MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday and Wednesday, September 11 and 12, 1990, Senate Committee Room 22, State Capitol, Des Moines, Iowa.

Members Present

Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives David Schrader and Betty Jean Clark.

Staff present; Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Alice Gossett, Administrative Assistant. Also present: Paula Dierenfeld, Governor's Administrative Rules Coordinator.

Special Review

Engineering Examiners

Chairman Priebe convened the meeting at 10:05 a.m. and called up the Special Review, Engineering Examiners, 193C IAC 2.6(3),(4). Appearing for the Engineering and Land Surveying Examining Board were: Patricia Peters, Executive Secretary, Dale Wight and Jolee Belzung, Board Members; Stephen E. Reno, Attorney General's Office; and Norman Van Sickle, Civil Engineer.

Pavich took the Chair.

Royce explained that Van Sickle had asked to make a presentation to the ARRC regarding accuracy standards for land surveys. Rule 2.6(114) provides that "measurements shall be made with instruments and methods capable of attaining the required accuracy for the particular problem involved." Subrules 2.6(3) and 2.6(4) provide: "The unadjusted closure for all surveys shall be not greater than 1 in 5,000. In a closed traverse the sum of the measured angles shall agree with the theoretical sum by a difference not greater than 30 seconds times the square root of the number of angles." Royce continued that the issue dates back to the late 1970's and involves basically several new different techniques for conducting surveys. Van Sickle distributed detailed handouts wherein he cited the importance of new, remote sensing survey methods. He stressed the importance that they be properly integrated with along-the-ground, traverse surveying. He referred to the various plates in his handout to explain the surveying technique he was using at the time an alleged violation occurred which resulted in the revocation of his license in 1979. Van Sickle's handout is on file in the Office of Administrative Code Editor and by this reference is a part of these minutes.

Reno addressed the committee on the Board's position. They want to ensure accuracy in surveying in the State of Iowa and believe the existing rules meet those requirements. The Board saw no need to make the measuring

Special Review Contd.

requirements absolutely exact by using satellites or other methods. In fact to do otherwise would probably unnecessarily be damaging to the profession.

In response to Tieden, Wight said the procedure followed was fairly consistent throughout the country.

Van Sickle offered details regarding the revocation of his license.

Priebe in the Chair.

After lengthy discussion, Pavich suggested that the matter be referred to the Speaker of the House and President of the Senate for referral to the appropriate subcommittee.

Motion

Priebe moved Pavich's recommendation. Carried.

ATTORNEY GENERAL

The Attorney General's office was represented by Marti Anderson, Elizabeth Osenbaugh and Julie Fleming and the following was considered:

ATTORNEY GENERAL[61]
Victim assistance program, division I, 9.2(1), 9.5, 9.10, 9.12(1). Notice ARC 1165A 8/8/90
Crime victim reparation, division II, 9.25 to 9.37. Notice ARC 1164A 8/8/90
Sexual abuse examination payment, division IV, 9.80 to 9.87. Notice ARC 1162A, also Filed Emergency ARC 1163A 8/8/90

9.2 to 9.37

Anderson pointed out that the three sets of rules govern the administration of the Crime-Victim Assistance Program. There are presently two investigators in their office. Anderson spoke of difficulties in working with ambiguous information. Before making recommendations, investigators consider the severity of the crime, look at the second injuries, try to determine whether or not the victim had made an attempt to leave the scene or to disengage in the situation, look at the comparable sides of the participants, and look at whether charges were filed.

Each month they serve 120 to 130 clients and the number of claims has doubled. Discussion of 9.31(4) with respect to payment of reparation to an Iowan who is victim of an act committed outside the state. According to Anderson, the federal government reimburses 40 percent of the claims paid.

9.80-9.87

Anderson reviewed new rules 9.80 to 9.87 which were adopted pursuant to 1990 Acts, S.F. 2413, section 1. There were no recommendations.

COMMITTEE BUSINESS

Code §4.3

Royce reviewed his draft of proposed amendment to Code section 4.3, references to other statutes. Controversy over adoption by reference in DOT rule on tinted windows called attention to need for clarifying legislation. Royce's proposal basically would provide that when an Iowa statute or rule is adopted by reference, all the subsequent amendments to that Iowa statute or rule are included

COMMITTEE BUSINESS Contd.

by current law. However, when a document or statute of another state or the federal government is adopted, it should be to a date certain. This would merely codify what the courts have held and what has always been Committee policy.

Royce called attention to the last paragraph as being significant. It essentially provides that a rule adopting material by reference must contain a synopsis of the material being adopted. It must specify where that material is available at no more than the actual cost of reproduction.

There was discussion as to whether the double adoption problem would be resolved. Royce reminded that many agencies have double adoption, e.g., the fire safety code has a number of them. A prohibition against double adoption would force agencies to review their rules. Priebe reasoned that corrective amendments could be made as rules were amended for other reasons.

Defer

There was consensus of the Committee to defer action on the proposed revision of Code section 4.3.

DENTAL EXAMINERS

Representing the Board was Cindy Nelson who reviewed the following:

DENTAL EXAMINERS BOARD[650]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Minimum training standards for dental assistants engaging in dental radiography. 22.4(1) to 22.4(3). 22.6 to 22.11. Notice ARC 1170A 8/22/90

Ch 22

Nelson said that amendments to Chapter 22 would clarify and expand requirements for dental assistants participating in radiography.

Questions were posed with respect to home/office study and to the reduction of course study time from 24 to 6 months. Nelson responded that the Board realized that the course could be completed in less time thus, allowing testing sooner. The Board had not received complaints.

Priebe interpreted 22.6(1) to require 3 examinations in 60 days. He also wondered if the last sentence meant that student status would be revoked forever. Nelson thought status would cease until the examination was successfully completed.

Doyle questioned what was intended by "unlawful" in 22.11(1)--criminal or civil penalty? He also asked about "discipline by the board" in 22.11(2). Nelson referred to the Dental Practice Act for disciplinary measures and she agreed to have the Board Secretary respond to Committee concerns. No Committee action.

ECONOMIC DEVELOPMENT

The following agenda was presented by Melanie Johnson:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
Iowa main street program, amendments to ch 39. Notice ARC 1135A 8/8/90

ECONOMIC DEVELOPMENT Contd.

39.3(3)

Schrader referred to 39.3(3) where "annually" had been deleted. Johnson would contact program managers but it was her understanding that Request for Proposals may be distributed more frequently than annually, depending on funding levels. Schrader thought a date certain and to whom RFPs would be sent would be helpful to the applicants.

In 39.5(5), Schrader interpreted revision to demand a match. Johnson clarified that match had been required previously but new language was intended to define percentages required to make the program self-sufficient within three years. Schrader wondered about impact on existing programs.

Priebe questioned use of grant funds for the salary of a full-time local Main Street Program manager--39.5(4). He reasoned that should be borne by the city. Johnson saw the necessity for an identifiable person who was in charge.

In response to Tieden, Johnson said they had received no comments on the rules. She also advised that the $5000 minimum population was not a legislative mandate.

COMMITTEE BUSINESS

Procedure Rules

There was further review of ARRC Rules of Procedure with focus on availability of tapes of the meetings. The existing rule provides in part "...Tape recordings used to prepare minutes are available only with the approval of the Chair or Vice Chair...and only after the minutes have been approved." Royce saw both practical and legal problems with the rule. It was his opinion that under the Open Records law the tapes are available at any time. A tape is a record and contains information that concerns the public who may have a right to demand it. Royce cited instances when tapes might be needed sooner than 30 days after a meeting. Although the taped meetings are not required by law, it was Royce's belief that when they are used, they become public record.

Priebe was hesitant to release tapes prior to completion and approval of the minutes. He suggested including the time frame in the rule--30 to 60 days.

Schrader concurred with Royce and it was noted that requests for tapes have been minimal.

Royce agreed to pursue the question by contacting the Attorney General's office.

Rules Staff Meeting

Royce informed the ARRC of a proposed 12-state Midwestern Regional Conference for rules review staff to be held in Minnesota or Wisconsin. The Council of State Governments would be involved in the planning. Minnesota staff initiated a survey of the Midwestern states to determine interest in such a conference. Royce noted that the group would not be associated with NCSL.

Priebe recalled that Minnesota had pursued this several years ago. He voiced strong opposition to such a concept

Rules Staff Meeting Contd.

contending that the legislative committees, not the staff, should be the dominant bodies in the rules review process. Royce asked about the possibility of ARRC authorization to attend the organizational meeting along with Barry.

Royce saw merit in an organization of legislative rules review committees. Priebe had thought for some time that this type of committee should be a part of NCSL but had not promoted that because of the continued growth of NCSL and layers of "bureaucracy."

After some discussion, there was Committee consensus that Royce and Barry should attend the meeting for informational purposes.

Motion

Doyle moved that Royce and Barry be authorized to attend the Administrative Rules Review meeting for Midwestern Legislative Staff. Motion carried.

Motion

Doyle also moved that the Iowa delegation carry the message that any formal action should be taken by legislative members not staff. The Committee had no problem with staff people learning what other staffs are doing in a support capacity.

Schrader suggested a topic for discussion by the Iowa staff. He opined that one of the biggest inadequacies of the ARRC was that other staff and legislators do not understand their function or the administrative rules process. The Doyle motion carried with Schrader's suggestion.

Omissions from IAB

Barry asked if the Committee would want to include as a Rule of Procedure their September 10, 1986 recommendation that full text of rules which are unchanged from the Notice and have not been controversial could be omitted from the Iowa Administrative Bulletin. The rules would then appear only in the Administrative Code. She pointed out that an Editor's explanatory note was added when rules were omitted.

Priebe favored such an amendment to the ARRC rules.

Schrader thought that it was important that "not controversial" be significant in determining whether rules should be omitted. Barry emphasized that caution is exercised in decision to omit any rule.

Segments of IAC-- Survey

In another matter, Barry called attention to the demand for segments of the Iowa Administrative Code on a subscription basis. A private firm has begun publishing the rules of the Revenue and Finance Department. The Superintendent of Printing had suggested a survey of subscribers to the Administrative Bulletin and the Administrative Code and state agencies as to demand for portions of the IAC. If such an interest exists, which

Segments of IAC--Survey Contd.

rules would they want available to them on a subscription basis. She commented on the many requests her office receives for specific rules. Barry asked permission to publish a survey sheet in the Bulletin.

Doyle pointed out that Iowa was in the final stages of selling Iowa Code computer tapes and it was his opinion this matter should be referred to the Legislative Council. Barry clarified that her request was for information only.

Doyle indicated that legislative Staff was studying ways to streamline availability of all of Iowa's legal publications. It was agreed that there was no authority to preclude private industry from buying the books and reproducing them.

There was discussion of proposed legislation for a pilot project to publish the Revenue Department rules. The provision was deleted from the Bill by a legislator who thought the matter could be authorized by the Legislative Council.

Priebe voiced concern that sales of the Code in sets would dwindle if portions were made available. He could foresee increased staff and expense.

Schrader mentioned the fine line of government interference with private enterprise. He recalled issues with the Secretary of State and the Board of Regents. He maintained that caution should be exercised in providing a service to certain groups.

Royce spoke of the cost of the Administrative Code ($942.55) and saw a benefit for the general public if it could be purchased in segments. He contended that industry could afford to purchase the entire set. No formal action.

Recess

The meeting was recessed for lunch at 11:50 and reconvened at 1:40 p.m.

INSPECTIONS AND APPEALS

Chairman Priebe called on Inspections and Appeals for the following:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Contested case hearings, rescind ch 10, introductory paragraph, Filed Emergency ARC 1172A	8/22/90
Hospitals, amend and transfer 641—ch 51 to 481—ch 51, Filed Emergency ARC 1161A	8/8/90
Hospitals—health care delivery systems, 51.2, 51.3, Notice ARC 1130A	8/8/90
Clinical privileges to certain health practitioners, 51.4(2), Notice ARC 1131A	8/8/90
Patient rights and responsibilities, hospital records and reports, 51.5, 51.6, Notice ARC 1129A	8/8/90
Residential care facilities for the mentally retarded, 63.14(7), Filed ARC 1128A	8/8/90

Appearing for the Department were Rebecca Walsh, Kim Schmitt, Bob Minkler and Mary Oliver. Also present: Elizabeth Osenbaugh, Deputy Attorney General.

Ch 10

Walsh stated that the first unnumbered paragraph in Chapter 10 was emergency rescinded because of opposition by the ARRC. The Committee had imposed a 70-day delay at their June 13 meeting.

INSPECTIONS AND APPEALS Contd.

Royce commented that one issue remained now that the Scope and Applicability paragraph had been removed. He wondered if there should be clarifying language as to applicability of the Contested Case Hearings rules.

Schmitt responded that several thousand appeals had been processed under the rules and he was not aware of problems.

Osenbaugh indicated that there was confusion to attorneys as to which rule, if not addressed to these rules, would need to be addressed to the various individual agency rules. Her preference was for a Scope section with the statement as to whom and when they apply but her overriding concern was to assure that they are being applied. No Committee action.

Ch 51

Walsh reported on the transfer and revision of hospital rules from the Public Health Department to Inspections and Appeals as mandated by 1990 Acts, H.F. 178.

51.2, 51.3

In review of 51.2 and 51.3, Minkler advised Priebe that 51.2(3) was a general hospital rule and if there were two hospitals under the same management, two separate licenses would not be required. Minkler said the language had been in existence since 1957. Priebe favored clarification of the provision.

51.4(2)

Walsh said that 1990 Acts, S.F. 2343, precludes a hospital from denying clinical privileges to certain health practitioners based on the school or institution where the training was received. The amendment to 51.4(2) addresses postgraduate training mandated by that legislation. In this instance chiropractors would not be included in the definition of physician.

51.5, 51.6, 63.14(7)

There were no questions on amendments to 51.5, 51.6, or 63.14(7).

INSURANCE DIVISION

Appearing for the Division were Kenneth Booth and Beth Stuchel. The following was considered:

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181] "umbrella"
Property and casualty insurance rate and form filing procedures, 20.1(2), 20.1(3), 20.2(1), 20.2(3), 20.3(1)"d," 20.3(3)"a" and "c," 20.5(1), 20.5(2), 20.5(4) to 20.5(6), 20.6(1), 20.6(3), 20.9, 20.10. Filed ARC 1154A 8/8/90
Publish rates in IAB (§509B.4) Dan Winegarten, Special Review

Ch 20

Booth explained amendments to Chapter 20 and there were no recommendations.

Special Request

Stuchel appeared for Daniel Winegarden, Executive Assistant to the Insurance Commissioner, who had sent a memorandum to cover his request. Iowa Code section 509B.4(9) requires the Insurance Commissioner to determine the maximum dollar amount for Plan A Hospital Room and Board Daily Expense Benefits. This benefit, equal to the current average semiprivate rate charged in Polk County metropolitan area of Iowa, has been determined to be $220. Although the

INSURANCE DIVISION Contd.

law does not require publication of the figure, Winegarden thought it should be made public record. A logical vehicle seemed to be a Notice in the Iowa Administrative Bulletin. However, such publication would require ARRC approval under Code section 17A.6(1)c. Stuchel did not anticipate frequent change in the amount.

Barry was willing to work with the Division on format for publication.

Motion

Doyle moved that the Insurance Commissioner be authorized under Iowa Code section 17A.6(1)c to publish in the IAB rate determination mandated in Code section 509B.4(9). Motion carried.

REVENUE AND FINANCE

The Department of Revenue was represented by Carl Castelda and Dennis Meridith and the following agenda was reviewed:

REVENUE AND FINANCE DEPARTMENT[701]

Tax liens — ten-year lien period for unpaid taxes, 9.1, 9.6, 9.6(1), 9.6(4). Notice ARC 1136A	8/8/90
Taxable and exempt sales determined by method of transaction or usage, 18.31(1)"a," 18.31(1)"b," 18.54. Notice ARC 1177A	8/22/90
Vehicles exempt from use tax, 32.4, 32.10. Notice ARC 1178A	8/22/90
Filing returns, payment of tax and penalty and interest, determination of net income, 52.4(5), 53.2(5), 53.11(7), 59.2(5), 59.8(7). Notice ARC 1138A	8/8/90
Examples of computation of alternative minimum tax when there are net operating loss carryforwards and carrybacks to a tax year; clarification of computation of federal tax deduction when separate Iowa corporation and consolidated federal returns are filed and there are capital loss carrybacks, 52.5(2), 53.3(1)"c," 58.5(2). Filed ARC 1180A	8/22/90
Minimum tax credit, 52.5(4)"a," "c," "d," "e." Notice ARC 1137A	8/8/90
Special fuel dealers' exemption certificates, license fee for tobacco products distributors, 65.13, 83.1(1). Notice ARC 1179A	8/22/90

9.1 et al.

No questions on amendments to Chapter 9.

18.31, 18.54

Meridith described amendments to Chapter 18 as tracking the new statutory definition for property purchased for resale in connection with the performance of services [H.F.2551,§12]. He added that companion legislation addressed exemption for advertising materials which are sold in this state and then find their way out of state to provide parity or equity with people who started their transactions outside the state [H.F.2551,§18]. These rules reflect the appropriate changes.

In response to Schrader, Castelda said that all material paper was included. Schrader asked if there were any change for sandpaper and similar items used in auto body repair. Castelda said their tax status had not changed. Castelda continued that Section 12 of the Act basically codifies the Department's rule on what is a purchase for resale in connection with providing a taxable service. They litigated but only to District Court. The Court held that even though the individual does not follow the criteria of the rule, there can be certain circumstances of which the resale exemption should apply. However, the Court did not provide any test which makes it extremely difficult for the Department and the taxpaying public to know when they can purchase something for resale and when they cannot. The Attorney General Staff suggested that the Department codify their rule.

REVENUE AND FINANCE Contd.

With respect to whether or not supplies used for refinishing the automobile would be an exempt sale, Castelda said it would depend upon how the customer was billed--how they itemize the invoice. Castelda recalled a special rule about 10 years ago which provided guidance to body shops.

Schrader asked if the comment on billing and the invoice could be included in the Sales Tax Newsletter.

Ch 32, 52.4 et al.

There were no questions on amendments to Chapter 32 or 52.4(5) et al.

52.5 et al., 58.5

Meridith advised that 52.5, 52.3, 58.5(2) and 52.5(4) were clarifying amendments. No questions.

65.13, 83.1

According to Meridith, amendments to 65.13 and 83.1 were intended to implement 1990 Acts, House File 2551, which permits special fuel dealers to prepare and use exemption certificates of their own design if they contain the required information. License fees on tobacco products distributors will be increased from $25 to $100.

Clark and Castelda discussed confusion which exists as to tax on farm machinery repair parts. Clark had complaints that implement dealers vary in the collection. Castelda was sure that was true. He added that the Department's recommendation was to withdraw the exemption on parts and allow exemption on the machinery and equipment. Exceptions such as engine replacement could be provided.

Castelda reasoned that the amount of revenue realized from small items and parts was not worth the effort involved. Also problems are created in competition and parts are interchangeable between tractors and cars.

An implement dealer had complained to Schrader about excessive paperwork to grant a tax exemption. Castelda responded that by statute, in order for a retailer to take the resale exemption or any exemption where they don't charge tax, it must be documented. Castelda described a somewhat shorter process which they now accept. An invoice can be stamped and the customer signs it.

NURSING BOARD

Lorinda Inman and Norma Jackson presented the following:

NURSING BOARD[655]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Nursing education programs, 2.3(2)"d"(2), 2.6(1)"a"(1)"1," Notice ARC 1133A 8/8/90
Registered nurse certifying organizations/utilization and cost control review, 12.3"26," 12.5(1), Notice ARC 1171A 8/22/90

2.3, 2.6

There were no recommendations for amendments to 2.3 and 2.6.

12.3, 12.5

In review of 12.3 and 12.5, Inman agreed to clarify quorum requirements in the final draft.

Minutes

Pavich moved to approve the minutes of the August meeting as submitted. Motion carried.

PROFESSIONAL LICENSURE

The following rules of the Division were presented by Kathy Williams, Carol Barnhill and Harriett Miller and there were no questions:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Barber licensure, 20.5(1), 20.5(2) to 20.5(9), Filed ARC 1194A 8/22/90
Barber instructors, 20.102(3), Notice ARC 1192A 8/22/90
Licensure of nursing home administrators, amendments to chs 140, 141, Filed ARC 1158A 8/8/90
Licensure of nursing home administrators, 141.4(2), 142.2(7), 142.2(8), Filed ARC 1157A 8/8/90
Optometry examiners, 180.14 to 180.18, Filed ARC 1191A 8/22/90
Respiratory care practitioners, amendments to chs 260 and 269, Filed Emergency ARC 1111A 8/8/90
Social work examiners, 280.8(2), Notice ARC 1159A 8/8/90
Speech pathology and audiology examiners, 301.101, 301.103, Filed ARC 1167A 8/22/90

PUBLIC HEALTH

The Department was represented by Mike Guely, Don Kerns, Dennis Boch, David Fries, Mary Weaver, and Jane Culp. Also appearing was: Larry Breeding, Iowa Association for Home Care. The agenda follows:

PUBLIC HEALTH DEPARTMENT[641]
Notification and surveillance of reportable diseases — giardiasis, 1.2(1)"a," Notice ARC 1109A 8/8/90
Sexual assault examination and reimbursement, transfer 641—ch 8 to 61—ch 9, Filed Emergency ARC 1160A 8/8/90
Hospitals, transfer 641—ch 51 to 481—ch 51, Filed Emergency ARC 1114A 8/8/90
Special supplemental food program for women, infants, and children (WIC), 73.5, 73.9, Notice ARC 1189A 8/22/90
Public health nursing, ch 79, Notice ARC 1156A 8/8/90
Graduate nursing grants program, 110.6, Filed Emergency After Notice ARC 1190A 8/22/90
Emergency medical services training fund and equipment grants, ch 130 title, 130.1 to 130.8, 130.8(5) to 130.8(7), Filed Emergency After Notice ARC 1110A 8/8/90
White flashing light authorization, ch 133, Filed ARC 1108A 8/8/90

Department officials offered brief explanations of 1.2(1), 130.8(7), Chapter 133, 110.6, Chapter 9, Chapter 5, 73.5 and 73.9. There were no questions.

Ch 79

Fries summarized revisions in Chapter 79. Priebe referred to the definition of "public health nurse" and asked why it included a "registered nurse licensed in the state" and then added that a work permit would be acceptable.

Weaver clarified that registered nurses were preferred but they wanted to be prepared in the event of shortage. Valid work permits are issued by the Board of Nursing on a temporary basis. There was no Committee action.

PUBLIC SAFETY

Appearing for the Department were Michael Coveyou, Gary Hayward and Roy Marshall. Also appearing were: Ahmet Gonlubol and Brian Sissel, Appellate Defenders; Bill Wegman, State Public Defender; and William Hargrave, State Public Defenders Investigator. The following agenda was considered:

PUBLIC SAFETY DEPARTMENT[661]
Fire marshal — fire safety standards for open parking garages and for "waiver homes" for the mentally retarded; sharing of aboveground storage tanks by governmental subdivisions, 5.230, 5.230(5), 5.305, 5.552, 5.620, Notice ARC 1173A 8/22/90
Impoundment of vehicles, 6.4(2)"d," 6.6, Notice ARC 1169A, also Filed Emergency ARC 1168A 8/22/90
Handicapped parking, 18.6, Filed Emergency ARC 1155A 8/8/90

Ch 5

Marshall explained amendments to rules relative to fire safety. He pointed out that open parking garages of noncombustible construction will not be required to have sprinklers. Marshall said that rule 5.620 reflects modifications of requirements for "waiver forms." Discussion of 5.305 which will allow sharing of aboveground storage tanks by governmental subdivisions, e.g., a city and school could share the same tank.
Priebe had heard from a Ledyard resident who operates Ternes Garage. He was interested in installing a 200 gallon tank on a pickup truck to contain a gas supply for emergency vehicles. Both gas stations have gone out

PUBLIC SAFETY Contd.

of business in the small city. Priebe asked Marshall to call Mr. Ternes to explain any details.

6.4, 6.6

Coveyou explained that amendments to 6.4 and 6.6 were filed emergency to comply with a recent U.S. Supreme Court decision (Florida v. Wells)110 S.Ct.1632(1990) which indicated that an order for searches of closed containers found during inventories of impounded vehicles was reasonable under the 4th Amendment to the U.S. Constitution. The law enforcement agency conducting the inventory must have an established policy regarding inventories of impounded vehicles which contain specific provisions for opening closed containers found in the vehicles and for the examination of the contents.

Doyle was interested in hearing from the Public Defender on this issue.

Wegman did not agree that Florida vs. Wells had changed the law. The law was already established policy for dealing with inventory or continuous searches in impounded vehicles. Therefore, he disagreed with emergency adoption. He declared that the question deserved an opportunity for public input. Wegman referred to the last sentence of 6.4(2)d which states that the process is to ensure safe return of the lawful possessions of the property owners of the vehicle. The preceding sentence allows locks to be broken and Wegman found that to be an unusual way to "protect" the vehicle. Wegman concluded that the option to open containers seemed to give the officer real discretion. He favored an inventory of everything.

Priebe called attention to the hearing scheduled for Wednesday.

Gonlubol disagreed with Coveyou's comment that the courts' decision was "reasonable."

Doyle noted that the Department had cited as implementation provisions, Code section 80.9(2)a which says they shall enforce all state laws and section 321.89 which covers abandoned vehicles. The Wells case was less than six months ago. Doyle continued that the Decision was important. It addressed the requirement for police policies and Department references do not coincide with the forcible execution statute--§808.6. That section allows an officer to break into a vehicle in a means necessary to execute the warrant. Doyle pointed out many precedents on searches and warrants and he cited a recent Iowa case, involving cigarettes found in a car in which the passengers had been apprehended. To rely on something other than Code Chapter 808 would be a matter of discretion of the legislature, in Doyle's opinion. He favored delay of the Noticed rules into the next legislative session. He agreed with the public defender that the Department of Public Safety really could not

PUBLIC SAFETY Contd.

prove under section 17A.5 that the waiting period should be waived since the rule does not confer benefit on the public. Doyle voiced support of an objection to the emergency rule and advised the Department to allow the full legislature to determine policy on searches and seizures.

Hayward addressed the points in the order in which they were presented. He defended the emergency filing. It became abundantly clear to him after the Florida vs. Wells decision that officers and the state would be exposed to liability if policy deficiencies were not corrected. Hayward stressed the need to continue with the inventory procedure and not set it aside for rule making. He reasoned there is nothing unconstitutional in the rule. The 24-hour waiting period was given to allow time to find a locksmith. They want to avoid tort claims for damage to vehicles and property if it can be avoided. As to the applicability to other agencies, Hayward said the policy was for the state patrol, DCI, narcotics and Department of Public Safety. They have no authority to write tickets for a local law enforcement agency.

With respect to discretion as to opening containers, Hayward referred to the Florida v. Wells case. The Department was trying to ensure that discretion of officers was consistent with the Court cases. As to the authority of the Department of Public Safety under Chapter 80, Hayward contended that impounding vehicles was part of enforcing the law. Part of the Department's responsibility in enforcing the law is to protect public safety and non-moving vehicles on and off the road. Also, Hayward disagreed with Doyle in regard to applying warrant procedures. The U.S. Supreme Court had specifically pointed out that the inventory search is separate and distinct from the warrant procedures and if these searches are performed as a subterfuge to that process, the law is violated. This is an inventory procedure and the warrant procedures do not apply. Hayward was willing to consider an alternative but declared there must be a rule to avoid breaking the law.

Pavich wondered if 24 hours were sufficient time to locate the owner of the vehicle. Hayward had tried to select a reasonable time to accommodate those involved and still allow completion of the inventory in a timely manner.

Pavich in the Chair.

Doyle emphasized the importance for a policy to inventory items which can be easily stolen, e.g. cameras or luggage. To open a fishing tackle box with a lock on it, or a brief case with a lock seemed unreasonable to him. As the Wells case points out the policy or practice governing the search should be designed to provide an inventory and not be a "fishing trip" to find marijuana, etc.

PUBLIC SAFETY Contd.

Doyle questioned Hayward as to justification for emergency adoption and Hayward reiterated that they have a policy that exposes officers and state to liability and loss of evidence, otherwise lawfully found.

There was discussion as to when the policy was adopted. History of rule 6.4(2)d dated back to June 27, 1979.

Doyle interpreted paragraph d without the new language would allow the Department to do the inventory but not to open containers.

Hayward admitted that "inventory of all contents" may be subject to challenge. The Wells case says that if you are going to have "something discussing containers you must specifically address containers." Hayward advised Schrader that Chapter 6 of their rules focused strictly on impoundments. If a vehicle is left on the street in such a way to create a hazard to traffic, it will be impounded and inventoried. If they have to take official action, they will impound the vehicle because they are responsible for it and are subject to suit. If vehicle is evidence, then warrants are needed.

Hayward explained that it was unlikely that they would open a camera for an inventory. He described a "container" as sort of a 4th Amendment law concept--a paper bag is a container; anything that holds something else is a container--it is a generic term.

Royce found it difficult to determine when a search ends and an inventory begins. Even in the case of Florida v. Wells, the fact situation did involve a case where they were actually looking for marijuana. They called it an inventory but they were looking for dope.

Hayward stressed that the inventory policy should not be used to find evidence. It is not a subterfuge to avoid search. If that is what the officer is doing, he is supposed to follow Code Chapter 808.

Schrader cited his reasons for support of an objection.

It seemed to Sissel that the Iowa Legislature should have some input as to how the Iowa Constitution should be interpreted. He failed to see where the last sentence of the new language in paragraph d was relevant to containers and perhaps it should be amended.

Motion

Doyle moved to object to the emergency filing of ARC 1168A, on the grounds that it does not confer benefit on the public as the Department stated.

There was discussion as to the possibility of deferring vote on the motion until tomorrow to allow Royce time to draft the language. Schrader took the position that a vote should be taken today.

PUBLIC SAFETY Contd.

It was clarified that the objection reversed the burden of proof to the Department and by statute the rule would expire in 6 months.

Priebe in the Chair.

Priebe pointed out that the rules were Noticed simultaneously with the emergency filing.

Hayward was concerned about exposure of the Department or the officers to litigation and voiced his strong opposition to the objection. He did not disagree that the legislature has authority to set limitations on discretion of law enforcement agencies. He disagreed with the Committee's interpretation of the law as it now stands.

Priebe asked for clarification as to whether the objection would include the Scope [6.6(321)] in Item 2 and Doyle responded that it was limited to Item 1, 6.4(2)d. The substance was not being objected to--only the emergency adoption.

Hayward commented that Chapter 6 of their rules had to do with inventories only and the extent that the search is justified by probable cause or without a warrant. The amendments were not an expansion--only clarification.

Dierenfeld was interested in a worst-case scenario with the objection in place. Hayward offered an example of a situation when an inventory is being taken and they discover something in a paper bag which is a container and have the court say, "I'm sorry but this evidence is not admissible because you opened a container in a vehicle. The Supreme Court in the Wells case said there must be specific policy on containers." That particular criminal charge may then go by the wayside. The officer will be subject to a civil rights suit for damages because he violated someone's rights in opening a paper bag when the State of Iowa did not have a container policy.

Schrader was troubled by Hayward's response and pondered, "Are we inventorying cars to gain evidence?" Schrader emphasized that the objection does not eliminate the new language. Hayward agreed it will be in place but with the presumption that it is not valid. In the absence of further evidence, they would lose.

Priebe was hesitant to dilute power of enforcement personnel.

Motion Carried

The Doyle motion to object carried 5 to 1, with Priebe voting "no."

Royce prepared the following language:

PUBLIC SAFETY Contd.

At its September 11th, 1990 meeting the committee voted to object to the "emergency" adoption and implementation of ARC 1168A item one, on the grounds that action was unreasonable. It was the opinion of the committee that the ground cited for emergency implementation under section 17A.5(2)"b", that the rule conferred a benefit on the public, was inappropriate. The committee believed that the rule may benefit the department, but that it offers no tangible benefit to the general public. In addition, the committee believed that the policy established in that filing was so significant that a compelling need exists to have notice and public participation before that policy is implemented.

In essence this filing provides that all locked containers in vehicles impounded for more than 24 hours will be opened and inventoried even if the locks on the vehicle or container must be broken. The committee does note that this provision applies only to vehicles impounded by the highway patrol and only to containers where the officer cannot readily ascertain the contents without opening the container. This rule-making is based on a recent decision of the United States Supreme Court, Florida v. Wells, 110 S.Ct 1632 (1990), where the court held that closed containers in an impounded vehicle could not be be opened and inventoried unless the law enforcement agency had a standard policy dealing with the opening of closed containers. Based on this decision the department decided to immediately implement an emergency rule requiring the opening of all containers.

The substance of this provision is based on the Court's ruling but the procedure of emergency filing this requirement, without an opportunity for public participation and legislative review is unreasonable. The Supreme Court stated that law enforcement agencies could have a policy that allows them to open sealed containers; the opinion did not require that containers be opened. This is a policy question that deserves an opportunity for public comment prior to its implementation.

18.6 — Coveyou explained emergency amendment to 18.6 intended to correct an inadvertent error in the original adoption. No questions.

AGRICULTURE AND LAND STEWARDSHIP — Appearing for the Department were: John Whipple and Ron Rowland who presented the following rules:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Standard for the storage and handling of anhydrous ammonia, 43.6, Filed ARC 1148A 8/8/90
Sorghum, ch 59, Filed ARC 1166A 8/8/90

There were no recommendations.

Christmas 1990 — Chairman Priebe announced that the Committee Christmas party would be held December 11, 1990 at the same place as last year.

Meeting Dates — Meetings were scheduled for October 9 and 10, November 13 and 14 and December 11 and 12.

Recess — The meeting was recessed at 4:10 p.m. to be reconvened Wednesday, September 12, at 9 a.m.

Reconvened

The meeting was reconvened by Chairman Priebe Wednesday, September 12, 1990, at 9:02 a.m. All members and staff were present. The rules of Human Services were considered.

HUMAN SERVICES

HUMAN SERVICES DEPARTMENT[441]

Public records and fair information practices, child abuse, 9.4(3), 9.4(5), 9.4(6)"a," 175.9, 175.14(2), Notice ARC 1186A	8/22/90
Public records and fair information practices, emergency assistance program, 9.10(4), ch 58, Notice ARC 1185A	8/22/90
Overpayment recovery, 11.1, 11.4, 11.4(1), 11.4(3)"a" and "b," 11.4(4) to 11.4(7), Notice ARC 1182A	8/22/90
Increase in income levels for ADC and medically needy, 41.8(2), 86.10(1), 86.12(1), Filed ARC 1125A	8/8/90
Refugee services program, ch 61 preamble, 61.1, 61.4, 61.7, 61.11(1), 61.12(2), 61.14, Filed ARC 1121A	8/8/90
Relief for needy Indians, 64.2(4), 64.2(9), Filed ARC 1124A	8/8/90
Conditions of eligibility for Medicaid, 75.1(31), Filed ARC 1123A	8/8/90
Medicaid — screening centers; nurse aide education programs, 77.16, 78.3(6), 78.3(13) 78.3(14), 78.3(16), 78.12, 79.1(2), 79.1(9)"g," 80.2(2)"u," ch 81 title, 81.1,81.3, 81.4(3), 81.5, 81.5(3), 81.6(2), 81.6(11)"n," 81.6(12)"a," 81.6(14), 81.6(16), 81.6(17), 81.7, 81.8, 81.9(1)"f," 81.10(1), 81.10(2), 81.10(4)"b," 81.10(6), 81.10(7), 81.13, 81.13(2) to 81.13(19), 81.15 to 81.19, Filed ARC 1127A	8/8/90
Cost-effective services for persons with AIDS, 77.34, 78.38, 80.2(2), 83.31 to 83.49, Notice ARC 1126A	8/8/90
Medicaid payments to nursing facilities, 78.10(2)"a" and "b," 81.10(5), Notice ARC 1115A	8/8/90
Model waiver program, homemaker services, 78.34(1), Notice ARC 1183A	8/22/90
Inpatient psychiatric services for individuals age 65 and over and under age 21, 85.8(2) to 85.8(5), Filed ARC 1120A	8/8/90
PROMISE JOBS program, 93.20(4), 93.35, Notice ARC 1118A, also Filed Without Notice ARC 1119A	8/8/90
Child support recovery, 95.1, 95.1(1), 95.11, 95.11(1) to 95.11(4), 95.11(6) to 95.11(9), 95.12, 95.12(4), 95.14, 96.1, 96.3, 96.4, 96.11, Notice ARC 1122A	8/8/90
Child support recovery — role of attorney, review and adjustment of child support obligations, 95.15, 98.51 to 98.58, Notice ARC 1184A	8/22/90
Child support recovery, medical support enforcement, 98.1 to 98.7, Notice ARC 1116A, also Filed Emergency ARC 1117A	8/8/90

Compensation in care facilities, 81.6(11)"h"(4)to(6)-Selective Review

Appearing for the Department were: Mary Ann Walker, Mary Helen Cogley, Della Tracy, Rita Voraska, Gary Gesaman, Maya Krogman, Wayne Johnson, Lucinda Wonderlich, Anita Smith, Janice VonArb, Carol Stratemeyer, Debborah Ozga, Joe Mahrenholz, Kathi Kellen, Bob Krebs, and Susan Bergwall. Also appearing were: Blaine Donaldson, Storm Lake; Paul Romans, Iowa Health Care Association; Bob Sheehan, Boys and Girls Home and Family Service; Earl P. Kelly, Orchard Place; Mark Lambert, State Public Policy Group; and Jennifer Tyler, ICHCC.

78.10, 81.10

Chairman Priebe announced that amendments to 78.10(2)a and b and 81.10(5) [ARC1115A] would be taken up first to accommodate those who had other meetings at 10 a.m. Walker stated that the revisions provided greater specificity regarding services for which a nursing facility is expected to assume financial responsibility and services which will be reimbursed by the Medicaid program. These rules provide that Medicaid will make payment to medical equipment and supply dealers to provide oxygen services to recipients in nursing facilities who need oxygen 20 or more hours daily for at least 30 days. Extensive comments were received and approximately 1500 opponents signed petitions. The main issues are payment of oxygen and transportation.

Chairman Priebe recognized Romans who reiterated opposition by his association as expressed in a letter to each member of the ARRC. Romans saw no justification for the private pay resident to subsidize the oxygen or continuous oxygen to the Medicaid resident. His association had also challenged an earlier version of 81.10(5)b with respect to supplementation. An Administrative Law Judge had ruled that the provision did not require facilities to provide transportation to receive medical services. The rule provides that a facility "arrange" for transportation. Romans added the Attorney General and Department

HUMAN SERVICES Contd.

insist that "arrange" means to "provide." He saw payment for transportation as a "tip of the iceberg" where facilities will have no control of the care plan. Romans cited an example: If a physician orders an expensive Clinitron bed, it would go into the reimbursement system and be subsidized by private pay patients. Also, he pointed out that doctors charge $25 for a telephone visit which only six months ago was $12. Romans urged that the Medicaid program be carefully studied by the legislature who should determine a fair and equitable way to reimburse providers for services. He suggested delay if compromise were possible.

Priebe reasoned that the Omnibus Budget Reconciliation Act (OBRA) would have a tremendous impact on costs to care facilities. Romans indicated that Ernst and Young, the nation's leading health care consultant, had projected $15 million for Iowa to meet all the mandated requirements in OBRA.

He was cognizant of budgetary restraints but cautioned against creating "open-ended contracts" with the rules as proposed. Romans added that the daily maximum allowed a facility was $44.75. That figure was based on costs dating back to July 1, 1989.

Priebe could foresee a cap on physicians' costs. He suspected that the Department was attempting to comply with a mandate but also recognized that passing on escalated costs to private pay patients would have to be curtailed. He favored a Session delay for the proposed rules which would probably be in final form for the November ARRC meeting.

Gesaman said the Department had worked with the nursing home industry for the past year and he thought the proposal was the best compromise in that they have specified those services for which Medicaid will make direct payment. The Department's position was that the nursing facility has responsibility for services called for in the planned care of a resident. Homes are surveyed by the Department of Inspections & Appeals to ensure that these services are provided. Thus, the Department contended they could not leave issues unresolved in terms of responsibility for payment. Gesaman and Priebe discussed the 74th percentile concept and it was noted that nursing facilities would receive the second increase on October 1 which Gesaman estimated to be an average of $3 per patient. This increase will cost the state $4 to $5 million.

Romans spoke of concern as to what the Department will eliminate by using a September 30 cost report.

Pavich in the Chair.

HUMAN SERVICES Contd.

Romans spoke of the 1500 petitioners in opposition to the rules which include all aspects. Schrader asked Walker if there would be modification of the rules as a result of comments. Walker responded that payment for continuous oxygen would be reduced from 20 to 12 hours per day. She pointed out that the Department was aware of facilities that bill relatives who have no legal responsibility to pay.

Gesaman said the Department determines the amount of client participation for each resident who is required to pay the cost of care. Basically, every Medicaid resident pays all of their income for care with the exception of $30 a month, which they keep for their personal needs. The facility in turn agrees to accept that payment plus payment the Department makes as payment in full for care of that individual. Under the rules, any amount paid by the family would reduce the amount of Medicaid payment.

Schrader asked if any facilities were billing families and Walker explained that there was no direct billing. However, facilities are hiring private transportation companies who are billing the families of clients who lack funds. Walker stressed that this practice has been in effect for 15 years.

Romans saw the transportation issue as being complex. Facilities complained that they often must take staff to accompany a patient to the doctor's office which could take four to five hours.

Walker recalled veto of legislation in the appropriations bill which had provided for payment of any transportation costs that exceeded the 74 percentile.

Clark reasoned that "family" should have some obligation and she disagreed with the Attorney General's opinion on the definition of "arrange" and "provide."

Priebe favored shifting funds to those who cannot pay.

Romans reported that the State of California had informed the federal government that they would not adopt the OBRA rules. It was his understanding that Iowa's congressional delegation favored repeal of OBRA. The cost to Iowa for the Medicaid portion of it was estimated at $15 million. No formal action.

77.16, et al.

There was review of amendments to 77.6 et al. in ARC 1127A. Walker explained that three previous notices had been combined to implement nursing home reform, all of the OBRA changes, and on nurse aide education programs that had been previously emergency adopted. Walker considered the main revision as the nursing home reform. As a result of much public comment 81.16(3)b was revised to provide that no charge for training may be made to a nurse aide employed on a Medicaid or a Medicare facility at the time

HUMAN SERVICES Contd.

of training. Community colleges had voiced opposition to the Noticed version since they have programs continuously for those who are hopeful of employment. These individuals would continue to pay for their own training.

Walker also clarified that the rules reflect name changes in level of care--skilled and intermediate care facilities will be known as nursing facilities.

Romans contended that the Department was relying on federal rules which had not been adopted.

Gesaman advised Clark that the two years' experience for nurses' aides was grandfathered but the aide who was employed by a facility would have to receive training within four months. Walker explained that activities coordinators gain experience by acting as assistants to the current coordinator. Clark cited the nurse shortage as basis for her concern over the requirement for all facilities to have a registered nurse 8 hours a day, 7 days a week.
Gesaman responded that many of the rules were based on proposed federal regulations but that public law clearly required the state to implement the program. The federal law requires the level of nursing set out in the rules but also allows for waivers. A facility may receive waiver for either the registered nurse requirement or the licensed nurse requirement, but not both.

Priebe in the Chair.

Because of budgetary restraints and the fact that federal regulations were not final, Priebe was reluctant to support adoption of the rules. He recalled an estimated $8 per day, per patient increase for implementation of OBRA. Much of the increase would be passed on to private pay clients.

In answer to questions by Dierenfeld, Gesaman said that OBRA grew out of research by organizations such as National Institute of Medicine, National Citizens Coalition for Nursing Home Reform, various nursing home associations, AARP and advocacy groups. Intent of OBRA is to improve the quality of care and life for persons in nursing homes. Gesaman reiterated that the law has basically stood as it was passed and the state clearly has an obligation to implement the provisions of OBRA regardless of whether federal regulatory processes are up to date.

Dierenfeld asked about risk to Iowa for noncompliance and Gesaman replied that federal sanctions could vary from denial of the state plan to sanctions regarding the entire Medicaid program. He concluded that Iowa had no option for noncompliance.

HUMAN SERVICES Contd.

Schrader felt very uncomfortable in defying the federal government and he asked for a response from both parties as to the scope of the rules as to whether they exceed the federal mandates. Although there was no intent to be more stringent than federal requirements, Gesaman suspected that modifications would be needed when those final regulations were available.

Romans had no problem with federal law compliance, e.g., 24-hour nursing. His opposition was to the adoption of quality of care issues revised by the Health Care Financing Administration (HCFA) but not published in the Federal Register.

Schrader wondered if any ARRC delay should be directed to select portions of the rules. Romans reiterated his contention that the liability at this time was to implement those federal statutes resulting from OBRA. He clarified that his recommendation for delay was directed at the Medicaid payment issue in 78.10(2) and 81.10(5)[ARC 1115A]. He added that delay of ARC 1127A would be appropriate until federal regulations are available. IHCA had petitioned the Department for revision of the portions of ARC 1127A which they contend are beyond the law.

Gesaman stressed that delay would not preclude the Department of Inspections and Appeals and Federal inspectors from inspecting facilities based on those requirements.

Royce asked if the Department of Inspections and Appeals (DIA) had taken action to adopt their material through the rule-making process and Gesaman replied that Human Services rules were followed by DIA through contract provisions. Those rules were consistent with information in the Federal Survey Manual used by DIA. Royce advised that the Manual should be adopted under Code Chapter 17A.

Motion to Delay

Priebe took the position that more study was needed. Clark moved to delay ARC 1127A for 30 days to allow time for study and to include the rules on the October ARRC agenda. Motion carried with 5 ayes. Schrader voted "no" with explanation that he opposed delay past the federally mandated effective date of October 1, 1990.

Lifted 9/29/90 Tele. conf.

Chairman Priebe asked Royce and Dierenfeld to confer with Department officials and opponents of the rules in an attempt to resolve the problem. It was agreed that the delay could be lifted by a telephone conference.

Special Review 81.6(11)

There was special review of 81.6(11)h(4) to (6) which define ownership and related parties and place limits on amount of reimbursement on cost report used to determine Medicaid payment rate. Following ARRC objection to the provisions in September 1989, the Department made an analysis of nursing home cost reports. The results of the survey were outlined in a letter to the Committee

HUMAN SERVICES Contd.

and the Department asked for guidance as to whether their recommendations for modifications were a reasonable approach.

Defer to October

Schrader suggested that the issue be deferred until the October ARRC meeting and there was unanimous consent.

Chs 9, 11,41, 58

Walker summarized amendments to 9.4, et al.; 9.10 and Chapter 58; 11.1 and 11.4 and 41.8(2) et al.

Ch 61

According to Walker, Chapter 61 was revised following Notice to clarify criminal offense—61.11(1)h.

64.2, 75.1

Amendments to 64.2 and 75.1(31) were unchanged from the Notice.

77.34 et al.

Walker stated that amendments to 77.34 et al. pertaining to services for AIDS victims had generated three letters of support.

Pavich in the Chair.

78.34

No questions on 78.34(1).

85.8

Walker stated that revision of subrules 85.8(2) to 85.8(5) change the policies on reimbursement for psychiatric medical institutions for children. Currently, there are no limits on the number of days the Department will pay when a child is absent from the facility and there is no reduction rate. Policies governing leave payment for PMICs will now be in line with payment to other medical institutions. Extensive comments were received with requests that the reduction in reserve bed rate not be adopted.

Clark concurred with the requests. She contended that prime concerns were to return youngsters to their families. The rules would preclude this because of financial restraints.

Bob Sheehan, representing PMICs and Earl Kelly, Orchard Place, emphasized their full mission was to reunite children with their families and this approach is mandated by the Department of Human Services. Sheehan attributed problems to a "glitch in the systems" and he requested delay in implementing the rules until the legislature could act. Kelly also urged delay until the language could be fully debated.

Gesaman said intent was to be consistent with other Medicaid policies for other types of medical institutions unless these facilities are sufficiently different.

Motion to Delay

Clark reasoned that the issue warranted review by the entire legislature and she moved that subrules 85.8(2) to 85.8(5) be delayed until adjournment of the 1991 Session of the General Assembly. Motion carried.

93.20(4) or 95.1 et al.

There were no questions regarding 93.20(4) or 95.1 et al.

HUMAN SERVICES Contd.

95.15, 98.51 to 98.58

Walker described amendments to 95.15 and 98.51 to 98.58 as clarifying the role of the Child Support Recovery Unit attorney and establishing procedures for review and adjustment of child support obligations. Krebs informed Doyle that they were operating under the federal guidelines now. Doyle noted that the Supreme Court was also drafting rules on the subject.

Doyle was concerned that there be mandatory annual reviews, e.g., changes in gross income, how far back is the obligation. Krebs said they had not received those recommendations. No formal action.

98.1-98.7

No recommendation was made concerning 98.1 to 98.7.

JOB SERVICE

Appearing for the Job Service Division were Joseph Bervid and William Yost who reviewed the following:

JOB SERVICE DIVISION[345]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
Employer's contribution and charges, claims and benefits, 3.43(4)"b" and "c," 4.1(113)"d," 4.1(120), 4.7(3), 4.9(1)"c," 4.27, Notice ARC 1188A 8/22/90

Bervid reviewed the proposals which included condensing the provisions on "voluntary quits." Bervid, in answer to Tieden, said that the employer of a voluntary quit employee would not be charged--3.43(4)b.

Doyle and Yost discussed eligibility for benefits when there are substantial reductions in hours or an employee leaves a 40-hour job at minimum wage for a part-time job with higher pay. With good cause to quit, there would be no disqualification. No action taken.

LAW ENFORCEMENT ACADEMY

William Callaghan appeared on behalf of the Academy and presented the following and there were no questions.

LAW ENFORCEMENT ACADEMY[501]
Certification through training and examination, 1.1, 3.1, 3.8, 3.9, Filed ARC 1112A 8/8/90
Psychological testing, 2.2(6), 2.2(7), Filed ARC 1113A 8/8/90

Priebe in the Chair.

RACING AND GAMING

Lorenzo Creighton appeared for the Commission and reviewed the following:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Greyhound racing, 7.3(16)"m," 7.3(17)"n," 7.6(20), Notice ARC 1176A 8/22/90
Thoroughbred racing, 10.1, 10.4(19)"j," Filed ARC 1175A 8/22/90

7.3, 7.6

Creighton described revisions of 7.3 and 7.6 as an attempt to eliminate the training of greyhounds with live bait in Iowa. They had worked with the Iowa Greyhound Association and animal rights groups on this issue.

Priebe agreed with the effort but was skeptical about enforcement.

Creighton pointed out that they have the ability to take the purse from the dog after the fact. He added that the rules were consistent throughout the country.

RACING AND GAMING Contd.

Priebe suggested that this fact be included in the rules.

10.1, 10.4

Creighton stated that Chapter 10 now defined "inclement weather" which was prompted by the need for jockeys to wear heavier clothing under certain weather conditions. Weight limit will be announced at the race.

LIBRARY DIVISION

Shirley George and Mark Peitzman appeared at the request of ARRC to provide an update on rule making for the Library Division to comply with 1986 government reorganization. George distributed copies of a proposed draft which would be published in a subsequent Iowa Administrative Bulletin. An earlier proposal (published in 3/9/89 IAB) had been reviewed by the Committee and revisions were suggested. It was recommended that the 3/9/89 Notice be terminated at the same time the new version is published.

There was discussion of quorum requirements with ARRC strongly suggesting that it be a majority of the members to take formal action. No Committee action taken.

CULTURAL AFFAIRS

Mark Peitzman presented the following for the Department:

CULTURAL AFFAIRS DEPARTMENT[221]
Cultural enrichment grant (CEG) program, ch 8, Notice ARC 1134A 8/8/90

Ch 8

Peitzman said that Chapter 8 would implement 1990 Acts, S.F. 2423, which created the Cultural Enrichment Grant Program to provide general operating support to major multidisciplinary cultural organizations in Iowa. It was noted that 8.10(4) addressed an appeal process in an abbreviated way. Royce advised that more detailed guidelines be included with respect to contested cases and the various rights of the parties. He suggested Economic Development rules on grants programs as an example.

UTILITIES DIVISION

The following Utilities agenda was presented by Allan Kniep, Anne Preziosi and Vicki Place:

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181] "umbrella"
Telephone service standards, 22.3(3)"b," 22.3(5), 22.4(3)"b," 22.5, 22.6, Notice ARC 1150A 8/8/90
Telephone service — blocking terminating access, 22.5(13), Filed ARC 1151A 8/8/90
Distribution of management efficiency report, 29.5, Notice ARC 855A Terminated ARC 1149A 8/8/90
Access to affiliate records and requirements for annual filings, ch 31, Notice ARC 1146A 8/8/90
Nonutility service, ch 34, Notice ARC 1153A 8/8/90
Telephone service, Notice of Deregulation ARC 1152 ..... 8/8/90

22.3(3) et al.

Also appearing were Todd Schulz, Iowa Telephone Association; John Lewis, Iowa Utilities Association; Susan Walter, Peoples Natural Gas. No questions on amendments to 22.3(3) et al.

22.5(13)

Preziosi stated that amendment to 22.5(13) addresses problems surrounding fraudulent use of the telephone work network by providing a manner in which telephone companies must deal with subscribers whose lines the company suspects may be subject to use for telephone fraud. An example would be unlawful use of access numbers. This matter was brought to the Board's attention by a complaint case.

UTILITIES DIVISION Contd.

There were no questions re 29.5.

Ch 31

In review of proposed Chapter 31, Place indicated that some utilities are objecting to the 7-day turn around period for producing records. There has been opposition to the exemptions for transactions under $50,000 or 5 percent but that is statutory and the Board is reviewing comments from the hearing held September 6.

Ch 34

Place discussed proposed amendment relative to non-utility service by a public utility. A hearing was scheduled for September 25. Place thought the definition of "systematic marketing" would be clarified in the final version.

NATURAL RESOURCE COMMISSION

Appearing for the Commission were Rick McGeough and Richard Bishop. The following agenda was considered:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"

Use of crossbow for deer and turkey hunting, 15.5, Filed ARC 1145A	8/8/90
Boat motor regulations, 45.4(1)"b," Notice ARC 1147A	8/8/90
Game management areas, 51.3(1)"a," Filed ARC 1144A	8/8/90
Crow and pigeon regulations, 100.1, Filed ARC 1143A	8/8/90

15.5

As mandated by 1990 Acts, Senate File 57, rule 15.5 will allow use of a crossbow by handicapped individuals for deer and turkey hunting. McGeough had received positive comments on the rule.

45.4

McGeough stated that amendment to 45.4 would allow an unrestricted horsepower at a no-wake speed on Beaver Lake in Dallas County.

51.3(1)

In review of proposed amendment to 5.3(1), McGeough spoke of a long history of problems with the use of firearms in the Banner Mine Area south of Des Moines near heavily developed areas. The DNR recently purchased additional property adjacent to the Banner area where they plan to expand the shooting facilities by use of a tube range. This will provide a safety measure and noise reduction. McGeough admitted that noise level for the shooter would probably escalate.

100.1

Bishop presented adopted rule 100.1 which sets the crow season from October 1 to March 18. Priebe expressed the opinion that there should be no restrictions since crows have exceeded the "nuisance stage." Bishop was doubtful that a longer season would resolve the problem. He thought other measures were needed. He added that federal regulations allow only 124 days. Any modification would have to be made through the Migratory Bird Treaty between Canada, U.S. and Mexico. Priebe recalled there had been a bounty on crows but Bishop felt that approach was unsuccessful. Priebe asked Bishop to prepare a legislative proposal to address the issue.

ENVIRON-
MENTAL
PROTECTION
COMMISSION

The following rules were presented by Peter Hamlin, Victor Kennedy and Gayle Farrell:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Emission standards for contaminants, 23.2(3)"b," 23.2(3)"i," 23.2(4). Filed ARC 1142A 8/8/90
Effluent limits and pretreatment standards, 60.2, 62.4, 62.4(3), 62.4(14), 62.4(16), 62.4(67), 62.4(71), 62.5. Notice ARC 1141A 8/8/90
Sanitary landfill and solid waste incinerator operator requirements, 100.2, 102.13 to 102.15. Filed ARC 1140A 8/8/90

Underground storage tanks--certified testers, 567--Ch136,Special Review

Also present: Representative Horace Daggett and former Representative Harold Fischer.

23.2

Hamlin told the Committee that amendments to 23.2 would allow for the burning of trees and tree trimmings at a burn site operated by a local government entity. In addition, agricultural structures can now be burned. Hamlin advised Doyle that sawdust and wood chips could be burned at the tree burning site. Otherwise, that material would have to be disposed of in a sanitary manner. Hamlin pointed out yard wastes must be separated from other garbage.

60.2

There were no questions on 60.2 et al.

100.2
et al.

Farrell said that amendments to 100.2, 102.13 and 102.15 would implement Iowa Code section 455B.304 which requires sanitary landfills and solid waste incinerators to have certified operators by July 1, 1990.

Farrell anticipated there would be enough certified operators to meet the need. Revisions were made in the rules following comments.

Schrader observed that his recommendations for a waiver period to replace a certified operator had not been addressed. Farrell thought that could be handled administratively. Schrader favored including the policy in the rules and there was Committee consensus that an emergency rule would be acceptable to accomplish this.

Special
Review
Ch 136

Chairman Priebe called for special review 567--Chapter 136 relative to underground storage tanks and certified testers. He recognized Fischer who referred to a letter he had sent to Hamlin wherein he vented his frustration with the underground storage tank program. Fischer had been requested by two automobile service stations in Wellsburg to obtain information on the testing and certifying compliance. Eventually, Fischer received "volumes of laws, rules and regulations" which failed to mention a relatively simple and inexpensive method for testing for leaks in underground tanks. He soon learned that the cost of performing this service by a "qualified contractor" ranged from $900 to $7000. Fischer talked at length about the negative impact of the UST program on small business and he was convinced that the actual "destruction and dismemberment of rural Iowa would be limitless." Fischer stressed that he was not opposed to cleaning the environment but contended there should be equal enforcement of the laws in the large cities as

Special Review Contd.

well as rural areas. Fischer had made some inquiries outside of the state and learned that Iowa has the most "strict, oppressive, offensive laws and regulations affecting underground storage tanks of all the states in the Union." He challenged anyone to show him an emergency situation in Iowa resulting from gasoline or oil spillage.

It was Fischer's understanding that the October 26 deadline for compliance did not apply in other states. Hamlin clarified that as of October 26, those with leaky tanks who have qualified for the state insurance program, will be reimbursed 100 percent of their cost.

Tieden pointed out that the insurance was mandatory regardless of whether or not there were leaks. Priebe had just realized that the insurance was applicable only on costs in excess of $5000 which would penalize the small operator. Hamlin readily agreed that there was an unfair burden placed on the small tank owner because of the way the law was written.

Schrader resented what he considered to be unjust criticism of Iowa's program. Iowa responded to the problem handed down by the federal government by passing a comprehensive underground tank insurance plan which imposes nearly 8.5 cents on each gallon of gas to help keep stations in small town Iowa. He was sure no one anticipated the magnitude of the problem--approximately 2000 cases in Iowa at this time. Schrader considered cleanup after there has been a contamination of the site to be a ma[illegible] concern. He was unsure whether federal or Iowa rules would prevail in the disposing of contaminated earth. Schrader was not convinced that this earth represented an environmental hazard right at the site. He questioned the cost effectiveness of environmental protection by hauling that soil to a landfill or a cornfield.

Hamlin responded that the drinking water standard for benzine was the standard they follow for groundwater. He added that it was more cost effective and quicker to overexcavate that dirt than it would be to pump and treat contaminated groundwater. Hamlin continued that the Department had relaxed their standards for cleanup on overexcavation.

Daggett echoed Fischer's remarks and cited similar problems in his district. He was concerned about the social problem which the tank issue had generated. With so many service stations closed, senior citizens in small areas will have difficulty. Daggett also mentioned the problem of delay in testing which prevents closing of the opening. Hamlin clarified that the Department does not require the hole to remain open. He was aware of unscrupulous contractors but the Department lacks a mechanism for evaluating contractors. They are

Special Review Contd.

looking very closely at the bills being presented and will not pay for excessive, exhorbitant costs. The Department has a recommended set of guidelines for the testing which the state intends to use as they evaluate claims. Hamlin said the social problems are of great concern to the Department. He knew of no program in his 19 years with the state that caused more grief personally than the tank issue. Hamlin cited hardship cases where LUST fund (federal money) was utilized.

Ron Marr, representing approximately 2000 independent petroleum marketers, posed the question of how clean is clean? He discussed areas of the country which have experienced much more serious problems than Iowa. A big concern of his clients was what they considered to be the "incompassionate staff" of DNR. Marr knew of no simple answers--they felt "caught in a vice between lenders, bureaucrats and an inflexible time frame."

Schrader commented on the problems confronted by service stations and emphasized that the legislature did not cause the problem but they created part of the solution which unfortunately, as Hamlin said, does not go far enough. The legislature voted 100 to nothing on a three-part plan to help the service station operators in Iowa comply with federal laws that are being administered by the Department of Natural Resources. Schrader felt there might be some leeway on how those federal laws are administered. He continued that Iowa created an insurance plan, a tank replacement fund and the insurance plan for remedial costs and required all Iowans to help pay for it. Schrader concluded that the legislature "went the extra mile in Iowa to help this industry" but it wasn't far enough. Perhaps they need to look at what more can be done.

Tieden was inclined to believe that Iowa has an "overkill in the laws and rules." There are many small communities in his county with station-grocery store operations. Many are closing because they cannot afford an $80,000 cleanup bill.

Fischer reasoned that the concept of the legislation had merit but there should have been an economic impact study. He reiterated his frustration with inconsistent information from DNR.

Comparison for October

Chairman Priebe asked Hamlin to prepare a comparison between the federal and state rules for review at the October ARRC meeting.

Clark urged improvement of public relations in the Department.

Pavich echoed the sentiments of the others and concurred there is definitely a social problem.

CORRECTIONS Fred Scaletta was in attendance for the following:

CORRECTIONS DEPARTMENT[291]
Definition — immediate family, 20.2. Filed ARC 1193A 8/22/90

Also appearing was Ruth Mosher, Deputy State Ombudsman; Phil Douglas, Director of Criminal Justice Ministries; Ethel Greenlee, Patricia MacDonald, Coordinator of Iowa CURE; Margaret Vernon, Presbytery of Des Moines, Peace and Justice Committee; Dean Richmond; Margaret Aschan, Iowa CURE chapter; Norman Searah, Vivian Richmond, and Judy L. Hughes.

According to Scaletta, the definition of "immediate family" was modified following comments at the hearing on the rule.

Clark voiced opposition to the Department's establishment of the relationship. It seemed to her that the marriage which created stepchildren, stepparents and stepbrothers and sisters, established the relationship. The rule seemed out of step in this modern world when establishing the "immediate family" as the blood family. Family should not have to prove they are family.

Scaletta spoke of the discretionary decisions on their part.

Clark contended that the rule seemed to indicate there were two kinds of families.

Mosher pointed out that department policy and the administrative rules were inconsistent. For example, the Administrative Rules consider stepparents as immediate family but the policy for the department considers them other family. It was her understanding that immediate family would normally be admitted to visit without criminal background checks--that was the only difference. Mosher noted the provision allowing for optional background check. In her experience with visitation rejections, dishonesty or inaccurate reporting of criminal background was the biggest problem.

Douglas took the position that the Department or the prison administration had no business deciding about a family relationship.
Visitation matters differed from other kinds of discretionary decisions made by prison administration since others on the outside also were affected. He concurred that practice should coincide with policy rules.

Hughes recounted her problem with visitation rights when she lost legal guardianship of a boy she had reared since age 14 months.

The question of funeral leave or furlough was raised and Scaletta stressed the need for the inmate being released to have a positive influence.

CORRECTIONS Contd.

Clark reiterated her opposition to two classes of people in the rule if the same discretionary opportunities exist for both.

Vernon urged equal application of the provisions.

Defer

Disposition of rule 20.2 was deferred.

Recess

Chairman Priebe recessed the meeting at 12:50 p.m. and reconvened it at 1:30 p.m.

CORRECTIONS 20.2

There was continued review of Corrections rule 20.2. Scaletta emphasized the importance for discretion by the Department. Their position is stronger toward natural or blood relatives.

Clark did not disagree that the Department should have discretion. In fact, they have a responsibility to make decisions but she wanted the rule and policy to be administered in the same fashion.

70-day Delay

Clark moved to delay for 70 days the effective date of 291--20.2(246) for further study.

Discussion of substitute language which would be acceptable. Schrader suggested that the first paragraph remain basically the same except for including a comma after "grandchildren" and a period after the word "stepbrother." In the second paragraph, first sentence, he would substitute "ordinarily" for "normally." Schrader recognized the importance for the Department to review a "relationship." The Clark motion carried.

TRANSPORTATION Tinted Windows

The following Transportation Department officials were present to consider proposed statutory revision to address window tinting in automobiles: Gordon Sweitzer, Dennis Ehlert, Jody Johnson and Jan Hardy. Also appearing were: Jim Clewell and Tawnee Eckhart, Iowa Window Tinters Association; and Doug Woolf, AAA of Iowa.

Royce distributed a draft entitled "Application of Sun Screening Devices on Motor Vehicles." The provision would be an alternative to registration as North Carolina and other states have pursued. Royce pointed out that federal law prohibits establishing a safety standard different than the one that is established by federal law and regulation. His proposal would create a licensing standard in an attempt to avoid the concept of a safety standard. Applicants for this license would be required to submit a $10 fee to the Department for a sticker authorizing use of a sunscreen device on the side and rear windows of the automobile. Both left and right outside mirrors would be required if a rear window were tinted. The installer would be responsible for inserting a special decal between the glass and the sunscreen to identify the manufacturer and list the degree of opacity. A medical exemption would be provided for sun sensitive disorders documented by medical or osteopathic

TRANSPORTATION Contd.

physicians. An administrative penalty of $30 could be imposed by the Department for drivers who fail to obtain the necessary license. Installers of these devices, in violation of this requirement would be subject to an administrative penalty of $100. Appeals are provided in the court.

Pavich asked about disposition of a medical sticker when the vehicle changes ownership. Royce agreed that should be addressed in the law.

Sweitzer needed more time to study the proposal. Some of his concerns included transfer of the vehicles and it was unclear to him as to whether or not the medical exemption allowed for total blackout.

Royce thought the density question should be left to the physician.

Royce advised that the sticker would be issued for the vehicle not the individual. The sticker would have to be removed when the vehicle was sold.

Doyle interjected that this sticker differed from the handicap device which is issued to the person.

Sweitzer was also concerned about great expense of a computerized registration system. Other questions raised by Sweitzer were in regard to the kind of a citation that would be issued and how would it be adjudicated. Enforcement officers use uniform citations. Sweitzer pondered whether or not DOT could issue a license that was contrary to a federal regulation. He thought the Attorney General's office would have to review this issue.

Sweitzer concluded that enforcement would have to be the responsibility of the officer on the street which would involve a great administrative process.

Clewell presumed there would be a sticker in the vehicle window, in addition to the sticker by the tinter to give the officer an indication that the vehicle was approved.

There was discussion of acceptable density of tint and the Department's interest in ensuring that federal funding would not be jeopardized.

Doyle was hopeful that DOT and the industry could develop a compromise for legislation.

Priebe suggested that the ARRC draft a bill to at least initiate some action.

Royce sought guidance as to whether he should pursue the concept of licensing in the bill.

TRANSPORTATION Contd.

Schrader raised question as to the authority for the ARRC to send out a bill since the Committee was subject to change. Priebe clarified that any proposal would be a draft for ARRC consideration only.

Eckhart wondered if a sunscreen pulldown for attaching to a window would be included and Royce advised that any device which cuts down on light transmittancy would be covered.

ARRC Rules of Procedure

Chairman Priebe announced that Committee Rules of Procedure would be carried over to the October meeting.

No Rep

No agency representatives requested to appear for the following:

BLIND, DEPARTMENT FOR THE[111]
Gifts and bequests fund — loan limit, 2.1(3), 2.1(4). Filed Emergency ARC 1181A 8/22/90

DISASTER SERVICES DIVISION[607]
PUBLIC DEFENSE DEPARTMENT[601] "umbrella"
Petitions for rule making, declaratory rulings, agency procedure for rule making, 2.1, 2.3, 3.1, 3.3, 4.3 to 4.6, 4.10, 4.11, 4.13, Filed ARC 1132A 8/8/90

HISTORICAL DIVISION[223]
CULTURAL AFFAIRS DEPARTMENT[221] "umbrella"
Main street linked investments loan program, ch 46, Filed ARC 1187A 8/22/90

MEDICAL EXAMINERS BOARD[653]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Definitions, licensure requirements and discipline of physicians, 10.1, 11.1(1)"b"(2)"3," 11.1(2), 11.5(2)"b"(2), 11.6(2)"b"(2) and (3), 11.30, 11.30(4), 11.33, 12.2, 12.4, 12.4(15), 12.4(16), 12.50(9), 12.50(26)"f"(9) and (10), Filed ARC 1174A 8/22/90

REGENTS BOARD[681]
Personnel administration — one-year extension for red-circled salary, 3.39(4), Filed ARC 1139A 8/8/90

Next Meeting

The next meeting was scheduled for October 9 and 10, 1990.

Adjourned

Doyle moved for adjournment at 2:25 p.m. Carried.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Alice Gossett, Admin. Asst.

CHAIRMAN