pathologist and audiologist license, also aides, 155.3(2), 155.3(3)"b" and "d", 155.4(1), 155.4(4)"b", 155.7, 156.4(3), 157.5, 156.4(2) ARC 2338 ..F..... 9/16/81

Fox explained reason for terminations of Notices. Wheeler conveyed to Tieden, the vital statistics rules would be Noticed a second time to allow for public participation -- IAB 10/14/81. The filed emergency rules will remain in effect[IAB 7/22/81].

Ch 156

Chapter 156 amendments implement the two-year license renewal for continuing education statutes. Fox pointed out that, in 156.2(2), continuing education hours were reduced. Hawes discussed the 30-hour requirement. The Department preferred a more clinical and realistic approach and reduced the requirement to 15 hours per year for the relatively new profession.

Tieden had been assured that "curbstone" hearing aid dispensing would be halted. However, he observed that advertising continued in county papers. Hawes was cognizant of the problem and indicated they were working with the attorney general.

In discussion of private practice of audiologists as compared to public employment, Hawes commented there were 80-90 acting audiologists--however, more have been licensed. He continued that most do not dispense hearing aids. DPI has had certification requirements for several years. Review of the certificate process is pending. Holden could envision a potential enforcement problem with public audiologists working "on the side" in private practice. Hawes contended DPI had been successful in resolving that problem.

156.112(3)

There was general agreement that it would be helpful if the introductory language of 156.112(3) were included with the proposed paragraphs. Oakley recommended that the two documents amending chapter 156 be combined when the they are adopted.

ch 240

No questions or comments on chapter 204.

ch 42

Discussion of chapter 42. In Schroeder's opinion, the Department standards for radiation should encompass all radiation standards, including dental radiography [ch 22]. Flater indicated that would necessitate rewriting chapter 42. Schroeder recommended they pursue that approach, and Wheeler agreed to cooperate.

HEALTH DEPARTMENT Continued

Holden and Priebe could envision a new occupational license without a fee. Wheeler declared every effort was made to avoid licensing requirements. Tieden questioned the need for conditional diagnostic radiographer in 42.1(2)c. Flater said there were individuals located too far away from educational institutions and hospitals and they were unable to obtain the necessary education. Tieden pointed out incorrect punctuation in 42.1(8).

42.1

Schroeder questioned the change in hours of supervised clinical training. Hawes replied the Department has followed 300 hour criteria for quite sometime without a rule. Responding to Holden in re 157.5(147), Hawes said aides were not licensed. Hawes continued that Iowa has no shortage of licensed personnel but smaller communities often lack funds to hire licensed speech pathologists and audiologists..

157.5

155.3, 155.4

Tieden inquired about impact of 155.3(3) and 155.4 if the licensee certificate is not dated within five years of application for licensure. Hawes indicated re-examination would be required. This would pertain to individuals who move from state to state. Flater said aides seldom return to college to earn a master's degree--a prerequisite for licensing.

Recess

Chairman Schroeder declared a ten-minute recess in order for the Committee to move to Room 24.

Reconvened

Committee reconvened in room 24 at 11:15 a.m.

SOCIAL SERVICES

The following agenda was before the Committee:

SOCIAL SERVICES DEPARTMENT[770]
Economic impact statement, juvenile justice county-base program, 141.5(2), (3) ARC 2262 N 8/19/81

SOCIAL SERVICES DEPARTMENT[770]
Council-quorum, 1.2(1), 1.2(3), filed emergency ARC 2315 ..F 9/16/81
Supplementary assistance, eligibility, 51.4(1) ARC 2365 ...N 9/30/81
Burial benefits, 56.3(1)"a" ARC 2316 ..... N 9/16/81
Medical assistance-prescribed drugs, 78.2(2)"a", filed emergency after notice ARC 2317 F,E,N 9/16/81
Licensing and regulation of child foster care facilities, 112.2(2) to 112.2(4), 112.4(2), 112.6(2)"d" and "e", 112.9 ARC 2366 ...N 9/30/81
Homemaker-home health aide services, 144.3(1), 144.4, 144.5 ARC 2367 ..N 9/30/81
Economic impact statement, detention facilities ARC 1838, 3/4/81 .....N 9/30/81

Medical assistance, sanctions against provider of care, 79.2 ARC 2318 F 9/16/81
Foster family homes, 113.14, 113.15 ARC 2319 ...F 9/16/81
Group living foster care facilities for children, ch 114 ARC 2321 ..F 9/16/81
Comprehensive residential facilities for children, ch 115 ARC 2322 .F 9/16/81
Residential facilities for mentally retarded children, ch 116 ARC 2323 .F 9/16/81

Appearing on behalf of the Department were Judith Welp, Research Policy and Analysis; Douglas Main, Paul A. Muller and Wendall Willard, Jail Inspection; Miriam Turnbull, George Keiser and Jim Krogman, Adult Corrections; Joe Mahrenholz, Medicaid; Jim Hennessey, Cris Perkins, Children's Services; Also present: Robert Harpster, League of Iowa Municipalities; Bill McCarty, Linn County Youth Facilities; Jerry Kopke, Polk County Juvenile Home; Merlie Howell, Coalition - Family and Children Services; George Belitos, Youth and Shelter Services, Inc., Ames; Mary Richards, Story County Attorney and Neil J. Carolan, Story County Juvenile Court.

ch 15

Chairman Schroeder announced review of the economic impact statement relating to local detention facilities, ARC 1838, chapter 15. In response to Clark, Keiser said the controversial language re jail classification was stricken. The Sheriffs Association contended that any facility which holds an individual more than 24 hours ought to be identified as a jail. Oakley announced that the Department intends to submit recommendations to the DSS Council in October and the "Crime Commission Needs Assessment Study"

SOCIAL SERVICES Continued

will be completed. Harpster reviewed a provision pertaining to the noise standard in detention facilities and he referred to the League's interest in 770-15.6(16). Although they didn't oppose the standards, they could forsee local communities faced with noise level violations. Keiser agreed to meet with Harpster to address their concerns.

Discussion moved to the economic impact statement[IAB 8/19/81] re juvenile justice county-base programs for children in need of assistance or children who have committed a delinquent act.

Perkins reviewed information which DSS mailed to the Committee regarding comparison of funds involved in care and treatment reimbursement prior to the time of audit. She explained the substantial reduction in reimbursement under the county base program--approximatley $33,000 monthly prior to the audit and $16,000 afterward. Examples of expenditures for Linn and Story Counties were included. She admitted there had been much confusion in Linn County as a result of inadequate instructions from DSS. Perkins discussed the agreement reached between Linn County and DSS as to reimbursement for FY1980.

In commenting on Story County, Perkins said the issue was a general question of foster and shelter care--not detention. Linn County favors shelter care reimbursement under the county base program rather than foster care. She reminded ARRC that DSS has taken the position they will not reimburse for detention services.

Oakley inquired as to why Clinton County had made no claims and Perkins attributed it to a possible lack of understanding on the part of the probation officers. The auditor's office is responsible for submitting claims. Perkins continued the court does not have to order the Department to pay. If the court orders a particular service for foster care, DSS is responsible. Schroeder wondered if DSS had ever refused payment. Perkins was unsure.

McCarty addressed the Committee regarding the latest information which he had not seen until this morning. He opined it was misleading in terms of cost. McCarty estimated additional amount due of $263,000--about $150,000 more than DSS figures. Linn County's interpretation of §232.141 was that counties be reimbursed for adtional cost related to the juvenile code. According to Perkins, the same issues are still in dispute but the Department is providing guidelines for administering the program. She emphasized DSS is willing to work with county officials to propose legislative changes for funding.

McCarty indicated they preferred not to challenge the Department on a legal basis. Oakley interjected an alternative might be to appear before the State Appeal Board.

Richards recalled that although negotiations have been made between counties and DSS since June, there was still dissatisfaction. She considered tables to be rather deceiving. DSS has required counties to apply for foster care reimbursement under §234.36. Story County will eventually be reimbursed, but out of a different line item. This would have no economic impact, in her opinion. Story County concurs with Linn that DSS lacks legal basis for disallowing detention costs.

SOCIAL SERVICES Continued

Discussion of Committee's options. Royce pointed out the rule was under Notice and the Committee, under 17A, has no power until rule is adopted in final form. General discussion with Priebe questioning DSS authority for their decision.

Perkins pointed out that DSS made the decision against writing administrative rules for the particular expenses to be allowed in the program. They interpreted the Code to be specific enough in identifying those services. She said there were two AG opinions addressing the matter. Richards disagreed.

Perkins could not deny that the figures did not represent a true economic impact. McCarty disagreed with Perkins and contended costs were being shifted to counties.

No formal action was taken.

Lunch

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

Reconvened

The Committee reconvened at 1:40 p.m. Welp explained amendments to 51.1(4), 56.3(1)a and 78.8(2)a and no suggestions were offered.

SOCIAL SERVICES

112.2

There was discussion of 112.2(2) which adds definition of group foster care facilities to the chapter. Responding to Tieden, Turnbull said the former law addressed children's boarding homes and that was changed to community facilities. Tieden wanted assurance there was authority for the change. According to Turnbull, chapters 114, 115 and 116 on today's agenda answer his concern.

144.3, 144.5 79.2

No questions raised re 144.3(1), 144.5, 144.5(9). Rule 79.2 clarifies sanctions which can be imposed against a provider of medicaid for violations. Responding to Schroeder, two comments had been received; one was concerning lack of appeal procedure. It was noted opportunity for argument is provided.

113.14, 113.15

Welp said 113.14 and 113.15 add procedures for checking references and for unannounced visits in foster family homes.

ch 114 ch 115 ch 116

Chapters 114, 115 and 116 pertain to group living facilities for foster children; physical standards, staffing, safety, personnel policies and services expected to be provided. Chapter 114 applies to all the different types of group facilities. Schroeder was advised that DSS had worked with representatives from these homes in creating the rules.

Committee members (Schroeder, Priebe and Tieden) voiced opposition to inclusion of 114.20(2), which prohibits corporal punishment. Krogman stressed that these agencies are "running a business and working with difficult children. It is not a parent-child situation." He added that the providers wanted the rule included to avoid potential abuse of children. Priebe had received calls requesting deletion of the rule.

Turnbull pointed out that children in these facilities were primarily over the age of 10 years where spanking would be "difficult--more likely would be a beating!"

There was general disagreement as to whether a 10-year old child could be spanked. Priebe insisted, "A 'splat' corrects them."

SOCIAL SERVICES Continued

General discussion with Turnbull emphasizing that a written disciplinary policy is required and she stressed there are techniques for learning physical restraint which are taught in group residential courses. Clark reasoned that discipline by hitting the child was ineffective and would not develop self-discipline. She continued a good worker can make a child much more contrite by other methods. Tieden disagreed. Clark concluded the rule provision would place a burden on the administrator to guarantee that employees in an institution, in the midst of anger or whatever, be able to know just how much force to use.

114.20(2) Schroeder took exception to singling out 114.20(2) to be communicated in writing to all staff. Krogman reiterated the problem was not with administering a spanking, but the possible abuse. Preibe questioned the prohibition of spanking and the approval of use of chemicals for restraint. [114.20(4)] His preference was spanking. Welp and Krogman reminded members that all three chapters must be considered. Chapter 114 addresses the lowest level of secure care--a nonsecure care where there are prohibitions; chapter 115 adds additional standards for comprehensive care and can be secure, with locked cottages. Priebe totally disagreed.

Turnbull commented the Department met with providers. Many facilities routinely care for very difficult children and use all of these types of restraint so written policies are necessary. Based on the fact that the restraints would be part of a treatment plan, DSS allowed them and provided guidelines.

Clark commented the "difficult children" are often from homes where "hitting" is the only discipline they have ever known.

Although Tieden disagreed with the philosophy, he admitted the Department was carrying out legislative intent. Schroeder insisted all restraint policies should be communicated in writing to the staff. Department officials contended this was present practice. The other types of restraint are listed in chapter 115.

No recommendations were offered for chapter 115. Welp said chapter 116 contains additional requirements for residential facilites that care for mentally retarded children. Turnbull explained the changes and called attention to a higher staff ratio because the children are handicapped. However, there is less requirement for professional training on the staff.

116.3(1)a Priebe questioned the requirement for a high school diploma for the paraprofessional. In 116.3(1)a(2), Committee members requested clarification of criteria for staff qualifications. Any individual who has worked in the health care field, but lacks a high school diploma would be excluded from a position even though they were an outstanding employee. Members doubted this was the intent of DSS. Turnbull agreed to review the provision.

Discussion of staff to client ratio in 116.4.

SOCIAL SERVICES Continued

With respect to physical standards--114.3--Tieden was interested in knowing how absolute the variance factors were. Turnbull thought a slight variance for dimensions would be considered and they plan to set it in rule form. Schroeder suggested a 10% variance as a compromise. Tieden indicated he would be content with a 5% variance. However, Clark pointed out that uniformity was not always fair.

Oakley observed that it was difficult to use discretion and draw a line between arbitrary rules and he cautioned that variance procedures were most expensive.

Schroeder could see an advantage in going through local Boards of Health. According to Turnbull, the boards do not want to be involved.

116.3, 114.4

Holden asked that "degree" be included in 116.3(2)a and requested clarification of 114.4(1)b. In re 114.4(1)h, he took the position the term "enclosed solid door" should be defined. Turnbull agreed to review areas of Committee concern.

PHARMACY BOARD

Norman Johnson, Executive Director, and Patrice K. Beam, Administrative Assistant, appeared on behalf of the Board of Pharmacy for review of medical assistance Act participation, rescinding 6.10, and Discipline, 10.1(2), 10.1(4)a, filed emergency, ARC 2381, IAB 9/30/81. Amendments to chapter 10 were rescinded at ARRC request. The subject is now under Notice to allow for public participation.

Recess

Chairman Schroeder called for a 5-minute recess.

PROFESSIONAL & OCCUPATIONAL REGULATION COMMISSION

Richard Woods appeared for Professional and Occupational Regulation Commission rules pertaining to day care providers, 5.2(2), ARC 2325, IAB 9/16/81.

No recommendations were offered.

INMATE TRANSFER HEARING BOARD

The following rules were before the Committee:

INMATE TRANSFER HEARING BOARD[505]
Organization and operation, ch 1; Notice and conduct of hearing, ch 2 ARC 2380, also filed emergency ARC 2379 (Notice) 9/30/81

Oakley introduced Nancy Shimanek, Governor's Staff Liaison, who attended the initial set of hearings held by the Inmate Transfer Board regarding their rules. Oakley indicated that he had assisted in the draft of the rules to implement §217.22, The Code, which has been in existence since 1973[65GA,ch178]. The Board was appointed last winter by the Governor in response to request by the Federal Bureau of Prisons. According to Oakley, inmates transferred to other states have had some kind of due process hearing even if they objected to the transfer--the statute was rather cryptic in its approach.

In Chiodo's opinion, the burden of proof should be on the inmate to show good cause why he should not be removed to another state. Committee members concurred.

MOTION

The Chair entertained a motion to advise the appropriate standing committees of the legislature to clarify §217.22. Chiodo so moved. Motion carried viva voce.

INMATE TRANSFER HEARING BOARD Continued

In further discussion, Oakley said the rules were promulgated on an emergency basis because of the disturbance at Ft. Madison--the premise being that the hearings would be informal.

Shimanek recalled formal hearings were conducted on a contested case basis despite the AG's opinion it was not. She pointed out the inmate lacks access to information to carry forward that burden of proof. The question of the constitutionality of the statute probably will be challenged in federal court. Clark commented that if the law is reviewed, guidance would be needed. She contended some rights and privileges should be removed. She was hopeful prisoners could be protected from mistreatment without allowing them to sue. Responding to Chiodo, Shimanek said due process is provided for some considerations, e.g., closeness to family, retaliatory measures.

Oakley reasoned, "You cannot abolish the process by abolishing the statute." Legislation could clarify and set specific guidelines.

Royce was directed to draft a request which would be forwarded to the legislature. No further questions.

PUBLIC INSTRUCTION DEPARTMENT

Robert B. Yeager, Area Schools Division, appeared on behalf of Director Moench for review of the following rules:

PUBLIC INSTRUCTION DEPARTMENT[670]
Area school energy appropriation program, 5.20 to 5.24 ARC 2370 ..... 9/30/81

According to Yeager, the proposed rules set out procedure and criteria for funds distributed to area schools for energy costs under SF552[69GA,ch8]. Tieden inquired about the use of automobiles and Yeager indicated "energy" has been identified as it relates to electricity.

Schroeder took exception to the formula which provided money to each school based on their present square footage. He declared that schools which have lived within their means would be penalized. Yeager admitted that was a reality.

Holden wondered about the incentive to pick up the costs and Yeager said many schools have become energy conscious. In response to Clark, Yeager reviewed the procedure for the school allocations--5.23(2)a. Clark preferred simplicity in paragraph "a" and she requested revision of sentence structure in 5.24. Yeager was amenable. General Committee agreement that the three-member panel should be designated--5.24.

5.23(2)a

Tieden added that guidelines and procedures for the panel should also be included.

SECRETARY OF STATE

John D. Galvin, Director, Corporations Division, was present for review of registration and protection of marks, 2.6, filed emergency, ARC 2324, IAB 9/16/81. When 2.6(1) was revised previously, classes of goods and services were inadvertently omitted and this amendment includes them.

Priebe questioned the provision in 2.6(2) which prohibited the Secretary of State from giving legal advice. Royce advised that with a "black and white" rule, the Secretary cannot be held accountable. No further questions.

REVENUE Special Review

Carl Castelda, Deputy Director, Cynthia Eisenhauer, and Mel Hickman were present on behalf of the Revenue Department for special review of rule 65.8, LP Gas Meters. Also present: Bette Duncan, Legal Counsel, and James O'Connor, Regulation Division, Agriculture Department; Craig Baldwin, Grundy Center; Roger Batt and Roger Hoover, North Central Pacific Service, Algona; Wally Warner, Tenaco; C.E. Knox, Macmillan Oil, Des Moines; M. L. Stroud, Murray; Dean Nolt, Iowa LP Gas Assn., Minneapolis; Caroll W. Schaal Jr., Schaal Oil Company, Jefferson; Carl 'Bud' Strub, Econogas Service, Iowa City and State Director, ILP Gas Association; Vern Logue, Thermogas, Inc., Des Moines, N. S. Annis II, President, Iowa LP Gas Association and Vice President, Sam Annis & Co., Waterloo; Fred Winke, Proga, Inc., Ft. Madison; Don Arendt, Gibson LP, Gibson; John Hart and Peter Reinertsen, Getty Refining and Marketing Co., Cedar Rapids.

65.8

Castelda commented the Department was somewhat surprised to learn of controversy re rule 65.8, IAC, which was promulgated about 18 or 20 months ago to require dealers to use temperature compensating meters when selling special fuel. It was his understanding that Agriculture officials considered this an unnecessary burden on dealers. One month ago, Castelda sent an explantory letter to Royce, setting out the basic reasons Revenue thought the requirement to be within the statute. Castelda asked the Exise Tax Division to research the issue and Mel Hickman briefed the ARRC regarding number of licensed dealers possessing the meters. He said there were about 299 licensed LP gas dealers of which approximately 180 are using temperature compensating meters which provide less chance for errors and shorter audit time.

Schroeder wanted knowledge of Revenue's cost projection in the use of temperature compensating vs. noncompensating meters. Castelda doubted they had made projections and did not recall the question having been raised. According to Castelda, the Iowa Oil Jobbers and the Iowa Petroleum Association had reviewed all of the rules at the time they were adopted. It was his understanding the industry was seeking new outlets and broader spectrum of use for LP fuel. The Department now believes that possibly, LP dealers may be licensed users rather than licensed dealers and thus would not be required to use the temperature compensating meters. Had the Department been aware of the problem, they would have been willing to work it out at the time the rule was written.

Castelda thought it was unfortunate the matter was brought to the Committee's attention before the Department had time to discuss it with various factions. He recalled that when the rule was discussed, prior to July 1980, the cost of a temperature compensating meter was about $2000--noncompensating meters cost $1000 to $1200. Hickman indicated they have received inquiries concerning the meters. He was unsure as to the number who have changed but the permit indicates the type of meter.

Holden reminded the Committee that the rule has been in effect for 15 months. He viewed the argument as focusing on whether a satisfacotry audit can be made without a temperature compensating meter. [a conversion chart is utilized, otherwise]

REVENUE
Special
Review
65.8
Cont'd

There was further discussion of the audit and resulting taxes. Castelda noted that most LP gas is used for heating. Nolt explained that the trend toward smaller volume of sales has allowed dealers to install smaller meters. However, he recognized that a number of dealers have the larger compensating meters for motor fuel. The pros and cons in utilizing the conversion chart were discussed. Holden reiterated his opinion it was an inaccurate method and almost impossible to audit.

Duncan called attention to Code §215.20 and added that it was the position of the Agriculture Department that the option is clearly stated. Further, §215.24 requires Agriculture to promulgate rules giving that option. Duncan was disturbed about the conflicting statutes -- chapters 215 and 324.

Motion to refer to Legislature

Priebe recognized the obvious disagreement between Agriculture and Revenue. Priebe moved that the matter be referred to the appropriate committees of the legislature.

Castelda, responding to Chiodo, thought Revenue could amend their rule by setting out options. He preferred guidance from ARRC. Castelda was hopeful that the situation today was not indicative of future practice--the Department being required to defend and change a rule on a moment's notice. Castelda concluded Revenue has the "reputation that we try to work with people."

Royce compared the two statutes and observed the question still remains: Should Revenue tax according to temperature compensation?

Castelda offered to hold enforcement in abeyance for thirty days to allow time to resolve the matter with Agriculture and the industry.

Holden suggested the possibility of taxing on either basis. O'Connor commented they became aware of the problem 3 months ago. Arendt saw the problem as a matter of collecting the revenue since most dealers have the means to temperature compensate.

Priebe reiterated his position that, regardless of what is done, the matter should be referred to the legislature.

Schaal, who had been licensed for 15 years, contended he was never notified by Revenue that a "compensated meter" was required.

Motion repeated
Vote

Chairman Schroeder repeated Priebe's motion and Holden called for the question.
Motion carried.

In Chiodo's opinion, disagreements of this nature between agencies should be referred to the Administrative Rules Coordinator, instead of this Committee, for possible resolution. He concluded that perhaps a "crisis point" could be avoided making it unnecessary for the ARRC to become involved.

Schroeder agreed to supply Castelda with a list of names of those who wanted to attend the meeting on compensating meters.

CONSERVATION COMMISSION

The following rules of the Conservation Commission were before the Committee:

CONSERVATION COMMISSION[290]
Water fowl and coot hunting, 107.1 to 107.5, filed emergency after notice ARC 2347 ..EFAN..... 9/30/81
Wild turkey hunting, 111.1, 111.2, 111.4 ARC 2346 .N..... 9/30/81
Barge fleeting, ch 51 ARC 2345 .....E..... 9/30/81
Pheasant, quail, and gray (Hungarian) partridge hunting seasons, 103.1 to 103.3 ARC 2346 .E..... 9/30/81

Appearing on behalf of the Commission were Robert Barratt, Superintendent, Wildlife; Roy Downing and Nancy Exline, Lands and Waters Division; and Eliza Ovrom and Allan Kniep, Assistant Attorneys General. Also present: Bill Crews, Governor's Office; Argie Hall, AGRI Industries, West Des Moines; Dave Marshall, Alter Barge Line; Shirley Lang, Dock Manager, City of Dubuque; Robert D. Hudson, Wisconsin Barge Line, Inc. and Joseph Fall, The Pillsbury Company, Dubuque.

ch 54

Chairman Schroeder announced that Barge Fleeting, ch 54, would be considered first. Responding to Schroeder, Downing was doubtful any regulatory rules would be 100 percent acceptable. He pointed out portions of the rules give a terrific amount of protection to the industry. All applications for fleeting will be circulated to every agency, state and federal, having any interest in the Mississippi River. If the agency determines an application should be denied, this rule provides the applicant the right to be heard in contested case, whereby a hearing officer, an unbiased person, then makes a decision.

Marshall had met with Wisconsin Department of Natural Resources which is initiating barge fleeting rules. They are willing to organize an industry committee but found Iowa's Commission was unwilling to change their position.

Marshall referred to problems that the Illinois Department of Transportation had encountered in attempting to seek legislation on the subject. He expressed a preference for transferring the regulatory authority to an agency which would be more transportation oriented, e.g., DOT or the Development Commission.

Hall interjected there is support for an Industrial Committee and legislative consideration of the rules. He stressed the importance of uniform application in all states.

Responding to Tieden's question, Marshall commented that the Corps of Engineers and the US Coast Guard are involved in regulation of fleeting.

Motion to delay 45 days

Priebe moved that Conservation Commission rules, chapter 45, ARC 2345, IAB 9/30/81 be delayed 45 calendar days into the 1982 General Assembly. It was pointed out that HF 855[69GA] had passed the House of Representatives in 1981 and was in the Senate Ways and Means Committee.

Vote

Priebe's motion to delay the effective date 45 days was adopted with voice vote. Chiodo asked to be recorded as voting "no".

CONSERVATION COMMISSION Continued

Responding to Tieden, Marshall maintained the rule did drive business across the river to Illinois and Wisconsin. Oakley pointed out that a joint resolution to disapprove of a rule must, of necessity, be presented to the governor. He observed the filed rules were considerably improved. He opined that the only opponent was the industry which will have to assume some burden in order to convince the governor's office that their position should be supported. Crews of the Governor's staff will be dealing with the technical aspect of the barge fleeting question. Oakley considered the rules to be reasonable and that Conservation has the authority to promulgate them. He noted there had been no expression from the Committee members as to what their objection entails.

Tieden favored joint regulation to provide a uniform solution for the three states. Oakley thought that was asking for federal regulation. Tieden disagreed. Oakley was not convinced that the states should have identical rules. However, should that be the case, he would recommend a compact or federal regulation. A very basic sovereignty question is involved and he was doubtful the state wanted to give that up or allow other states to dictate how we would treat our environmental side of that river.

Downing explained to Tieden that unless the Congress were to take away the sovereignty from Iowa, there would always be differences among the three states. The beds and banks of the Mississippi were given to Iowa by Congress. Tieden was still hopeful an agreement could be reached.

Clark thought the solution might be in a compact to provide equality. Lang took the position the rules do not recognize the needs of the industry. She added that grain will be moved on barges--an economical method. Fall supported the compact concept. He thought Illinois had taken the lead in that and mentioned the fact Minnesota was being sued. Instead of regulation, he suggested establishing a joint group that could police the operation. He suspected there was an overreaction.

Downing, replying to Priebe, said Iowa is not "running business out of Illinois." He had not received application for fleeting from Marshall's company. Downing explained they have applications for fleeting and if the rule is delayed 45-days, Conservation is required to charge double rental fee and industry will suffer. He stressed that the rule provides for an orderly process until legislation is enacted. He supported the compact and committee concept.

Holden was told that the problem of fleeters tying on state-owned land had been resolved.

Marshall concurred that he had not filed for the permit and he apologized for conveying that impression.

Chairman Schroeder brought the discussion to a close and the Committee moved on to the remaining Conservation matters. No questions were posed re chapter 107.

CONSERVATION COMMISSION Continued

With respect to 111.4(2), Priebe asked for the total number of turkeys taken from zone 1 last year. Barratt said there were 965 permits; the old zone 4 and zone 1 were combined, plus area was added. Priebe thought overall total had increased 50 percent. Barratt admitted it was a substantial increase. Schroeder questioned rationale for closing season at noon and Barratt said turkeys are inactive after noon--most hunting is over by 9:00 a.m. The rule was requested by turkey hunters, so the birds will not be disturbed. Barratt continued there were more turkeys right now than can be taken care of. Last year, the success rate was 32 percent. Priebe had heard there were too many hens but Barratt replied that was not true. However, there is a maximum population in some areas and young birds disappear before January 1. Also, turkey banding is continuing.

Tieden requested a map of the two districts but one was not immediately available. Barratt said turkeys were being hunted north of Highway 30 but he doubted there would be enough for hunting in northwest Iowa. Tieden was interested in the result of the changes.

ch 103

No questions on chapter 103.

Recess

Committee was recessed at 4:55 p.m. to be reconvened at 9:00 a.m. Thursday, October 15, 1981.

Reconvened Thursday October 15

Chairman Schroeder called the meeting to order at 9:05 a.m., Thursday, October 15, 1981, in Committee Room 24. All members were present as were Royce, Staff, and Oakley, Coordinator.

BUREAU OF LABOR

Schroeder announced the first item on the agenda would be the Bureau of Labor, represented by Walter Johnson for review of elevators, chapters 71,72. The Committee submitted proposal for rulemaking as follows:

Elevators

530-71.4(104) Exclusion from coverage. The provisions of this division shall not apply to elevators installed soley for the use of persons who would otherwise be unable to enter or freely move about the building. These elevators must be key operated and only a single attendant may ride the elevator in addition to the non-ambulatory individual.

Johnson was aware that many other states have initiated action allowing for a certain type of noncommercial elevator in non-public structures. However, he had problems with the petition language. Johnson referred to §104.3(2) and questioned whether they had authority to adopt the Committee's proposal. In his opinion, the safety aspect must be considered. Schroeder suggested adding "a manufactured product which meets safety standards" would be an improvement.

Johnson was willing to draft a rule addressing the issue and the Committee agreed not to file the formal petition. He announced they were in the process of revising all their rules but would prefer to include the elevator proposal with the package within the next two months. Oakley cautioned against "convenience over safety." He advised that the rule provide for application to the Bureau before installation of an elevator. Variance provisions was discussed. Oakley was concerned over "the power of variance." Clark reminded that the variance would be allowed

BUREAU OF LABOR Continued

until the normal rule change operation, which could be 5 months away.

There was discussion of expense to mail rule changes to elevator owners. Johnson estimated mailing costs of between $500-$700 each time elevator rules are amended. He announced that people were welcome to call the Bureau of Labor for information at any time.

Committee Rules

Royce and Barry were directed to review Committee Rules of Procedure as published in the IAC and point out areas which need revision.

AGRICULTURE DEPARTMENT

J. D."Bud" Hook, Laboratory Division, was present for review of certification of seed and potatoes--5.6. The rule designates The Iowa Crop Improvement Association as the official certifying agency as provided by law. Schroeder raised a question as to what status the rule gave the Iowa Crop Improvement Assn. over anyone else. He wanted assurance they did not have a monopoly on the market. Hook understood there was no control over foundation stock. He noted the Secretary of Agriculture is a board member of the Association. Schroeder preferred some type of designated distribution system. He thought a mechanism should be available for the dissatisfied individual.

Responding to Priebe, Hook explained that Arden Campbell, Ames, is executive secretary and represents Iowa State University. He continued the Association is comprised of "seed men" and producers of seed. Committee members viewed the situation as allowing a trade association to license its own members.

Upon recommendation of the Committee, Hook agreed to work with the Association to revise the present method.

Priebe was bothered by the fact that Iowa State University pays for the research and then, private companies realize the profits. He wondered if Iowa State should be asking for royalties.

Recess

Committee was recessed for 5 minutes.

REVENUE

The following rules were before the Committee:

REVENUE DEPARTMENT[730]
Cigarette samples by manufacturers, 82.16 ARC 2330 ..... 9/16/81
Filing returns-penalty and interest, 12.10(3); (Individual) Penalty and interest, 44.3, 44.7(6); (Corporation) Penalty and interest, 52.5(2) to 52.5(4),52.5(7)"b"; (Franchise) Penalty and interest, 58.5(2) to 58.5(4), 58.5(6)"b"; Administration (motor fuel) 63.8; Freight-line and equipment car companies, tax, 75.1, 75.2 ARC 2374 ..... 9/30/81
Taxing optional service or warranty contracts, 18.25(3) to 18.25(5); Services exempt, sales and use tax, 26.2(6) to 26.2(8) ARC 2373 ..... 9/30/81
Special fuel-licensed metered pumps, 65.8, special review ..... IAC
Fiduciary income tax, ch 89 rescinds ch 187 ARC 2375 ..... 9/30/81
Gambling rules, 91.4 to 91.7, 92.3, 93.2 94.1 to 94.3, 94.10, 95.2 ARC 2331 ..... 9/16/81

Present for the discussion were Carol Castelda, Deputy Director, Ben Brown, Administrator, Charles Haack, Counsel, and Cynthia Eisenhauer, representing Revenue Department. Also present: George Wilson and George Wilson, IV, Tobacco Distributors; Paul Morlan and James B. West, Iowa Retail Food Dealers Assn.

About two years ago, according to Castelda, Department of Revenue revised the rules regarding cigarette and tobacco taxes. One area of concern was free distribution of samples by distributors and manufacturers.

REVENUE Continued

Revenue elected to withdraw that rule to allow time to meet with manufacturers, distributors, etc. A policy statement was sent to the two factions. Comments were received and revisions were made. The Department had relied heavily on AG opinions.

In response to Clark, Castelda said, from a general standpoint, the Department and the industry has had numerous situations where there appears to be conflict between chapters 551 and 98. There are 4 or 5 AG opinions but Revenue thought an AG had issued a wrong opinion and they requested a second one, which set aside a previous opinion. In answer to Schroeder, Castelda said they have always honored the most current opinion. Certain areas had not been addressed in the first opinion and Revenue made the conclusion that it should be set aside.

Royce advised that when two statutes address the same subject, they are read together--Chapter 98 specifically says manufacturers may give free packs of 4 cigarettes and he wondered, "How could a rule interpreting another chapter--551A--create a free distribution system that, basically, conflicts with a specific statutory provision?" In Castelda's opinion, manufacturers were excluded from chapter 551A.

Haack stated Revenue's position is that 98.39 creates an exemption as far as the normal tax paying and tax distribution methods. A manufacturer does not need a distributor's license or a retailer's license to hand out cigarettes on the street corner. Under 551A, manufacturers can distribute cigarettes at whatever price they choose. Section 98.39 addresses licensing, tax and payment methods.

Tieden wondered if the manufacturer and distributor were not one and the same under that circumstance. Haack said if he acts as a distributor, a license would be required. Under 551A, he can give them away.

General discussion as to method of affixing stamps and who could give away cigarettes. There were differences of opinion as to Code interpretations. In Royce's opinion, chapter 551A refers to the price at which distributors must sell cigarettes and chapter 98 provides for give away. Tieden thought that when 551A was passed, if the legislature had wanted it changed, they would have done so. He envisioned this as disregarding legislative intent. He interpreted the Code to limit free cigarettes to 4. Clark questioned how a "sale could be interpreted as zero."

Oakley called attention to the fact that sale includes gifts. He did not see a legal problem between the two sections. The Department is saying a sale can include a gift and, therefore, you can give away packs of 20 if there is no cost from the manufacturer to the distributor. It appears that chapter 551A would only allow a distributor or a retailer to give as opposed to a manufacturer. A manufacturer can give away 4 cigarettes.

REVENUE Continued

Wilson disagreed with the conclusion of the Department and he had sent correspondence to all. He thought there were two ways cigarettes could be handled by the manufacturer and chapter 98 is very specific. In chapter 551A, a gift can be made with a combination sale. Wilson contended there is a cost--a package of cigarettes in the hands of the manufacturer has a cost or an actual replacement cost. It was his opinion that giving away 20 would be a violation of the law.

Oakley said obviously there was some intent to make a distinction between 4 and 20 cigarettes.

West's view of the problem was a little divergent. He stated the purpose of the Iowa Unfair Cigarette Sales Act[ch551A] is to prevent price discrimination and prevent formation of monopolies and protect free competition. This is achieved simply by prohibiting low cost sales. Small, independent merchants cannot afford to sell below cost and are unable to compete with stores that do. He added 551A is an antitrust law and has been so interpreted by the Iowa Supreme Court in May Drug Stores vs. State Tax Commission 45 NW2nd 245. West reasoned that the proposed rule appears to sanction price discrimination, by implication, by manufacturers between retailers and wholesalers which could "destroy the businesses of merchants not so favored." The practice probably violates chapter 551, which prohibits price discrimination between localities in the state in the sale of commodities-- probably would be a violation of the federal patent Act. In a 1958 AG opinion, cited by Revenue, it specifically states that the gift item to be given free be given to all retailers, not just a select few. The Iowa Food Retailers Assn. urges that the rule be redrafted to require that whatever may be given free to one merchant be provided without discrimination to all competition.

Oakley asked where the wholesalers fit in? Wilson responded that the distributors are also wholesalers.

Haack said Revenue cannot regulate the price at which manufacturers sell cigarettes and neither can they regulate gifts. Responding to Tieden, Haack indicated the discussion during the last session dealt with post-manufacturer distribution.

Chiodo thought, under the law, equal entitites in business that deal with the same manufacturer are to be treated equally by that manufacturer. Revenue advised him they did not have that authority under chapter 551A. It might possibly be a federal law.

Oakley requested Revenue to provide the brief on the rules with all the citations and Castelda was amenable.

West declared that a rule set down by the state should not condone a violation of antitrust laws of the state and federal government. Chiodo concurred with West's comment.

Castelda commented that the rules address current as well as past practice.

REVENUE Continued

Castelda noted two packs of cigarettes can be purchased for the price of one in the grocery store. Clark had heard that a sample pack of 10 or 12 had been given away in downtown Des Moines the night before. Castelda declared that to be a violation of the law and agreed to investigate. Revenue had no intention of showing favoritism. The matter may be resolved by legislation to clarify the relationship between the two chapters. Schroeder thought there could be an economic impact on small businesses. Castelda thought it would be impossible to provide an economic impact statement. He was agreeable to scheduling a public hearing, although, in his judgment, little would be gained. He reminded ARRC that Revenue had been working with all factions for over a year and one-half. Priebe wondered who would attend a public hearing.

Discussion of the placement of chapters 98 and 551A in the Code. Royce pointed out 551A appears in Title XXIII--Trade and Commerce. Chapter 98 is located in Title V, Police Powers. Discussion of Committee options regarding the Noticed rule and the approximate effective date. Barry advised the rule could become effective December 16. No formal action taken.

Amendments to chs 12,44, 52,58,63,75

Castelda told the Committee that ARC 2374 was filed by the Department to implement SF2327[68GA,ch1113] which increased penalty rates for failure to file and to pay tax. He noted that under these rules, the Department will be assessing penalties, on all of its billing, as high as 25 percent. Notice that the new interest rate for 1982 calendar year will be 17 percent will be published in the newspaper and the IAB. It is possible in one year that the combined interest and penalty rate could be 42 percent.

10:40 a.m.

Due to lack of a quorum, Chairman Schroeder declared a five-minute recess.

Castelda alluded to a proposed bill Revenue had submitted to the legislature in 1981 which received no consideration. He agreed to provide Schroeder a copy. Castelda informed Tieden that Revenue follows the Internal Revenue Code re quarterly filing of income tax. He advised ARRC that around $100 million in taxes was uncollected--collections and collection problems have skyrocketed in the last three years. Approximately $80 million is in litigation. That is one reason for the penalty and interest statute.

No recommendations were offered for ARC 2373 and 2375.

chs 91-95

Amendments to chapters 91-95 reflect the new gambling law and amendments to chapter 99B, The Code. Several changes were made since the rules were under Notice.

Tieden made mention of some problems faced by his local Jaycees. Castelda said if someone shows they are registered under one section of the Internal Revenue Code, and they don't qualify, the Department is not just denying them a license. They are asked to fill out a federal form to make a determination whether they qualify under one of the other sections. The Department is assisting in licensing of organizations.

CAMPAIGN FINANCE DISCLOSURE

Kay Williams, Executive Director, and Board Members Robert Fulton, Herbert Selby and Emmanuel Bikakis represented Campaign Finance Disclosure for review of the following:

Schroeder knew of no advserse comments regarding the rules. Chiodo broached the subject of delinquencies and admitted that he has a difficult time in complying with filing deadlines, and he wondered about the possibility of a slight variance.

Holden took the position on-time filing was more important during a campaign. Chiodo was of the opinion the media tends to magnify the problem. He supported the concept of one or two days' grace before a fine is imposed. Williams responded the Commission had anguished with it and considered daily fines but could not decide where a line could be drawn. They followed the Code. She agreed that the impact of reporting was near election time and pointed out statutory political committees are included.

4.1(56)

In re 4.1(56), Williams cited a telephone number as an example of information which might be requested. She reported that both the candidate and the treasurer of the campaign were responsible for filing and that a fine would be an allowable deduction. The Board thought penalizing a treasurer should be at the discretion of the Campaign Finance Disclosure Committee. She concluded the candidate, as well as the treasurer, is responsible for disclosure reports.

Holden, pursuing his major complaint against use of campaign funds for office expenses and, in some cases, personal expenses, asked what they were doing to define "campaign". He said, "Or is that solely a legislative responsibility?"

Fulton commented that under the disclosure law, office expenses are not authorized. It would be necessary to broaden the law. Fulton told Holden the list of legitimate campaign expenses was for purposes of checkoff money. Fulton referred briefly to procedures followed by other states.

Holden had reservations about a 30-day reminder letter and form from the Commission. The form could be used to file early (prior to 20th) if no receipts are anticipated. Williams said the report could be amended. This was an attempt to cut down, in an off-election year, the time on long lists of delinquencies. Holden favored the concept but questioned the legality. He inquired if their list of committees was public information. He had received a solicitation letter from a zoo addressed to the Holden Election Committee. Williams said the lists of registered committees were available to the public at no cost. Schroeder thought it should be made illegal to use the list for any other purpose than elections. Williams noted The Code prohibits use of lists to solicit contributions, and agreed to follow up on the question. No other questions.

CITIZENS' AIDE

William Angrick, Ombudsman, was present for review of the following:

CITIZENS' AIDE — Angrick announced he had made the requested editorial changes. No recommendations or questions from the Committee. Angrick thanked the staff and the coordinator for their cooperation.

Recess for Lunch Reconvened — Chairman Schroeder recessed the Committee at 11:30 a.m. to be reconvened at 1:45 p.m. The meeting was reconvened at 1:45 p.m. with a quorum present.

ENVIRONMENTAL QUALITY — The Department of Environmental Quality rules as follows were represented by Odell McGhee, George Welch and Rod Vlieger:

ENVIRONMENTAL QUALITY DEPARTMENT[400]
Emission standards for contaminants, compliance dates, 4.3(2)"b"(5), filed emergency ARC 2376 ..F,E 9/30/81
Land application of wastes, ch 33 ARC 2378 ..N 9/30/81
Emission standards for contaminants, 4.1(1), 4.1(3) ARC 2377 ..F 9/30/81

McGhee explained that 4.3(2)b(5) was amended to correct compliance date from 1-1-82 to 10-1-81. There was brief discussion of the definition of "contaminant" and leaf burning. Also, discussion of chapter 33, which addresses land application of waste.

33.1(1) — Schroeder recommended that "liquid slurry or solid" be added after "animal manure" in line 3 of 33.1(1). This would avoid a problem with someone pumping out of a confinement pit area.

Welch stated they were considering addition of the definition used by the American Society of Agricultural Engineers. Schroeder inquired if DEQ would try to stop land application around new sites. Welch called attention to a key word "burial" and indicated there were no changes with respect to the handling. He explained to Schroeder and Tieden that 33.3(1)c(1) would apply to municipal sludge only and this provision was set out in the old rules. Welch added that the 2 ton per acre limitation, without permit, was based on the data that was developed through the AG research service. They want to avoid excess levels of heavy metal concentration in the soil, e.g., cadmium, which could be hazardous to human health. Muncipalities are required to keep records on application of the wastes for DEQ. Before application can exceed 2 tons per acre, DEQ must review the plan.

In response to Chiodo, Welch said the rules would apply to 4 types of permits which have been in effect since 1979. Chiodo was concerned the cities who choose to take sludge to landfill did not meet requirements. Welch said Des Moines moves sludge to the Metro landfill and it was difficult to find land, in urban areas, for the sludge. The Metro landfill must meet DEQ landfill requirements which are more stringent than these rules.

33.2(2) — In re 33.2(2), Clark called attention to what appeared to be a discrepancy regarding permits. Welch said, originally, water supply sludges and animal manures were approved. Other sludges have not been researched, but there could be innocuous industry sludge that could be approved under this provision.

33.3(1) — Priebe voiced concern as to the effect 33.3(1) could have on harvesting hay. He opined the collection and preservation of samples required in 33.3(1)d(2) should be approved by the Commission, not the Executive Director. Priebe questioned the need for a soil map in 33.4(1)a(2). Welch explained this would be a standard SCS soil map. In re 33.4(1)a(5), Priebe could not

ENVIRONMENTAL QUALITY DEPARTMENT Continued

see the feasibility of requiring well depth information. If there is a nonaccessible well, the applicant indicates information is not available. Preibe and Schroeder requested that words to that effect be included in the rules.

Schroeder questioned the necessity for a telephone being available--33.4(1)d. Welch replied that would be on landfills only. Welch said the provision would be applicable when a landfill operation reached the intensity where 8-hour shifts are used. Tieden feared that eventually farmers would be prohibited from applying animal sludge or waste in the winter. Welch reminded him that animal waste had been excluded from the requirement. He pointed out the rules addressed only industrial operations. Vlieger added that the proposed rules actually relax some requirements. No formal action taken.

Brief review of amendments to chapter 4. The Department has adopted the federal National Emission Standards for Hazardous Air Pollutants. Schroeder inquired as to what was being encompassed by "relief valve discharge; fugitive emission standards" in 4.1(3)e.

4.1(3)e

Welch said it would be where there is a pressure valve to protect a vessel--applicable to vinyl chloride plants. McGhee promised to send a memo to Schroeder on the matter.

MERIT EMPLOYMENT DEPARTMENT

Clinton Davis, Technical Services, Division Manager, appeared on behalf of Merit Department to review the following rules:

MERIT EMPLOYMENT DEPARTMENT[570]
Reagnations, 11.1(1) filed emergency ARC 2368 ...F.E..... 9/30/81
Suspension of merit increase eligibility, 4.52, ARC 2333..F..... 9/16/81
Emergency appointment, 5.8 ARC 2334.....F..... 9/16/81
Chaplain qualifications, lack of rules, special review

11.1(1)

Clark questioned 11.1(1), new language and concern for the rights of an employee who might, due to extraordinary circumstances, be unable to notify their supervisor of an absence within three working days. Davis declared it would have to be an authorized leave. Clark recommended providing "without authorization from the appointing authority." Schroeder was still concerned that there was no recourse for employee which could be critical in today's employment market. Davis commented that was an interesting point which had not been considered. Responding to Tieden, Davis announced he had been with the Department since early 1970. Davis pointed out the rule on abandonment of position was in chapter 14 for over 10 years but he was willing to revise it to address Committee suggestions.

Returning to 11.1(1), Clark made the point "to the appointing authority" in line 3 was superfluous language.

In a matter not officially before the Committee, Tieden wondered if under collective bargaining, agreement could be negated. Schroeder opined a legislative mandate could supersede. Royce reasoned the law should recognize availability of funds. He concluded no law could be enacted which impairs a contract. Davis interjected that the legislature ultimately decides whether or not the contract will be ratified.

MERIT EMPLOYMENT Continued

In re 8.8, Chiodo inquired as to who decided an emergency appointment was needed. Davis replied that the Department director determines by virtue of the needs of the agency. Davis explained to Tieden that the hours are based upon 2080 hours in a work year.

COMMERCE COMMISSION

The following rules of the Commerce Commission were reviewed:

COMMERCE COMMISSION[250]
Practice and procedure, telephone utilities, tariffs, directory assistance, 7.4(4), 22.2(5)"b", 22.3(3) ARC 2372 ..... 9/30/81
Gas and electric utilities, winter shut-offs, 19.4(15)"h", 20.4(15)"h" ARC 2371 ..... 9/30/81
Practice and procedure, interventions, 7.2(7), 7.2(8), 2.2(10) ARC 2342 ..... 9/16/81
Electric utilities, cost of service, 20.10(2) ARC 2363 ..... 9/30/81

Representing the Commission was David Conn, legal counsel. Also present: Kent Jerome, Iowa Telephone Association, and Don Williams, Northwestern Bell Telephone Company.

Conn told the Committee that ARC 2372 would implement legislative change allowing telephone utilities to charge for directory assistance calls. A public hearing was scheduled for November 5.

22.3(3)a

Williams wondered if 22.3(3)a should specify the number of calls allowed for directory assistance. Oakley, commenting that was a good point, said the circumstances would dictate. Capital structure, useage, etc. are so different that it should be handled on a case-by-case basis--one company would have four, another, eight. He presumed the legislature would want some oversight on that particular area. Schroeder noted about five companies are regulated.

Jerome urged consistency for all companies. He drew attention to 22.2(3)b and pointed out there was no technology as yet for operators to have the information as to whether a number is unpublished. Williams thought the technology would be available in 1984. General discussion. No further questions re telephone utilities.

19.4(15)h, 20.4(15)h

Conn announced that after taking comments, Commerce wanted to consider actions which it felt were outside the scope of the Notice as originally published, so they published an amended Notice concerning winter shutoff. Chiodo thought the idea to be basically sound.

Oakley stressed that utilities have some responsibility as good citizens but they should not have to carry the welfare load in the state. Holden thought dates should be included in 19.4 and 20.4.

Schroeder asked who would dictate the payment agreement conditions. Conn said the rules set forth the reasons but Schroeder thought it could be clearer. Discussion of payment plans which could cause a termination of utility. Oakley made mention of a quick arbitration plan which could avoid long disagreements about payment plans. Conn indicated, to a great extent, it is worked out at a staff level, but if not, then the Commission eventually sees it. Holden emphasized importance of distinct and separate rules dealing with shutoff of gas and electric utilities. Conn pointed out a mistake in 20.4(15)h(4), and admitted the second paragraph should not be included.

COMMERCE COMMISSION Continued

Chairman Schroeder moved the discussion to ARC 2342. Chiodo questioned Item 2, regarding intervenors and petitioner's interest. He interpreted it to mean that Commerce would determine one intervenor for a unique issue. Conn was unsure that was necessarily true. He did not think it was the Commission's intent to choose only one. It will probably be a group.

Chiodo discussed the time sequence -- would the right to intervene be declared when intervenors apply or would the Commission wait until everyone has applied and then decide who would intervene?

Conn said the deadline is 20 days before the hearing. Chiodo asked if, at that point, Commerce would cease applications for intervention and make a decision. Conn was unsure but thought that to be the wisest procedure. Chiodo thought that information to be important knowledge before the rule becomes effective. Any other way would create a real problem. Conn contended the rules do not require the Commission to deny intervention. Intervenors will be consolidated. Chiodo was uncomfortable about it without the knowledge of the time sequence.

Oakley interjected that Chiodo probably was referring to the large number of intervenors generated by consumer advocacy--over 600--mostly for publicity purposes and not for contributing substantially to adjudication. Oakley concluded he was not sure that all time sequence should be spelled out but confidence in the Commission was important.

Discussion of electric utilities cost of service. Conn declared the general thrust of the rule was to officially state that electric rates should be based upon the cost of serving the customer and to give some of the considerations the Commission will use in determining those costs. No other questions or comments regarding Commerce.

3:00 p.m. Chairman Schroeder called a five-minute recess.

DEPARTMENT OF TRANSPORTATION

The following Transportation Department rules were before the Committee:

TRANSPORTATION, DEPARTMENT OF[820]

Security required following accident, [07,C] 14.4, filed emergency ARC 2343 ... F,E 9/16/81
Interstate registration and operation of vehicles, [07,F] 1.3(1)"e", 1.6, 1.7, 1.11 ARC 2358 ... N 9/30/81
Movement of loads, permits, limitations [07,F] 2.2(1), 2.3(2)"a"(1) and (5) ARC 2359 ... N 9/30/81
Interstate motor vehicle fuel permits, transport carrier registration, [07,F] 7.4(2), 7.4(4), 7.4(10), 7.5(2), 7.5(4), 7.5(5), 7.7(2), 7.7(5) ARC 2360 ... N 9/30/81
Abandoned vehicles, [07,D] 2.3(3) ARC 2352 ... F 9/30/81
Vehicle recyclers, [07,D] ch 6 ARC 2353 ... F 9/30/81
Mobile home dealers, [07,D] 7.2(2), 7.2(5), 7.4(1) ARC 2354 ... F 9/30/81
Travel trailer dealers, [07,D] 8.2(2) ARC 2355 ... F 9/30/81
Motor vehicle leasing licenses, definitions [07,D] 9.1 ARC 2356 ... F 9/30/81
Motor vehicle dealers, manufacturers and distributors, [07,D] 10.1(7), 10.1(13) to 10.1(17), 10.2(1), 10.2(3) to 10.2(5), 10.4(1)"a", 10.4(2)"a" and "c", 10.4(3)"c", 10.7(1)"a" and "b", 10.8, 10.10 ARC 2357 ... F 9/30/81

Appearing on behalf of the DOT were Carol Coates, Vehicle Registration Director and Carol Padgett, Vehicle Registration; Bill Kendall, Director, and Norris D. Davis, Driver License; and Candace Bakke, Director, Operating Authority.

[07C]14.4

Kendall stated [07C]14.4 coincides with legislation enacted in 1981 pertaining to financial responsibility after an accident. No questions raised.

ch 1

No recommendations were offered for chapter 1.

DEPARTMENT OF TRANSPORTATION Continued

Bakke explained amendments to [07F]ch 2. The law allows permits to be issued for movement of 16-foot wide mobile homes and the rule requires movement on 24-foot roads as much as possible. Narrower roads may be used for a total of 50 miles and maps have been checked.

Schroeder declared nothing in the statute allowed that limitation. Bakke responded the statute provides discretionary power to DOT on issuance of any permits.

In Schroeder's opinion, DOT could designate preference of route over the 24-foot roads and achieve as much without having it in rule form. Bakke cited §321E.1 as their authority. She pointed out the legislature had removed distance restrictions on very wide loads. Bakke reminded ARRC members that the Manufactured Housing Association had no problems with the rule.

Holden wondered if the Department had given thought to eliminating some of the escort requirements. Bakke responded in the affirmative. There is only one statutory requirement for escorts.

No questions re [07F]ch 7 amendments.

[07D]2.2(3)

Coates advised Schroeder the time for notification re abandoned vehicles was increased from 10 to 20 days. Return receipt is requested. Schroeder was assured DOT had proof for disputed cases.

ch 6

In re 6.1(1), Priebe was informed the recyclers are required to have a building occupied where the public can contact them. Padgett indicated there were unlicensed recyclers who do not have a location.

Committee members expressed concern that those people operating without a location could be "grandfathered" in this rule. DOT officials commented that was not the intent. DOT will not renew a license for someone who does not have a place of business. Priebe contended that was not stated. Coates was requested to clarify that those who are licensed can continue to obtain renewals.

chs 7 & 9 amemdments

No questions were raised on chapters 7 and 9 amendments.

ch 10

Holden called attention to the fact that 10.2(4)b had received opposition from ARRC when it was under Notice. Coates commented DOT had discussed the matter with the AG's office and each dealer is required to have their own place of business. Sharing them would not be legal.

10.4(2)a

Responding to Priebe, Coates, in re 10.4(2)a, said there was a statutory change which the rule reflects. Priebe opined the wording in the rule was misleading as to intent. Coates agreed to revise to clarify intent.

No further comments or questions regarding Transportation.

MINUTES

Chairman Schroeder called for a motion to dispose of minutes of the September meeting. Tieden requested the addition of "neighboring" before "district", page 1560, second paragraph, line 1. The Secretary made the correction. Priebe moved the minutes, as corrected, be approved. Motion carried.

No Agency Representatives

No agency representatives were requested to appear for any of the following agencies:

BLIND, COMMISSION FOR[160]
Organization, 1.3 ARC 2326 ..... F 9/16/81
Emplacement practices, ch 5 ARC 2327 ..... F 9/16/81
Classification and compensation policies and procedures, ch 8 ARC 2328 ..... F 9/16/81
Promotions, demotions, transfers and terminations, 6.2 to 6.6. ARC 2082 terminated ARC 2329 ..... N 9/16/81

ENERGY POLICY COUNCIL[380]
Set-aside program, motor fuel, emergency purchase, ch 3. ARC 1671 terminated ARC 2351 ..... N 9/30/81
Purchasing fuel from alternate sources, ch 5 ARC 2349 ..... N 9/30/81
Standby emergency energy conservation measures, 12.11, 12.12. ARC 1672 terminated ARC 2350 ..... N 9/30/81

INSURANCE DEPARTMENT[510]
Appeals, 3.9(1) ARC 2314 ..... N 9/16/81

REAL ESTATE COMMISSION[700]
Brokers and salespersons, 1.7, 1.13 ARC 2332 ..... F 9/16/81

Adjourned

Chairman Schroeder adjourned the Committee at 3:40 p.m. Next meeting will be Tuesday and Wednesday, November 17 and 18, 1981.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assisted by Vivian Haag

APPROVED:

Lavene Schroeder
CHAIRMAN

DATE