

MINUTES OF THE REGULAR MEETING

OF THE

ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of
Meeting

Tuesday and Wednesday, June 10 and 11, 1986,
Committee Room 24, State Capitol, Des Moines,
Iowa.

Members
Present

Senator Berl E. Priebe, Chairman; Representative
James D. O'Kane, Vice Chairman; Senator Donald V.
Doyle; Representatives Edward G. Parker and Betty
Jean Clark. Not present: Senator Dale E. Tieden,
on vacation. Staff Present: Joseph Royce, Committee
Counsel; Phyllis Barry, Deputy Code Editor, and
Vivian Haag, Executive Administrator. Also present:
Barbara Burnett, Governor's Administrative Rules
Coordinator.

Meeting
Convened

Chairman Priebe convened the June 10 meeting at
10:15 a.m.

TREASURER

The Treasurer of State was represented by Mike
Tramontina, who explained the following rule:

Deposit and security of public funds, ch 3, filed emergency ARC 6568 *EE* 5/21/86 1758

Tramontina referenced 1985 legislation which provided
that an administrative system be established to insure
deposits of public funds. [453.22(2)] Rules were
rewritten to simplify the process for banks, cities,
counties and school districts. Tramontina continued
that Savings and Loans will be allowed to use mortgages
as collateral; credit unions may accept deposits of
public funds. Following liquidation of an Albia bank,
it was necessary to implement a system as to how to
return public funds to respective public units [3.6(2)].
Depositories such as banks must report to the Treasurer
on a monthly basis a one-page form listing public units
in which they have funds in excess of federal insurance
and the amount. A copy is required to be sent to each
of the public treasurers named on the form. Clark
complimented Tramontina on the rules and there was
discussion as to definition of "in bearer" in 3.8(3).
In re 3.14(1) "c", O'Kane inquired as to the meaning
of "special obligation." He learned that it is a bond
secured by special obligation. No other questions.

3.8(3)
3.14(1) "c"

LOTTERY

Charles Strutt appeared for Lottery and reviewed the
following:

Licensing, operation, purchasing, instant game, on-line game, 3.6, 3.20(5), 3.20(12), 3.20(25), 4.6(1), 5.6(3), 8.8,
9.11 ARC 6538, also filed emergency ARC 6537 *N.F.F.* 5/7/86 1676
On-line game, LOTTO, 9.4, 9.5, 9.9, ch 10 ARC 6540, also filed emergency ARC 6539 *EE* 5/7/86 1677

LOTTERY

6-10-86

No questions re 3.6 et al. Discussion as to tax liability in situations where more than one person claims a share of the winning Lotto ticket. Strutt stated that rules and the statute provide for winnings to be paid to one person and the burden of proof is on the taxpayer. Priebe opined that rules should address this issue. It was pointed out that this would be a function of the Revenue Department, not the Lottery Agency.

With respect to the 20-year payoff for winnings, Doyle asked if there were a rule on that subject. Strutt was unable to locate such a rule. He explained that the Department purchases an annuity contract with cash on hand. Cash value is paid for amounts up to \$100,000--over that, it is distributed in a 20-year payoff. Annuity cost averages 42 per cent--a million dollar annuity prize could be purchased for \$420,000.

In response to Doyle, Strutt advised that federal law would preclude business with Canadian companies. The Lottery Agency has requested an Attorney General's opinion on this matter.

AGING COMMISSION

Ronald Beane was present on behalf of the Aging Commission for review of:

Definitions, service requirements -- elderly nutritional services, 1.7(1), 8.45(2)"b" and "c," 8.46(3), 8.46(3), 8.47, 8.49(2), 8.49(3)"a" and "b," 8.49(4), 8.50(1)"c," 8.50(2)"b," "e," "h" to "i" ARC 6531.....N 5/7/86 1655
Retired Iowans community employment program (RICEP), 8.71 ARC 6532.....M 5/7/86 1656

According to Beane, the substantive change is to performance standards--8.49(2). He emphasized that the program has been more than just a "soup kitchen" type service. There are minimum requirements. Typically, there are no dietitians, but a consultant dietitian is available a few hours each month. Barry agreed to double check lettering of paragraphs in subrule 1.7(1). Clark viewed 8.49(2)c as a good goal but unrealistic. She envisioned it as causing problems for congregate meal sites. Beane contended that to do less would make it ineffective. Clark noted duplication in use of "or demonstrated" in 8.49(3)b"2". Responding to Doyle, Beane said that 95 per cent referenced in 8.49(2)b was by area agency not by site. Beane pointed out that 8.71 would provide guidelines and criteria for the Retired Iowans Community Employment Program.

HIGHER EDUCATION LOAN AUTHORITY

Kris Schultz, Executive Director, was present to review organization and operation, rulemaking and declaratory rules, chapters 1 and 2, ARC 6528, Filed, IAB 5-7-86.

Priebe raised point re 1.2(7) "...except for those portions which are excluded from the definition of 'rule' by Iowa Code..." as to what was excluded. Royce commented that some statements are confidential by nature, such as an inspection schedule. Priebe wondered if the

HIGHER
EDUCATION
LOAN
AUTHORITY
(Cont.)

excluded items should be spelled out and Royce indicated that would be acceptable. Royce noted lack of a contested case procedure. Schultz agreed to consult with their assistant attorney general.

NURSING
BOARD

Ann Mowery, Executive Director, appeared on behalf of the Nursing Board for review of:

Continuing education — providers, 5.3(2)b(7) ARC 6525 F. 5/7/86 1633
 Licensure to practice — registered nurse/licensed practical nurse, 3.4(7), 3.4(7)e, 3.5(2), 3.5(2)c and "d," 3.5(3),
 filed emergency after notice, ARC 6524 FEAN 5/7/86 1680
 Continuing education, 5.1, 5.2(2)c(2), 5.2(2)e and (1), 5.3(2)b(7) and (12), 5.3(2)c(2) and (3), 5.3(2)d(2), (3)
 and (9), 5.3(2)f, 5.3(3)a(9), 5.3(4)a(6) ARC 6546 N. 5/21/86 1747

No questions were raised re 5.3(2)b(7).

Re chapter 3, Mowery reminded ARRC that the Board had been issuing temporary licenses to out-of-state applicants who were examined in another state but wish to work in Iowa. Previously, there were no rules governing that practice. On a matter not officially before the Committee, O'Kane asked Mowery to review ARC 6571, Health Department, page 1730, WIC rules, in particular, Item 2, and contact him later for discussion. Mowery reviewed the proposed rules for learner designed self study--chapter 5. Clark expressed her support of the concept.

COMMITTEE
BUSINESS

The Committee reviewed a draft prepared by Barry, Royce and Burnett to be printed in the IAB to suggest a procedure for nonsubstantive rulemaking to implement the Act. Also, the Legislative Service Bureau Director had recommended addition of section 2065 from the Act--SF 2175. That section addresses transition and preserves existing rules.

Motion

O'Kane moved that the statement and section 2065 be included in an "Attention" message in the IAB. Motion carried.

MERIT
EMPLOYMENT
DEPARTMENT

O'Kane moved to lift the 70-day delay which had been imposed on the following Merit rules:

Separations, disciplinary actions and reduction in force, 11.3(2)d, 11.3(5), 11.3(6) ARC 6579 N. 5/21/86 1742
 Separations, disciplinary actions and reduction in force, 11.3(5), 11.3(6) ARC 6578, also filed emergency, ARC
 6577 N+FE 5/21/86 1757

Motion
Carried

The delay would be lifted effective June 27, 1986.
 Motion carried.

ARRC
Procedure
Rules

Brief discussion of ARRC Rules of Procedure with discussion being made to review them for possible revision at a subsequent meeting.

Further discussion of section 2065(2), which mandates the Rules Coordinator, ARRC and Deputy Code Editor to "develop a schedule for the necessary updating of the IAC." Priebe suggested Royce, Barry and Burnett meet and make recommendation at the July meeting. It was

6-10-86

agreed that three to four months' time would be needed. Doyle recalled that the Legislative Council had created an Oversight Committee on reorganization and suggested that their meetings be monitored via minutes.

NASS
Meeting

Barry reported that Legislative Service Bureau Director, Donovan Peeters, had suggested that she and Laverne Swanson attend the Secretary of State Conference on Administrative Rules in Seattle July 19 to 23.

Motion

Doyle moved that Barry and Swanson and other ARRC members be authorized to attend that meeting. Priebe had attended a similar conference in Florida several years ago and considered it to be very worthwhile.

Carried

Motion carried.

PLANNING
AND
PROGRAMMING

Rod Huenemann, Program Administrator, represented OPP for review of Community Services Block Grant, Chapter 22, ARC 6523, filed IAB 5-7-86. In responding to Priebe's question re purchase of land or improvements of a building, Huenemann said that would be only through waiver procedure. Federal law is clear that funds are intended to benefit the low income.

Representative Parker arrived.

REVENUE
DEPARTMENT

The following agenda was presented by John Christensen for the Department of Revenue:

Sales and use tax on services — lobbying, 26.70	ARC 6530	.....	F	5/7/86 1693
Corporations — basis of tax, 54.1(4)	ARC 6533	.....	F	5/7/86 1694
Income tax credit for increasing research activities, 42.2(6), 52.4(5)	ARC 6534	.....	N	5/7/86 1673

26.70

In the matter of rule 26.70, Christensen was unaware of protests. They had heard rumors of possible lawsuit. It was Royce's understanding that the 1986 Attorney General's opinion ruled that the statute relative to tax on lobbying service was unconstitutional. The Department would hire outside attorneys for any litigation. Parker wondered if ARRC reasons to object would cover "unconstitutional" matters. Doyle commented that unconstitutional questions would be left to the Iowa Supreme Court. No questions re 54.1(4), 42.2(6) and 52.4(5). Christensen said that subrule 42.2(6)b, second unnumbered paragraph, would be stricken since it was inconsistent. No further comments.

54.1(4)

42.2(6)

42.2(6)b

Lunch recess The Committee recessed at 11:25 a.m. for lunch.

Reconvened Chairman Priebe reconvened the Committee at 1:30 p.m.

HEALTH
DATA
COMMISSION

Sharon Henry appeared for review of:

Submission of data, 6.1, 6.3 to 6.6	ARC 6558	.....	F	5/21/86 1748
Data accessibility and confidentiality, 7.1 to 7.5	ARC 6557	.....	N	5/21/86 1727

Also present: William Hedlund, Iowa Medical Society; Jeanine Freeman, Iowa Hospital Association; Eldon Huston, Iowa Medical Society. Also Pierce Wilson, Health Department.

HEALTH DATA
COMMISSION
(Cont.)

6.4

Delay 6.4(2)
Motion
Carried

7.1--7.5

O'Kane in the chair. Henry informed ARRC that the Health Data Commission collects medical data for the state and publishes reports to notify consumers of the health services provided. The legislature has directed the Department to collect information from physicians as well as hospitals by July 1, 1986. After their hearing and comment period, decision was made to limit information from physicians to surgery procedures. Doyle raised question re 6.4, which provided, "In no event, shall third-party payers submit data which identify a patient by name, address or patient identification number unless authorized by the patient." He noted that the form for the data included a blank for the ID number which seemed to be a conflict. Wilson pointed out that the ID number was intended for confidentiality. He added that the "insured ID" and the "patient ID" were different. Clark agreed that the ID number should be deleted. Doyle moved a 70-day delay on 6.4(2) to allow for further study. Motion carried.

Review of Rules 7.1--7.5. Henry said the rules had been changed for several reasons; one being physician reporting as opposed to hospital reporting; the other, to clarify the statute on one hand and give physician providers opportunity to verify data and still receive reports published by Health Data Commission on a timely basis. Time frames were included. According to Henry, many written comments had been received and they had met with several medical associations.

ch 6

Freeman submitted written comments to the ARRC and summarized her position on the amendments to chapter 6. Freeman contended that the changes would result in effectively eliminating many of the rights relative to verification because of tight time frames. The definition of "notified" was a concern--publication by newspaper would negate notice provider receives. She recommended that the language be eliminated and existing process be continued. Freeman voiced concern re frequency of reports (quarterly) which may result in artificial data. Further, time periods for verification of data were too short and was "inconsistent with the law." Huston spoke in support of many points made by the Iowa Hospital Association. He presented written comments and was hopeful a compromise could be reached. He contended that the statute was based on patient confidentiality and accuracy of information. In their judgment, there should be some direct contact with each physician giving opportunity to verify.

Priebe resumed chair.

COMMERCE
COMMISSION

David Lynch, Ray Vawter, Cindy Dilley and Allan Kniep represented Iowa State Commerce Commission for:

6-10-86

COMMERCE
COMMISSION
(Cont.)

Findings of fact and conclusions of law, 7.7(15)"a." last paragraph ARC 6576 F.. 5/21/86 1725
Practice and procedure, rate regulation election — certain electric utilities, 7.12, 7.4(10) ARC 6574 N 5/21/86 1724
Filing periods for responses and objections, 7.7(12), 7.8(2)"c." 7.9(3) ARC 6573 N 5/21/86 1723
Billing procedures for industrial customers, 19.3(7), 19.4(2)"a." 19.4(6), 19.4(11), 19.4(15), 20.3(6), 20.4(3)"a." N.T. 5/7/86 1658
20.4(7), 20.4(12), 20.4(15), also notice ARC 6292 terminated ARC 6536 N 5/21/86 1725
Incentive rates for natural gas customers, 19.12 ARC 6575

7.7(15)a Kniep noted that 7.7(15)a was "cleanup". No questions
7.12 re 7.12, 7.4(10) which Dilley indicated were intended to
7.4(10) comply with 1986 Iowa Acts, House File 2325. The Act
requires rules prescribing the manner in which certain
electric utilities may elect to have their rates regulated
by Commerce.

7.4(10)c Priebe inquired as to reason twenty days were reduced to
7.8(10) fifteen in 7.4(10)c. Dilley said it would be consistent
7.12(1)c with 7.8(10). Priebe was doubtful that private donations
could be used to oppose an issue--7.12(1)c. Doyle envi-
sioned problems in rural areas. Vawter indicated there
is an election if they want regulation; otherwise, all
are deregulated. Vawter did not anticipate many petitions
for regulation. According to Kniep, the period for
7.7(12) response on motions was shortened from 14 to 10 days
in 7.7(12). Subrule 7.9(3) would shorten the time to
object to application for rehearing from 14 to 10 days.
The Commission must act on rehearing within 20 days.
[Code section 476.12]

Motion General discussion of statutory problem. Clark moved
to notify the appropriate legislative committees that
twenty days is inadequate and that 30 days would be
Carried better. Motion carried.

19.3(7) No questions re 19.3(7) et al.
19.12

According to Lynch, rule 19.12 was the first step of a
package intended to reflect the restructuring of natural
gas industry currently taking place at federal level.
Lynch advised Parker that rules for electric customers
would be forthcoming. Parker recalled this matter had
been one of disagreement in the legislature for several
years. Lynch pointed out that the rules were in response
to recent action by Federal Energy Regulatory Commission.
If Iowa fails to act, there is a risk that FERC will
preempt Iowa on service charge rates for local distri-
bution companies in order to run this through on their
own. Royce took the position that Commerce was within
their authority. Lynch said they tried to allow for
flexibility in that utilities will determine most
provisions when they file tariffs for approval. Rules
are an attempt to ensure that no costs are passed on
to other customers--no subsidy from one customer to
another. No action.

INDUSTRIAL Robert Landess, Commissioner, and Barbara Bartz, Insurance
COMMISSIONER Program Specialist, were present for discussion of
4.9(8), 4.27 contested cases, 4.9(8), 4.27 and 4.2, ARC 6572, Notice,

6-10-86

INDUSTRIAL
COMMISSIONER
(Cont.)

IAB 5-21-86. Landess said the amendments will streamline and expedite the hearing process with respect to contested cases and workers compensation.

In re 4.9(8), Doyle inquired as to what kind of case would be involved in the withdrawal of counsel and Landess replied that all areworkers' compensation cases. Doyle noted that the rule required a receipt from the client and he questioned what action would be taken if the client could not be located. Landess said a ruling would be made on it and he referred to the second to last paragraph of 4.9(8) for further explanation.

EMPLOYMENT
SECURITY

Representing Job Service were: Joseph L. Bervid, Rich Hemming, Executive Assistant, Jim Hunsaker, Administrative Staff. The following amendments were considered:

Employer records and reports, employer's contribution and charges, 23.3, 2.3(1), 2.3(6), 2.4, 3.43(15) ARC 6585N 5/7/86 1661

2.3(6)f

Bervid described changes as essentially "cleanup" in nature. O'Kane and Bervid discussed credit memos--2.3(6)f.

SECRETARY
OF STATE

Sandra J. Steinbach appeared on behalf of the Secretary of State for consideration of the following:

Alternative voting systems, 10.1(2), 10.1(4), 10.2, 10.3 ARC 6527, also filed emergency ARC 6526N.F.E. 5/7/86 1693

Steinbach said the amendments were to accommodate a new voting system which was purchased by Black Hawk County and used for the first time in their primary election.

Steinbach advised Doyle that rules existed re pencil marking of ballots as used in Woodbury County. In 10.2(1), Clark was of the opinion "are used" should be inserted before "shall" in last sentence. Steinbach would check the matter. In the material titled "Marking Your Ballot", paragraph 5, Doyle thought "person's" should read "candidate." According to Steinbach, a person is not a candidate until the name is on the ballot. Doyle saw it as an area of confusion for the voter. Priebe called attention to use of "must" in "Returning your Ballot" and thought it should read "shall." Steinbach was of the opinion that "must" was more understandable for voters. Royce and Clark defended use of "must" in this situation. It was pointed out that "shall" is used in the Code. (Definition of "must"--is required by law, custom or moral conscience to ...). Doyle was told that Code chapter 53 still uses the word "affidavit" rather than certification but Steinbach will review the matter. No other questions.

HEALTH
DEPARTMENT

The following agenda was before the ARRC:

Board of optometry examiners, applicants licensed in another state, 143.6	ARC 6561	.....F.	5/21/86 1769
Outpatient diabetes education program, 9.7(1)"c" and "d"	ARC 6529	.....N	5/7/86 1663
Special supplemental food program for women, infants, and children, 73.18, 73.5(1), 73.5(2), 73.5(4) to 73.5(6)	ARC 6571	.....N	5/21/86 1730
Deaf services of Iowa, ch 126	ARC 6522	.....N	5/7/86 1663
Board of optometry examiners, branch offices, 143.9(1)	ARC 6552	.....N	5/21/86 1732

HEALTH
DEPARTMENT

Health Department representatives present were: Mike Guely, Eloise M. Lietzow, Nancy Neal, Jean Plant, Susan Osmann, Barbara Thiede, Cheryl Brinkman, Jacqueline Smith, Advisory Council, Mike Soliday, Diana Leonard and Carolyn M. Cool, Signer interpreters. Also present: Jane Kelleher, Norma Jean Weiland, Iowa Association of the Deaf and approximately five other members; Rose Vasquez, Assistant Attorney General; John Cool and Jim Hanson, Vocational Rehabilitation; Harold Kinkade, Waterloo; Janice Hawkins, Sign Language Interpreting Services; and approximately 25 interested citizens; William Angrick, Citizen's Aide/Ombudsman; Shirley Hicks, President, Iowa Deaf Association; David Legg, Cedar Rapids.

- 143.9(1) No questions re 143.6 and 9.7(1). Brinkman explained that subrule 143.9(1) was clarified to show that each optometrist practicing in a branch office must display a certificate. In response to O'Kane, Brinkman said it is an original but smaller than the original one for the optometry license.
- 161.4 Royce spoke for Irene Howard of the Licensing Division who could not be present for a special review of rule 161.4. A question had developed relative to social work accreditation. Royce described the problem--graduates from an American Institution are accredited by a national organization and are given approval to take the test. There is no formal process for foreign graduates. The Department was hopeful of a resolution to the problem in the near future.
- Minutes O'Kane moved approval of the May minutes. Motion carried.
- Discussion of amendments to chapter 73. No recommendations.
- Recess Chairman Priebe recessed the Committee temporarily to move to a large room. The meeting was reconvened in ch 126 Room 22 for review of chapter 126, deaf services. Guely recalled this was a second Notice of Intended Action. Comments from the hearing were distributed and it was noted that the deaf services program will move to the newly created Department of Human Rights on July 1. Guely explained that, because of this change, the Health Department had been reluctant to respond to points raised at the June 4 public hearing. However, the Health Department will forward the comments to Deaf Services and its new Commission.
- Discussion as to the appropriate action to take, i.e., should the Health Notice be terminated and a new one commenced under the new agency. It was decided that interested persons present today should be heard.

HEALTH
DEPARTMENT

The Chair recognized Angrick who reiterated concerns which he had shared with the ARRC after the first Notice. He saw a need for dialogue and improvement in the confidentiality provisions as well as management of that information. He added that the grievance mechanisms should be refined and he saw an issue developing with respect to signers. Hicks commented that the Iowa Association for the Deaf had participated in developing the rules. Priebe announced that material which had been submitted to him would be filed with the Deputy Code Editor to become a part of the record.

Hicks emphasized that the proposal was unsatisfactory to the IAD. Issues of paramount importance include the role of the director, the Deaf Services of Iowa's assumed function of advocacy, a clear client grievance procedure, and confidentiality. Hicks concluded that confidentiality was a complex issue for the deaf community--their lives involve a routine "invasion of privacy."

Weiland expressed her opinion that confidentiality provisions in the proposal were not adequate. She favored a strict policy patterned from the Code of Ethics by the Registry of Interpreters for the Deaf. In conclusion, Weiland pointed out lack of a grievance procedure in the proposed rules. She recommended that one be included for all the programs.

Kinkade saw the number one issue as one relative to qualified interpreters. He urged expansion of interpretation services to include personal social gatherings if there is no conflict with higher priority settings such as legal and health matters. He cited Code section 601I.1(2) as authority. In addition, he thought the Code of Ethics for confidentiality should be followed.

Priebe was interested in knowing how the hearing person is sure that interpreters are performing correctly. Doyle noted that court administrators have directories of deaf interpreters who hold valid certificates.

Kelleher signed that on June 17, the Iowa Supreme Court will be discussing the use of certified interpreters in the Iowa Court System. She was aware of court interpreters who were not properly certified. Kelleher referred to Code chapter 622B which addresses interpreters for hearing impaired persons.

Leitzow addressed the matter of qualified interpreters on the Deaf Services staff. She referenced a problem that surfaced two years ago when the Registry of Interpreters for the Deaf increased annual dues from \$40 to \$100. Leitzow had results of a vote on the subject which revealed that 398 favored the increase and 414 were for retention of \$40--84 interpreters indicated they would not renew.

HEALTH
DEPARTMENT
Continued

The Board asked for a raise to \$75, but the RID bylaws restrict increase in dues to membership. Leitzow continued that the issue became a conflict nationally. DSI staff sought guidance from the Supreme Court on the complex issue. The Supreme Court, along with other lawyers, have advised that an interpreter need not be a member of the organization if they have been certified. Leitzow said that some contend that DSI staff who no longer pay membership are breaking the law. Iowa has been part of a six-state effort to certify interpreters through Mid-America Quality Assurance Screening Test (QUAST) for sign language interpreters. This would provide a choice of RID or QUAST.

Weiland was concerned about confidentiality with QUAST. Priebe responded that if Iowa adopts something, the confidentiality can be required by law--he agreed it was important. He thought it should be spelled out by rule so the public would be informed. Guely pointed out that Deaf Services have no statutory language re confidentiality. Mention was made of referral to the General Assembly.

Legg cited an instance when Deaf Services had broken his confidentiality in a conversation with Legg's wife. Soliday explained that he had apologized for the innocent mistake. His intentions were to share his experience re a medical problem which was identical to Legg's problem. Leitzow was aware of only three "goofs" for DSI in ten years.

Angrick spoke of his involvement in reviewing the Legg case and as a result, there was an expungement and reduction of the files. Angrick raised two issues; why is the information being collected, and is there adequate management and statutory authority over that information? It was his opinion that the client should have control.

Doyle wondered if there were opposition to termination of the proposed rules by the Health Department. The new agency could then follow the Notice process and provide for additional hearings for new rules. He saw a need for consensus of the various factions. Priebe suggested termination of the proposed rules by the Health Department and that Royce, Burnett, Deaf Services, Angrick, and someone from the new agency work together to develop new rules for consideration.

Motion Responding to Kelleher, Leitzow said the new Commission would decide the broader outline and then the staff, probably the Director, will draft language which must be returned to the Commission for approval. Clark recommended that the existing material be delivered to the new Commission as rules are being written so as not to be after the fact. O'Kane moved that ARRC recommend that DSI terminate this notice in favor of a new one by the successor Commission, effective July 1. Motion carried.

Recess Chairman Priebe recessed the Committee at 4:30 p.m.

Reconvened Chairman Priebe reconvened the meeting, Wednesday, June 11, 1986, 9:00 a.m.

HUMAN SERVICES

The Human Services agenda follows:

Location of oral presentations, 3.2	ARC 6543	F.	5/21/86
ADC, granting assistance, 41.1(6)"d," 41.7(4)"a," 41.7(6)"f" and "i," 41.7(7)"c"(6), 41.7(7)"l," 41.7(7)"g" and "x,"	41.7(9)"c"(2), 41.7(11), filed without notice	ARC 6544	5/21/86
Supplementary assistance and medical assistance — recovery, 51.9, 76.12	ARC 6548	F.	5/21/86
Procedure and method of payment, submission of claims, 80.2(2)"b" "c," "j" to "n," 80.2(3)	ARC 6545	F.	5/21/86
Community supervised apartment living arrangements services program, ch 206	ARC 6549	F.	5/21/86
Residential services for adults, ch 207	ARC 6550	F.	5/21/86
Confidentiality and records of department, 9.3(3)"g"	ARC 6569	N.	5/21/86
Food stamp program, 65.3, filed emergency after notice	ARC 6547	FEAR	5/21/86
Medical assistance, eligibility, 75.1(13)"c," filed emergency	ARC 6542	FE.	5/21/86
Health maintenance organizations, ch 88	ARC 6570	N.	5/21/86

Department representatives present were Mary Ann Walker, Clark McDonald, Marie Theisen, Cynthia Tracy, Dan Gilbert, Nanette Foster Reilly, C. S. Ballinger, William Turner, Harold Poore, and Vivian Thompson.

- 3.2 No questions re 3.2, 51.9, 76.12, 80.2(2) and 80.2(3). Walker distributed packets with information pertaining to amendments to chapter 41 and she reported on the hearing.
- ch 206 Chapter 206 was amended to add transportation services to the list of services for which payment will be made. Priebe questioned the action and Walker said that transportation was an essential part of the program component.
- ch 207 Two previous programs were consolidated in chapter 207, according to Walker. Priebe was told that the interdisciplinary team consisted of client, client's representative, personnel from residential program, and one person who is qualified as a resident. Priebe could foresee a continuation of the same "rut" if the family were part of the team. No recommendations re 9.3(3)g.
- 65.3 Amendment to 65.3 was a result of revised federal regulations and will be federally funded. Priebe asked if anticipated income were considered in calculations and was told that local offices should be using that procedure for food stamps. Additional training will be forthcoming. Walker gave brief overview of the medical assistance eligibility subrule--75.1(13)c--which was the result of a court case. No questions.
- ch 88 Chapter 88 establishes procedures for use of HMOs to provide medical and health services to Title XIX recipients--a major change in the way services will be delivered. McDonald said that notices were sent to 95,000 clients and also to providers. Hearings were scheduled for this week with major source of contention anticipated to be centered on the voluntary vs mandatory issue for enrollment. Priebe wondered why grievance procedure was needed. He was told that a client and HMO might disagree as to need for a particular service; particularly, in counties with mandatory enrollment. Priebe asked that Parker and O'Kane be excused.
- Recess Committee in short recess.

WATER, AIR &
WASTE MGMT.

Mark Landa, Darrell McAllister, Jerry Tonneson, Bob Drustrup, Randy Clark and Diane Hansen were present for DWAM to review:

(controlling pollution, emission standards for contaminants, 22.3(1)c, 23.1(4), 23.3(2)b"	ARC 6566	.....F	5/21/86
Nonpublic water wells, well interference, 49.1, 49.3, 49.6(10), 49.6(11), 50.1, 50.2, 50.3(2), 50.6, 50.6(1)a" and (3), 50.7(2), 50.8(1), 52.2, 52.6(4), 52.7(2), ch 54	ARC 6567	.....F	5/21/86
Wastewater treatment and disposal, 60.2, 62.3	ARC 6556	.....F	5/21/86
Criteria for award of grants, 91.1, 91.5(4), 91.6(2), 91.6(4)"g," 91.8(3)"c," 91.8(5), 91.9(1), 91.9(7)	ARC 6541	.....F	5/21/86
Wastewater construction and operation permits, design standards, 64.2(9)"b"	ARC 6554	.....N	5/21/86
Individual private sewage disposal systems, amendments to ch 69	ARC 6555	.....N	5/21/86

Landa explained that rules 22.3 et al were promulgated by EPA in accordance with a court order and have been implemented in Iowa for about 1½ years. There is no impact on industry.

Randy Clark reviewed amendments to Chapter 49 and pointed out changes since Notice. Priebe was interested in meaning of "reputable well driller" as referenced in the definition of "registered well driller." Priebe contended the language constituted a "registered" well driller. R. Clark said this would be any well driller. Clark said the Department wanted to ensure that drillers would not be precluded from performing their work until the rules were in place.

Royce had a problem with the term "well driller"--a sort of temporary government official being given supervisory authority which is not statutory. Department officials stressed that the intent was to have a registered driller at the site--someone technically responsible.

Priebe was interested in penalty for violation of 50.6(1)a(3). Clark spoke of the various methods for revoking a registration, e. g., if the well is constructed in noncompliance with effective standards.

Drustrup clarified that registration of well drillers was not addressed in these rules. He considered the provisions as analogous to a situation where a registered engineer certifies a plan. There was discussion of the statute and penalties. Priebe could foresee problems. No other comments.

60.2, 62.3

Hansen gave brief overview of amendments to 60.2 and 62.3 and noted a major change was to allow facilities to operate in split-flow mode. After primary treatment, some can divert part of their flow around the secondary unit and then it is combined with the effluent from those units before it would be released from the plant. Priebe reiterated his concern for the fact that the city of Des Moines is pumping sewage into the Des Moines River and wondered if the rule were written to assist Des Moines. Hansen said split-flow mode was not precise because everything goes through primary treatment and they would still have to meet secondary standards. Standards were not relaxed.

6-11-86

WATER, AIR &
WASTE MGMT.
Continued
ch 69

No questions re amendments to chapter 91 or 64.2(9)b. General comments were favorable at the public hearing re changes in chapter 69. Suggestion was made for an ongoing advisory committee. Hansen explained there would not be raw sewage and leech field should not be affected. McAllister said septic tanks would continue to operate. Royce was interested in whether or not laundry water could now be pumped into a backyard. Hansen did not believe that was included. She added there was no intent to change that practice but they want to eliminate the old-fashioned cesspool which contained human waste, garbage, etc. Hansen would do further research on Royce's question. No other comments.

BEER & LIQUOR William Armstrong represented Beer and Liquor Control
CONTROL DEPT. Department for the following:

Operation of state liquor stores, point-of-sale advertising, 13.3 ARC 6561F. 5/21/86
License and permit divisions, 5.7(1)"c," 5.7(2)"b," 5.8(4), 5.9(3) ARC 6559N 5/21/86
Advertising, 6.1(10), 6.1(11) ARC 6560N 5/21/86

13.3 Armstrong pointed out that amendment to 13.3(3)a was
in response to ARRC request--"this" was substituted
5.7(1) et al for "the" before "policy". Discussion of 5.7(1)c
et al. Doyle had heard conflicting reports re the
dram shop rider. He commented that with the law change
three more companies might come into Iowa. Armstrong
admitted a high-risk establishment finds it increasing-
ly difficult to obtain insurance. It was his under-
standing that the law was not changed to require grocery
stores and quick shops to carry dram shop coverage.

Priebe had been contacted by constituents relative to
procedure for buying liquor stores. According to Arm-
strong, rules had not been promulgated. He noted that
franchisee legislation did not pass--1986 Iowa Acts,
HF 2484, is not a franchisee bill but permits private
citizens to buy a Class "E" license, not the store per se.

6.1 Discussion of amendments to advertising rules. Priebe
failed to understand why free distribution of wine
menus was prohibited. Armstrong referenced Code §123.45
and indicated that the industry lobbyist, Laird, took
the position that such distribution was prohibited by
the Code. Priebe thought prohibition of free promo-
tional items to be acceptable, however, he failed to
understand how a wine list, not suggesting a particu-
lar wine, would fall into that category. Clark con-
curred. Doyle thought the AG should be asked for
another opinion to address Laird's point. Armstrong
was amenable. Brief discussion of 6.1(11), tasting
or sampling of wine.

CONSERVATION
COMMISSION

Nancy Exline and Richard Bishop were present for the
following review:

Saylorville multiuse trail and wildlife area, ch 56 ARC 6564F. 5/21/86
Wild turkey fall hunting regulations, 112.1, 112.2, 112.4 ARC 6565F. 5/21/86

6-11-86

CONSERVATION
COMMISSION

Also present: Robert Anderson, Iowa Sportsmen Federation and Iowa Wildlife Federation.

ch 56

In re chapter 56, Exline gave brief overview of changes made since the Notice. Anderson was interested in whether or not dogs had been prohibited for hunting and Exline indicated they were not--the rule addresses the type of weapon. Anderson was concerned that use of dogs would be "use of any other method" and Exline agreed to review the matter with the Commission and make clarification if necessary.

ch 112

Wild turkey hunting amendments were explained by Bishop. One change made since the Notice was to exclude an area around Red Rock Lake where birds had just been stocked last year. Doyle raised question re zones, 112.2(1)b, exception in line 3, as to what was the south boundary. Bishop explained that complete zone information is not set out in the rule but south boundary would be the southern border of the state--an area in the middle is being excluded.

IOWA
DEVELOPMENT
COMMISSION

Doug Getter was present for the following:

Economic development, 8.7(3)"a" and "b," 8.8(3)"d," 8.10(2), 8.10(3) 8.10(5)"b," 8.13, 9.2, 9.3(2), 9.4(2), 9.5(2), 9.5(4), 10.7, 10.10"2," 11.1, 11.4(2), 11.7, 12.3(3), 12.3(4), 12.5, 12.8(4)"f," 12.8(6)"d," 12.8(8), 12.9 to 12.12 ARC 6553F. 5/21/86

12.11(4)

He reminded ARRC that rules had been filed emergency last fall in anticipation of lottery revenue. The public hearing was held with excellent comments received. Re ownership of equipment in 12.11(4), Priebe envisioned problems with significant equipment being purchased. Getter said there was a possibility of private colleges submitting proposals although he was unaware of any. Priebe thought there was some inconsistency in the rule. Clark suggested a prohibitive clause re sale. Getter did not foresee problems but was willing to review the matter. He said there would be a round of grant proposals soon which would provide a good benchmark. Priebe contended that as long as the state pays for the equipment, it is state property, and not that of the private colleges. Getter indicated Regents schools had to work through the Board of Regents.

12.11(5)

Doyle noted use of "invention" in 12.11(5) and wondered if it should be "inventors".

MERIT EMPLOY-
MENT DEPT.

Clint Davis and Carol Swanson appeared for Merit Department to review:

Separations, disciplinary actions and reduction in force, 11.3(2)"d," 11.3(5), 11.3(6) ARC 6579N. 5/21/86
Separations, disciplinary actions and reduction in force, 11.3(5), 11.3(6) ARC 6578, also filed emergency ARC 6577N&EE 5/21/86

Also present: Edward Moses, state employee.

Davis recalled there had been an exception to a filing with respect to rules having to do with bumping during layoff and recall. Because of that, the rule was rescinded and previous language was restored.

MERIT EMPLOY-
MENT DEPT.
Continued

Davis continued that the other Notice would place under proper procedures those changes with respect to bumping and recall to make noncontractual employees' rights on bumping similar to those that were negotiated for contractual employees.

It appeared to Moses that promotionals would appear anywhere on the list and he contended that was in direct conflict with Code §19A.1. It was his opinion that Merit had exceeded their authority under 19A.7, appointment by appointing authority of a person standing among the highest six scores on appropriate eligible list to fill a vacancy. Moses reiterated his disagreement with the Department on the appointment and promotion language. He argued that they should be objective and provide as much protection for the employee as the employer--for 17 years, a promotion was an appointment, and rule 10.1 was inconsistent with the law. He considered this very unfair to long-term employees.

Davis referenced his position at the May meeting.

Royce reviewed the two different Code sections in question. He stated that, "Clearly, for your initial appointment in state government, you are going to be chosen from the top six scores. For promotions, you go to section 4, in my interpretation, which is somewhat different. There is no requirement that you be appointed from the top six."

After some discussion with Moses, Doyle suggested Royce research the question, "Is there a precedent if you take the law and use one part of it and, later, use it in a different way?" The Committee asked Royce and Burnett to work together. Moses wanted clarification as to whether a promotion would be an appointment and if so, the generic term "appointment" in the law, would it include "promotion?" Priebe said Moses would be contacted, probably after the August meeting.

Clark asked Davis why Merit had changed its practice and he replied that it was for affirmative action purposes. Code chapter 19B provides a basis for more flexibility to management in making promotional hires from within qualified staff--a clear opportunity for management to take more responsibility for its affirmative action.

11.3 (6)b

Re 11.3(6)b, Doyle was told that a person could have been laid off as a full-time employee and they would have right to a full-time situation. If the employee turned down that full-time status, they would be off the list. The same would apply for the part-time employee. A public hearing was scheduled for June 12 and Davis agreed to review the language for possible clarification. Doyle thought 11.3(6)b contained two definitions of "status."

6-11-86

RACING
COMMISSION

Gary Hayward, Assistant Attorney General, appeared for Racing Commission to review:

Twin trifecta wagering at greyhound tracks. 8.1, 8.2(4)" ARC 6520, also filed emergency ARC 6519 N.F.E. 5/7/86
Harness racing. 9.7(9)"c" and "d." 9.14(4)"d"(1) and (2). 9.14(4)"e." 9.16. 9.20. 9.21(2). 9.23. 9.37. 9.38(3). 9.39. 9.40.
9.42. 9.43. 9.52(1) to 9.52(5). 9.65(3). 9.69(7). 9.69(12). 9.83. 9.85. 9.92. 9.98 ARC 6521 N. 5/7/86

Priebe questioned the emergency filing. Hayward said there was no apparent opposition and the Commission wanted to start wager when the Council Bluffs track opened to avoid reworking the system. No questions.

Brief discussion of trifecta--the money can accumulate until the last day of a meet. Priebe asked who controlled the money and was told the track had that responsibility. Priebe thought the state should get the interest but Hayward pointed out that the state gets the tax. He added that the statute did not provide for the state to claim the interest on trifecta money--it is the bettor's money. Priebe commented that should be in the rules and Hayward agreed to take Priebe's concern to the Commission.

Royce wondered if the money were audited by state auditors and Hayward said the funds were monitored by the state racing commission staff. Any abuse of the system would affect the licensing. Priebe insisted that rules should indicate the disposition of unclaimed winnings, etc. Brief review of amendments to chapter 9.

PROFESSIONAL
TEACHING
PRACTICES
COMMISSION

The following had been carried over from the last meeting:

Complaints - rules of practice and procedure. 2.2(2). 2.4(1). 2.6(1)"c." 2.8(1)"g" ARC 6492, also filed emergency ARC 6491 *Carried over from May meeting* N.F.E. 4-23/86

David Brown, Des Moines attorney, and Carolyn Haurum represented the Commission. According to Brown, they had received a series of complaints involving misconduct by licensed professionals, not really contesting underlying factual circumstances, but there was no provision in the rules for voluntary surrender of certificate without some type of contested proceeding. The Commission had quite a backlog and, in the interest of efficiently revoking certificates when there was no factual debate, they saw need for a rule change.

2.8(1)g

Doyle referred to 2.8(1)g, voluntary waiver of formal hearing, and asked, "How would you get to court?" Royce suspected a court might view the waiver as failing to exhaust the administrative remedy and would not hear the appeal. Brown contended that once the waiver had been made, the administrative remedy under chapter 17A was available to take a judicial review to district court. He said that each licensed professional is advised at the time they voluntarily surrender their certificate without a contested hearing that they have a right to appeal--the analogy being with guilty pleas. Priebe and Doyle thought that should be in the rule. Doyle thought it could be construed to be more of a guilty plea than a waiver.

PROFESSIONAL
TEACHING
PRACTICES
Continued

Brown said the need for the rule has been limited to repeated acts of sexual abuse, where there was little doubt that revocation was imminent. Brown continued that attorneys have favored a procedure other than public hearing when children have to testify. A voluntary surrender option is available for lawyers and it seemed only fair to provide one for teachers.

Royce raised the point that the only time for actual hearing would be when there were facts in dispute. The waiver of formal hearing forces the individual to admit that facts of the case are violations. If facts are not in dispute, no need for a hearing. Brown reiterated that the Commission is without jurisdiction to impose anything if there is no admission by the licensed professional or finding of a violation of certain criteria. Doyle recommended a voluntary surrender procedure and Royce said that was different from a permanent revocation.

2.8(1)

In 2.8(1), Brown agreed to review the subrule and the waiver form. Doyle viewed the use of "that" at the beginning of each paragraph of the form as unnecessary. Royce pointed out differences in the fifth and sixth paragraphs of the form with respect to suspension and revocation. Haurum said that paragraph five addresses authority of the Commission to recommend and paragraph six pertains to waiver which is used only in revocation. Brown admitted they might have been too all inclusive. Doyle expressed concern about the lesser than criminal offenses.

Priebe suggested that Department officials work with Royce and Burnett for an acceptable rule and form. No other questions.

Committee was in recess until 1:00 p.m.

No Agency
Reps

No agency representatives were requested to appear for the following:

ATTORNEY GENERAL(120)
Public information, 1.4(6) ARC 6562.....N 5/21/86
TRANSPORTATION, DEPARTMENT OF(820)
Procurement of equipment, materials, supplies and services, female and minority small business set-aside, (01.B)
2nd amended notice ARC 6563.....N 5/21/86

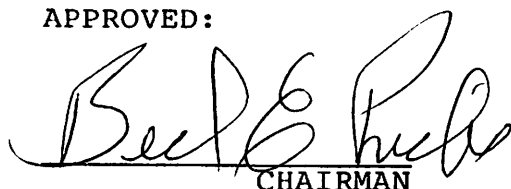
No recommendations.


Adjourned

Committee adjourned at 1:30 p.m.

Respectfully submitted,

APPROVED:


CHAIRMAN


Phyllis Barry
Assisted by Vivian Haag and
Bonnie King