

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting The special meeting of the Administrative Rules Review Committee was held Tuesday and Wednesday, May 19 and 20, 1987, in lieu of the statutory meeting, State Capitol, Des Moines, Iowa.

Members Present Senator Berl E. Priebe, Chairman; Representative Edward G. Parker, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representative David M. Tabor; Representative Betty Jean Clark. Staff present: Joseph Royce, Counsel; Phyllis Barry, Deputy Code Editor; Vivian Haag, Executive Administrator. Also present: Barbara Booker Burnett, Governor's Administrative Rules Coordinator.

See 1/6/87 Tabor replaced Jim O'Kane who resigned.

Convened Chairman Priebe convened the meeting at 10:05 a.m. in Senate Committee Room 22. He announced that the Committee would reorganize following review of rules of the Deaf Services Division of Human Rights Department.

DEAF SERVICES DIVISION Diana Leonard, Administrator, and Carolyn Cool, Interpreter, were present for review of procedural requirements, chapters 1 to 9, ARC 7518, Notice, IAB 4/8/87.

1.3(5) In response to Doyle, Leonard commented that the standing committee's reference in 1.3(5) will be established to focus on specific areas of legislation to identify priorities but will receive no pay. Tieden interjected that many areas in northern Iowa have no available interpreters. Leonard admitted there was a great need and she alluded to the difficulty in meeting those needs. She added that Fort Dodge will be included in the Sioux City area.

1.3(2) Clark questioned Leonard as to availability of agenda--1.3(2)b. Leonard indicated that an agenda is published at least 24 hours prior to a meeting. Packets of material are prepared two weeks early.

Discussion of quorum requirements--1.3(2).

William Angrick, Citizens' Aide, spoke in support of the proposed rules.

2.3(13) In review of 2.3(13), relative to the loaner program for telecommunications devices, Leonard explained that the \$25 deposit fee could be waived for those persons who cannot pay it. With respect to confidentiality of records, Clark

3.1(3) questioned use of "other agencies" in 3.1(3)a(5) and Leonard stated that the language was taken from the Citizens Task Force on Public Records.

5.2(1) There was Committee consensus that reference "section a" in 5.2(1) should be set out in capital letters for clarity.

Committee
Business
Committee
Reorganized

Doyle moved that Senator Berl E. Priebe be re-elected to serve as Chair of the ARRC Committee and that nominations cease. Motion carried.

Doyle moved that Representative Edward G. Parker be re-elected to serve as Vice Chair of the ARRC and that nominations cease. Motion carried.

Staff

Doyle moved that Joseph R. Royce be retained as Committee Staff at his current salary. Motion carried.

PERSONS WITH
DISABILITIES
COMMISSION

Donald W. Westergard, Administrator, appeared on behalf of the Commission to review proposed chapter 1, Organization, published in IAB 4/8/87 as ARC 7515.

Tieden questioned Westergard with regard to quorum requirements. Westergard responded that winter weather poses the biggest problem for members because of their immobility in many instances. A majority of the 26 members would be 14. Meetings are rescheduled when there is lack of quorum. Royce noted that the quorum requirement of 2/3 was not specified in the rules. Tieden was of the opinion that any exception to the requirement should be spelled out. No action taken.

BOARD OF
REGENTS

R. Wayne Richey, Executive Secretary, was present for review of supplemental specific rules for each Regents institution--parietal rule, 2.2(5), 2.36(5), ARC 7500, Notice, IAB 4/8/87.

In answer to question by Priebe, Richey said the May 1990 date in 2.36(5) was necessary because of the long-range plans of institutions. In the event it became necessary to rescind the temporary suspension rule, a public hearing would be held. Richey informed Tieden that dormitories are filled during the first semester; housing for married students isn't always filled. Richey provided occupancy statistics for 1986: University of Iowa, 109.5 per cent; Iowa State University, 111.6; University of Northern Iowa, 102.7 per cent.

Richey continued that the rule was instituted to create a sense of community and it has resulted in financial benefits for the Universities. He added that, from a legal standpoint, students cannot be required to live in dormitories purely for financial reasons. Richey attributed the success of the dormitory system at Iowa State to the fact that floors are organized into houses which provide a sense of belonging. University of Iowa has been equally successful in recent years.

Doyle inquired as to board and room costs, and Richey cited \$2366 for U of I, a 5.4 per cent rise over last

BOARD OF
REGENTS
Continued

year; Iowa State, \$2242, a 10 per cent increase; and UNI, \$2018, a 3.5 per cent increase over present costs. It was noted that the proposal did not provide for a public hearing for the University of Iowa. Richey pointed out that, normally, students do not object to suspension of the parietal rule but he would check the matter.

CHILDREN,
YOUTH AND
FAMILIES
COMMISSION

Ann Thompson presented proposed rules relative to the organization of the Commission, published as ARC 7516, Notice, 4/8/87 IAB.

Draft by
Royce

In discussion of quorum requirements in 1.3, the Committee asked that a specific number of members be included. Tieden was told that \$80,000 had been appropriated to the Commission. Thompson advised Doyle that the statute provides for the district court judge to be appointed by the Governor. Doyle asked Royce to pursue legislation to remove that authority. Thompson advised that the Commission has gender balance.

Doyle noted lack of enforcement authority and asked if the Attorney General provided assistance. Thompson responded that since the Commission promotes coordination of voluntary services, there is nothing to enforce. Rules on grant proposals would be forthcoming. No other questions.

IOWA DEPART-
MENT OF
ECONOMIC
DEVELOPMENT
ch 57

Jude Conway, John Bargman, Bob Brooks, and Mike Murwin appeared for the following:

Iowa job training partnership program, definition, 1988 filed emergency ARC 7503 JFE 4/8/87
Emergency shelter grants program, ch 24, 1988 emergency ARC 7504 JFE 4/8/87
Ambassador's program, ch 27, 1988 emergency ARC 7505 JFE 4/8/87

According to Murwin, chapter 57 had been filed emergency because a number of organizations, individuals, and businesses were interested in making either cash or in-kind contributions to the Ambassador's Program. The Iowa Broadcasters Association has made a written commitment to a minimum of \$100,000 TV and radio time to promote quality of Iowa and IDED used \$50,000 of the appropriation to develop the TV and radio spots which are currently being aired by 100 radio stations and the majority of TV stations in Iowa.

57.3(2)

Royce advised that creating a list in 57.3(2) would be too restrictive. He noted that five general areas were set out as guidelines. Priebe observed that the purchase of alcohol was not an allowable in-kind match.

Murwin said that the private sector Board of Directors would review proposals and make a determination as to whether they fit within the guidelines of the state's strategic plan or fall within the guidelines established by that Board. Parker suggested a policy should be adopted.

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ECONOMIC
DEVELOPMENT

Angrick, Citizens' Aide, wondered if his office would have jurisdiction to investigate the decision-making process in the event of a denial by the private sector board. Royce referenced an AG opinion and advised that the function being performed on behalf of the state was relevant. He added, "You can't privatize new process rights."

19.3

Conway explained the revision of "family of one" definition in 19.3 would include handicapped individuals and those over 55 years of age. Applications for summer youth program are being taken.

Tabor and Conway discussed the various forms used and it was noted that they vary because of varying income. Guidelines are provided but there are no restrictions as to information which may be requested on the forms. Department officials were confident that youth in rural areas would benefit from the JTPA program. They clarified that forms are not provided by the Department.

Conway introduced Bob Brooks who will manage the Emergency Shelter Grants Program. The Program was passed as part of the Federal Homeless Act to be administered by the state agency which operates the Community Developmental Block Grant Program.

Parker was informed of the availability of \$113,000 for Iowa; \$10,000,000 was allocated nationwide. Conway pointed out that few cities under 10,000 population would have emergency shelters. The Department anticipated that five or six of the eight applicants would be funded by Friday.

24.10(1)b

Clark questioned use of "on the shelter" in the last line of 24.10(1)b. Discussion of 24.11(5), second numbered statement, for which Committee suggested clarification when the rules are rewritten. Priebe expressed preference for the rules to be published under Notice, also.

CORRECTIONS
DEPARTMENT
ch 21

Fred Scaletta appeared for review of Iowa state penitentiary--visiting, chapter 21, ARC 7544, Notice, 4/22/87 IAB. Scaletta reported on the history of the rule making which included a termination of Notice and resubmission. The institution submitted comments including inmates' opposition to the removal of visiting privileges on Wednesday. Discussion of visiting policies for attorneys. The visits are usually set up in advance and may include three or four inmates visited in a given day. Court orders and national standards require that attorneys be permitted to see clients. Wednesday would be a day for special visits.

CORRECTIONS
DEPARTMENT
Continued

Doyle was advised that the limitation to two inmates per unit in 21.2(3)b could be waived for attorneys. Doyle considered 21.2(5) re questions during a visit to be deficient. Scaletta responded that specificity could rule out certain types of questions. Tieden opined that the rules were rigid and Scaletta expected complaints from inmates if the rules are adopted. Clark noted that the visiting hours for the John Bennett facility were shorter and Scaletta replied that the Court had not mandated those hours. Scaletta added that the population of 110 to 115 inmates allows for open visiting and contact.

Priebe wanted assurance there would be no discrimination in the fee charged for meals--21.4(2)d. Parker viewed the operation as creating an atmosphere of adversity. Scaletta said these rules would implement only a small portion of the court orders.

Responding to Tieden, Scaletta recalled three law suits by inmates in one day after the law was passed to allow them to sue the state. The federal court usually throws out those cases.

Angrick reasoned that institutional administrators should be more willing to accept suggestions from the Ombudsman's office to avoid going to court.

Committee
Business

Barry pointed out that mechanics for removal of obsolete rules from the Iowa Administrative Code had not been passed by the Legislature. She mentioned several examples of such rules which resulted from reorganization of state government. Discussion of possible alternatives to legislation. Priebe questioned the ARRC authority to authorize deletion of obsolete rules. Mention was made of requesting an AG opinion. However, Parker favored seeking advice rather than an opinion and Doyle thought that request for procedure would be preferable.

Barry sought guidance as to her editorial responsibility when an administrative rule is nullified by resolution of the General Assembly [Iowa Constitution, Article III, §40, in 1984]. She noted there were no statutory guidelines on the matter. There was general agreement that an editor's note should be used to alert the reader that Job Service subrule 345--4.34(8) had been nullified by HJR 14 in 1987.

Draft by
Royce

After further discussion, it was Committee consensus that Royce should draft legislation to address these issues.

Recess for
Lunch

Committee in recess for lunch at 11:50 a.m.

Reconvened
BOARD OF
NURSING

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Chairman Priebe reconvened the meeting at 1:15 p.m. He announced that Board of Nursing rules on nursing education programs, chapter 2, were to be considered. The adopted rules, published in IAB 3/11/87, ARC 7409, had been delayed 70 days for further study by the ARRC at their April meeting.

Those in attendance today included Nursing Board Members Pamela Triolo, Chairperson, Edna Eaton, Marjorie Matzen, Elaine Veverka, Ann Mowery, Executive Secretary, and approximately 80 interested persons.

Chairman Priebe recognized Mowery who introduced Triolo. She spoke of the compromise and read a prepared statement. She provided background on the rule making which was published as Notice of Intended Action in 8/13/86 IAB. The Notice generated many comments, both pro and con. At the recommendation of the ARRC, a negotiating team was selected from both factions to develop a compromise for the controversial educational requirements for nursing staff. This was accomplished and the adopted rules reflect the agreement. Triolo discussed the Board's perspective as to the need for the rules to protect public health, safety, and welfare.

Triolo continued that former rules had been in force for ten years and changes were needed to reflect current office practice and changes in the health care arena. She stressed the importance of a master's degree for faculty and indicated that public opinion has been overwhelmingly in support of the revision. Of 421 responses received, 404 were in support and 17 in opposition. At the public hearing, 78 persons spoke in favor and 9 in opposition to some portion of the rules. Triolo concluded that the time frame for compliance was generous and she urged support of the rules as agreed upon in the compromise.

Priebe commented on the large amount of mail he had received in opposition to the rules. Mowery contended that figures cited by Triolo were correct and obviously those who contacted legislators did not share their concerns with the Board.

R. Gene Gardner, Superintendent, Southeastern Community College, West Burlington, Iowa, represented Community Colleges and had chaired the negotiations Committee. The Community College sector was represented on the Committee by two nursing department heads from northeast Iowa and the Sioux City area, and Charles Moench from the Department of Education.

Gardner continued that revisions to chapter 2 passed the Community College President's group at the March meeting by the narrowest of margins. In response to Priebe, Gardner said the vote on chapter 2 was 8 to 6.

BOARD OF
NURSING
Continued

The vote has not been tested since that time. Priebe asked if "grandfather" provisions had been considered, and Gardner said they had discussed grandfathering with possible development program. Eventually, faculty would be required to obtain a baccalaureate degree as opposed to a master's degree. A vote on this alternative was 14 to 1. However, revised chapter 2 received the 8 to 6 vote and the majority has not been challenged.

Mowery indicated she learned later of the 8 to 6 vote.

Parker was less interested in knowing the vote than whether the Community College organization supported the compromise. Gardner responded that the majority voted in favor of the revisions. They voted to support the work at the bargaining table and did not purport to represent other segments of the Community Colleges. Clark was assured that master's and bachelor's degrees in fields other than nursing would be acceptable.

According to Gardner, negotiating sessions were held in December and January and numerous telephone calls were made.

- 2.6(2)c(3) Mowery discussed faculty requirements in 2.6(2)c(3) which states: "A person who is a faculty member on September 1, 1987, and who does not hold a baccalaureate degree shall obtain a baccalaureate degree in an applicable field by September 1, 1995, and a master's degree in an applicable field by September 1, 1998."

Gardner said that six fields related to nursing had been identified but were not in the rules--nursing, natural sciences, chemistry, psychology, and education which could be in areas of teaching or allied health occupations and social sciences. The ARRC recommended including the six fields with language "may include but not be limited to." Mowery concurred but said paragraphs c, (2) and (3) would cover those department heads with master's and bachelor's degrees.

Doyle had heard predictions of a shortage of nurses in the state. Mowery saw no problem since three programs offer master's degrees and they are allowing for degrees at UNI and Iowa State in nonnursing fields.

Priebe failed to understand why a master's in another field would better qualify individuals for teaching nursing more than someone who has taught nursing for years. Gardner suggested that a curriculum for associate degree of nursing could provide an answer.

Tieden expressed concern for rural areas and voiced his support for grandfathering.

BOARD OF
NURSING
Continued

Chairman Priebe recognized Lieutenant Governor Jo Ann Zimmerman, who was in attendance, but did not wish to comment.

Joe Gross, former legislator, owner, and administrator of long-term health care center in southwest Iowa, commented that he had hired a great number of well-qualified nurse graduates from Southwestern College in Creston. He contended that health care providers in southwest Iowa would be at a disadvantage if they were to lose the school of nursing at Southwestern.

Former legislator Lyle Krewson, representing the Iowa Association of Homes for the Aging, nonprofit nursing homes in Iowa, referred to his letter to Royce wherein he opposed the Board of Nursing standards to increase educational requirements.

Support

Chairman Priebe recognized individuals who had indicated their desire to speak on a sign-in sheet. The following spoke in support of the rules:

Board members who spoke were Edna Eaton, Marjorie Matzen, and Erlene Veverka. Eaton mentioned the availability of educational opportunities in Missouri and Omaha.

Representing the Iowa Nurses Association were Kathryn Schweer, President--quality education demands quality educators; Fay Cleary, retired health consultant; Susan Williams, student, University of Iowa, working toward a master's degree; Kay Myers, cautioned against attributing nurse shortage to availability of programs; Lee Ann Krapfl, Health Education Instructor, Mercy Health Center, Dubuque, performance of the new graduate nurse is directly proportional to the quality of the faculty.

JoAnn Chapman, President, Iowa Organization of Nurse Executives, and Vice President for Covenant Medical Center, Waterloo, employer of approximately 600 registered nurses. Nursing needs the best possible educators.

Colleen Brems, Dubuque, approach is futuristic and consistent with requirements of other midwest states.

Jane Hasek, Senior Vice President, Allen Memorial Hospital, Waterloo, faculty must be educators and must be nurses and need collegiate work in both areas.

Pam Jeffries, Associate Director, Nursing Education, Iowa Methodist School of Nursing, diploma school located in Des Moines, viewed the compromise as a "watering down of the rules."

Mary Hansen, Drake University, contended shortage was due to lack of qualified educators.

Joyce Roberson, Chairperson of Nursing Program, Clarke College, Duquibue.

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BOARD OF
NURSING
Continued

Ellen Stochata, Grand View College. Evelyn Benda, Acting Chairman, Department of Nursing Education, Coe College, believes in the future of nursing and necessary sacrifice. Beth Gaul and Beth King, Grand View College instructors.

Geraldine Felton, University of Iowa, supports compromise; Eleanor McClelland, Associate Professor, University of Iowa, urged adoption.

Trudy Laffoon, R.N., changes are appropriate and necessary.

Joann Buittell, Waterloo R.N., high level training for nurses is imperative.

Opponents The following opponents to the rules expressed their views:

JoAnn Stulau, but not against further education; Cheryl Creighton, received associate degree at Creston; Carol Krings; Loretta Eckels; Terri Speer, student.

Robert Ernst, Vice President of Instruction, Southwestern Community College, not opposed to upgrading but spoke of the impact on southwest Iowa.

Richard Hamilton, Administrator, Clarinda Municipal Hospital, could foresee shortages of nurses to fill positions in Community Colleges.

Karen Johnson, Community College instructor, not anti-education, but would welcome "grandfathering." Roberta Donahue suspected a possible closure of programs. If the system works, why change it?

Roberta Kokenge, a teacher for 17 years at Clarinda center where faculty would not meet chapter 2 standards. Jean Wagner, Director of Nursing at a long-term care facility, cited lack of availability for educational facilities in southwest Iowa.

Monica Sciortino spoke of trauma, stress and financial problems. Estimated cost of \$17,000 to complete the BSN. Sarah Fletcher, LPN, southwest Iowa; Bernice White, Community College instructor who spoke of the family problems in seeking additional education.

Lois Heskett, Iowa Lakes Community College, Emmetsburg, northwest Iowa, who considered herself a quality educator, based on state board results. She contended the master's requirement was unreasonable. Urged the ARRC not to abandon north and southwest Iowa.

Jane Reams, a mother of five children on welfare since a divorce, will graduate as associate degree nurse, but the rules "would mean another 12 years on welfare."

Richard Byerly, Southwestern Community College, and a former legislator, reasoned, "If it isn't broken, let's not fix it."

Jim Sutton, ISEA, representing the teaching profession, suggested deferral for one more week to provide opportunity to approach the Nursing Board.

BOARD OF
NURSING

The written statements presented are on file in the office of the Code Editor. Mowery pointed out that the compromise was made in good faith.

In Parker's opinion, the one overriding purpose was to provide the opportunity to become nurses or enter that profession.

Clark wondered about the possibility of grandfathering all current teachers and requiring those hired from now on to have at least bachelor's degrees and department heads to have MSNs by 1998. Mowery replied in the negative since Iowa standards would be far below the national level. Clark was troubled by inference that those under current standards were not doing a good job.

Priebe was informed that Kansas, Minnesota, Illinois, Wisconsin and Nebraska have the standards that Iowa has adopted. He had problems with it being necessary to travel out of state to receive the required education.

Tieden predicted the issue would be debated by the legislature if the rules become effective. Priebe could foresee job loss and financial hardship for many if the rules were adopted tomorrow. However, he expressed respect for the Board in attempting to maintain high standards. Mowery envisioned no problem because of the 10-year time frame.

Doyle voiced objection to the large packet of materials sent to ARRC by expensive overnight delivery. He urged the Board to avoid such a practice in the future. Mowery responded that the method was used to allow the Committee time to review the information prior to this meeting.

Royce reviewed Committee options with respect to the rules which would become effective June 24 if no further action were taken. Parker recalled that when the ARRC sends two parties to negotiate, that recommendation is usually accepted. No formal action taken.

Recess

Tabor moved to recess for the day. So ordered at 3:50 p.m.

Wednesday
May 20

Parker reconvened the meeting at 9:05 a.m. All Committee members and staff were present. Parker recognized Priebe.

BOARD OF
NURSING
Motion to
Delay to
GA

Priebe moved that nursing rules, chapter 2, be referred to the General Assembly. The delay could be lifted if the Nursing Board "grandfathered in" approximately 70 instructors presently employed. There was general discussion. Tieden supported the motion.

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NURSING

Priebe asked and received unanimous consent to amend his motion by substituting "delay" for "referred" in the first sentence. Tabor spoke against the motion contending 10 years would provide ample time for compliance with the rules. Parker also spoke in opposition and commented that "the medical profession was moving away from use of LPNs." In closing remarks, Priebe said "Several who spoke yesterday were forty and fifty years of age and would be affected." They felt two years of education could cost as much as \$70,000 and he recalled that, "generally, down the years, we have grandfathered people." Show of hands revealed affirmative votes by Priebe, Doyle, Tieden and Clark, and Parker and Tabor opposed the Priebe motion.

Vote

Priebe resumed the chair.

AGRICULTURE
AND LAND
STEWARDSHIP
DEPARTMENT

The following agenda was before the ARRC:

Iowa-foaled horses and Iowa-whelped dogs. 30-14.41 ARC 7543 F 4/22/87
Livestock importation. 30-17.5(2)"b" ARC 7546, also filed emergency ARC 7545 NFE 4/22/87

Present for the Department were Walter Felker, State Veterinarian, and John Hinshaw.

17.5(2)b

Brief discussion of the Royce memo to Senator Boswell where he advised the Senator of the ARRC scheduled review of amendment to 17.5(2)b. The amendment provides for continuation of the quarantine and retesting of breeding and dairy cattle originating from a Class "A" state. A revised version will supersede the 4/6/87 filing on 7/1/87. Royce also provided history of the rule and ARRC prerogatives. Doyle was informed that the rule would not impact the Sioux City stockyards. No action taken on 14.41 or 17.5(2)b.

Committee
Business

Committee agreed on June 9 and 10 for their next meeting and that the June 3 Bulletin should be included. Tentative summer meeting dates were scheduled for July 7 and 8 and August 18, 19, and 20. At the request of Doyle, August 20 would be spent discussing statutes relative to rule-making authority of the Department of Inspections and Appeals and whether conflicts with other departments exist. Staff from the Department and Legislative Service Bureau would be asked to attend. In the event conflicts in the law exist between Inspections and Appeals and other departments, corrective legislation could be drafted for the next GA.

Priebe excused to attend another meeting.

Parker in chair.

AGRICULTURAL
DEVELOPMENT
AUTHORITY

William Greiner was present for the following:

General, beginning former loan program soil conservation loan program, 1.1 1.2 1.4 1.5(6) 1.9 2.1(2)"a" 2.1(6), 2.1(8), 2.2(1), 2.5(1), 2.6, 2.7(1), 2.7(3)"a" and "b," 2.7(4), 2.7(5), 2.8 to 2.13, 2.16, 2.18, 4.2(7), 4.3, 4.4, 4.9, further amend and transfer 523—chs 1 to 6 to 25—chs 1 to 6 ARC 7540 F 4/22/87

AGRICULTURAL DEVELOPMENT AUTHORITY (Cont.) 2.7(3) He introduced Sue Kirkhart, Administrative Assistant. In answer to Tieden's question, the language in 2.7(3) was deleted to conform with the law. Parker asked about tax issues in the future and Greiner commented that mortgages had been purchased from banks and other lenders. There is uncertainty as to whether the banks will sell mortgages. The authority will cooperate with Agricultural Banks. No action taken.

EMPLOYMENT SERVICES DEPARTMENT Joseph Bervid, Ed Moore and John Bowman presented the following:

EMPLOYMENT SERVICES DEPARTMENT[341]
Administration, 1.1(2) to 1.1(5), 1.2(3), 1.2(5) ARC 7501N. 4.8.87
JOB SERVICE DIVISION[345]
Administration, employer's contribution and charges, claims and benefits, 1.1(2), 1.1(3), 1.2(1), 1.2(3), 1.2(4), 1.3(2) to 1.3(6), 1.4(2) to 1.4(3), 1.4(2) to 1.4(3), 1.4(2) to 1.4(3) ARC 7502N. 4.8.87

ch 1 Bervid gave brief overview of the amendments to Chapter 1 which intended to implement government reorganization. Parker questioned Department officials as to their plan for 4.34(8) on lockout which was nullified by the GA. Bervid reported that the matter was being studied but no decision had been made as to their responsibility regarding the rule. Possible options were discussed. Bervid had advised the Department that the amendment "nullifies" but does not "rescind." In answer to Parker, Bervid said that it was doubtful the Department would promulgate a new rule re lockout. Royce had talked with Barry. Royce took the position that nullification by Resolution has the force and effect of law and the Code Editor could remove the rule. It was noted that no statute addresses nullification. Moran contended that filed emergency rules react to statute, not a resolution.

Bervid thought Code Chapter 17A could be amended and there was consensus that a uniform policy was needed. Doyle suggested that the Editor add a termination date to the rule. No other recommendations.

INSPECTIONS AND APPEALS DEPARTMENT Kim Schmidt was present for the following:

Amendments—contested cases, mission statement to ch 1, 4.6(3) to 5.6(2), 5.6(3), 5.7(1) to 5.7(3), filed without Notice ARC 7522F.W.N. 4.22.87
Program integrity section, ch 14 ARC 7537N. 4.22.87
Health facilities, ch 30 ARC 7512N. 4.8.87

Doyle advised Department officials of the August 20 special meeting relative to Inspections and Appeals and requested that Beverly Allen be invited. He indicated an area of particular concern was nursing homes.

ch 1 et al Discussion of amendments to Chapter 1 et al which were intended for clarification. Royce quoted from 17A.2 re contested cases and raised question as to whether the hearing board must utilize a hearing officer. Schmidt referred to S.F. 2175 [1987 Code, Sec. 10A.101--10A.106] re conduct of hearings for professional licensing boards by Inspections and Appeals. Doyle

INSPECTIONS
AND APPEALS
DEPARTMENT
(Cont.)

and Royce discussed the hearing and appeals process where an Inspections and Appeals hearing officer makes a "proposed decision."

Discussion of the fact that Board authority was set out in two chapters of the Code. Clarifying legislation was not enacted. Doyle requested that this situation be included in the August 20 review.

ch 14

Roxanne Benda and John Barber explained Chapter 14, which set out procedure for aiding Human Services in determining eligibility for public assistance. Clark was informed that definition of "overpayment" had been taken from Human Services. Clark called attention to use of "may" in several places and Barber referred to Code chapter 10A.

ch 30

Mary Oliver was present to review Chapter 30. It was noted that the new Inspections and Appeals Department is responsible for establishing standards subject to approval of the Board of Health and the Inspections and Appeals Department is also responsible for establishing procedures and enforcing standards.

Doyle advised Department officials to postpone submitting notices until after the August 20 meeting.

30.3(1)

Clark was informed that fees in 30.3(1) were decided upon arbitrarily.

30.6

In reviewing 30.6, Doyle recalled that the time frame for notices for appeals had been changed by some agencies from 10 to 20 days. Royce agreed to pursue the matter. Also, Doyle preferred "appeals may be taken" rather than "negative decisions may be contested." Oliver agreed to eliminate "negative."

DENTAL
EXAMINERS
BOARD
51.12

Connie Price presented procedural rules--publication of decisions, 51.12, ARC 7492, Notice, IAB 4-8-87 which was mandated by Iowa Code Chapter 258A and 17A.22. Tieden challenged the requirement to notify the news media. Price admitted it was not statutory.

In response to Parker, Price cited drug abuse, incompetency, and insurance fraud as examples of complaints against dentists, which have doubled since last year. Disciplinary action was taken against a dentist who was addicted to nitrous oxide. In re 51.12, Doyle could foresee problems with general circulation of decisions "to be selected by the Board" and suggested "upon request". Parker reminded Price that newspapers were also singled out. Tabor reasoned that "shall be transmitted" could create problems. Alternate language could merely point out that a board decision is public record.

Recess

Vice Chair Parker announced a 10-minute recess at 10:20 a.m.

COMMISSION
ON STATUS
OF WOMEN
chs 1 to 3

Charlotte Nelson appeared for review of Chapters 1 to 3 pertaining to Description, Duties and Iowa Women's Hall of Fame, Notice as ARC 7514, 4/8/87 IAB. Nelson said that addition of Chapter 3 was to provide an awareness of the procedure for selection of nominees for the Hall of Fame which has been in existence since 1975--four women are inducted each year.

Tieden questioned the need for Chapter 3 and Royce advised that procedure for selection should be in rules.

Doyle noted lack of enforcement power and Nelson stated that professional services contracts would be made through Departments of Personnel and Management. In the event of problems, Nelson would call upon the AG liaison.

1.2

Tieden questioned quorum requirements in 1.2 and Nelson was apprised of the ARRC preference for the statutory 2/3 of the total membership, not just those present. She was advised to work with Royce for an acceptable solution.

HUMAN
SERVICES
DEPARTMENT

Mary Ann Walker, Norma L. Ryan, Cindy Dobson, Linda Foster, Don McKeever, Mary McGee, Cynthia Tracy, Barb Momberg, Marion Sammon, and Jim Hennessey were present for review of the following rules:

Program evaluation, ch 13	ARC 7523	.....	F	4/22/87
ADC--unemployed parent, 42.4(3), 42.4(4)	ARC 7524	.....	F	4/22/87
Treatment of Medicaid qualifying trusts, 75.9	ARC 7525	.....	F	4/22/87
Child care centers, family and group day care homes, 109.2(1)"i", 109.2(7), 109.3(6), 109.3(9), 109.5(2), 109.5(8), 109.6(4)"f" and "g", 109.6(6)"b", 109.7(4)"b" and "d", 109.9(1)"a", 110.5(12), 110.9(3)"e"	ARC 7526	.....	F	4/22/87
Child care center financial assistance--right to appeal, 154.5, 154.5(2)	ARC 7527	.....	F	4/22/87
Food stamp program, administration of, 65.3, <u>filed emergency</u>	ARC 7529	.....	FE	4/22/87
Food stamp program--verification of deductible expenses, resources, 65.2(2) to 65.2(6), 65.30	ARC 7535	.....	N	4/22/87
Medical assistance, eligibility, 75.1(25)	ARC 7533	.....	N	4/22/87
Amount, duration and scope of medical and remedial services, 78.1(2)"e", 78.1(11), 78.1(14), 78.4(1), 78.10, 78.2(1)	ARC 7498	.....	N	4/8/87
Amount, duration and scope of medical and remedial services--psychologists, 78.2(2)"a" to "j"	ARC 7534	.....	N	4/22/87
Collection services center, ch 97, <u>filed emergency after Notice</u>	ARC 7530	.....	FEAN	4/22/87
Purchase of adoption services, 157.1, 157.2(3), 157.2(4), 157.3(5), 157.4, 157.5, <u>filed emergency after Notice</u>	ARC 7528	.....	FEAN	4/22/87
Child abuse report, ch 175,	ARC 7467,	70 day delay.....		3/25/87

Also present was Pat Montgomery, Ames.

Walker explained that rules which require skilled nursing facilities to meet Medicare conditions had been in existence since 1977. Walker informed the ARRC that skilled nursing facility market basket index is from Data Resources, Washington, D.C. and Human Services Department obtains the information from the University of Iowa.

ch 13

No comments had been received on Chapter 13, program evaluation. The need to coordinate rule making effort with Inspections and Appeals was noted. Parker advised Walker of the special review scheduled for August 20. Doyle requested that Walker peruse Human Services rules for possible problems resulting from reorganization. Doyle opined that 13.8 appeared to direct the federal government to review sample cases.

HUMAN
SERVICES
DEPARTMENT
(Cont.)

According to Walker, no one attended the hearings scheduled in eight districts for amendments to rule 42.4.

No questions to 75.9.

ch 109

In re amendments to Chapter 109, no comments had been received. Poore reported that he had been in contact with the center with which Priebe had been concerned. Annual evaluations are made and the Department will follow up on the complaint of the facility.

154.5

Rule 154.5 was considered and Walker pointed out that time for appeal was changed from 10 to 15 days at ARRC request. No questions on 65.3 or 75.1(25).

65.22
65.30

Amendments to 65.22 and 65.30 were reviewed. Foster responded to question by Tieden and Doyle that federal regulations have always recognized heat or air conditioning as allowable expense.

Clark asked for clarification as to shelter costs and Department officials cited taxes, mortgage payments and insurance as examples.

ch 78

Walker gave brief overview of the amendments to 78.1(2) et al. Walker assured Clark that presently, nonmedical items were not covered--78.10(1)d. Clark disagreed with that policy and mentioned preset portable oxygen units as an example.

Priebe expressed concern in 78.10(1)b as to why the fiscal agent would make the determination on "necessary and reasonable". Walker said that medical staff review documentation. She admitted that opinions are divided within the Department.

Department officials did not believe that communication systems for the deaf were covered under 78.10(3)--prosthetic devices.

No questions re 78.24(2)a to d.

ch 97

In explaining Chapter 97, comments with respect to turn-around time for payment to the recipient; unavailability of records; loss of jobs for staff; and abstractors have complained. In response to Priebe, Walker said 28 additional staff had been hired. Approximately 25 will be hired for conversion teams--a total of 53 until April 1988. Payments are being turned around in 24 hours and records will still be filed in all 99 counties. A terminal and a printer will be installed in each county by June 8 and a backup system will be available. Also, a printed list will show location of the computers.

HUMAN
SERVICES
DEPARTMENT
(Cont.)
ch 157

Department representatives attributed concern of Clerks of Court to "a lot of fear, many changes, and much work to convert records to a computer system."

Walker gave brief overview of amendments to Chapter 157 which were filed emergency after Notice in order to utilize federal grant dollars by a date certain.

ch 175

Chapter 175 on child abuse reporting was before the Committee carried over from last month after a 70-day delay was imposed.

Royce summarized Committee concerns which focused on the requirement for "expungement" of complaints of child abuse which cannot be effectively proved valid--175.15. There was uncertainty as to whether the expungement process contained adequate safeguards to protect those wrongfully accused.

Montgomery contended that everyone with access to child abuse reports would know who the accused are and reports to the County Attorney are distributed by approval of the Central Child Abuse Registry. There is no guarantee that all copies have been destroyed. Priebe wondered if provision could be added to ensure that expunged records could never be used again. Parker was doubtful there was a physical way to make such assurance. Walker said expunged information would be removed from the computer and shredded.

General discussion with Doyle citing the fact that DCI leaves the information in their computer. Copies of child abuse reports are automatically given to county attorneys and juvenile court. Criminal record check is a separate function. It was pointed out that information does not show up on the DCI rap sheet unless there is conviction or arrest. Montgomery read from Code §235A.18(1) and (2) relevant to sealing of information 10 years after receipt of an initial report. Montgomery referred to subsection 2 and interpreted it as doing nothing to clear the alleged abuser's name. Department officials stressed that sealing applies only to founded child abuse reports. Montgomery responded that his legal counsel did not read that in the Code.

Hennessey said the statute requires the Department of Human Services to expunge. Committee members discussed possible better method and whether or not a Code change would be required.

Montgomery pointed out the difficulty in resolving a case within one year which can be very detrimental to a citizen attempting to clear his own name by being found "not guilty."

HUMAN
SERVICES
DEPARTMENT
(Cont.)
Motion
Carried

Priebe moved to refer the amendments to Chapter 175 to the Lt. Governor and Speaker of the House for referral to the Judiciary Committees of the House and Senate. Doyle asked Royce to provide all of the information to Legislative Service Bureau, as well, for statutory revision. Short form vote. Motion carried.

Hennessey stated that the rules had been drafted on advice of counsel and failure to implement them could penalize the innocent. The Department was assured that the rules would be in effect upon expiration of the 70-day delay.

Recess Committee was in recess at 12 noon for lunch.

Reconvened Reconvened at 1:15 p.m. by Chairman Priebe.

RACING AND
GAMING
DIVISION

Mick Lura appeared on behalf of the Commission for the following:

Organization and operation, greyhound racing, mutuel departments, 1.2(1), 7.3(9), 7.11(2), 7.13(1), 8.2(4)"k" and
subparagraph (3), 8.3(1), 8.3(2) ARC 7493N. 4/8/87
Practice and procedure before the department of commerce division of racing and gaming, procedure for rule
making, chs 18 and 19 ARC 7497N. 4/8/87

ch 18 Discussion of Chapter 18.

18.2 Tieden asked Royce if the second paragraph of 18.2 were legal and Royce replied in the affirmative. For good cause, a rule can be waived, unless it is required by law. Lura said Racing had not waived a rule.

Priebe and Lura discussed the "dog payouts" at Dubuque, Waterloo and Council Bluffs. Lura reminded that Agriculture was the governing body but indicated that the industry would agree with the 15 per cent payout. Priebe suggested that the Racing and Gaming Commission make recommendations to the General Assembly and Lura agreed to convey Priebe's sentiments.

REVENUE
AND FINANCE
DEPARTMENT

Carl Castelda appeared on behalf of Department of Revenue and Finance for the following:

Practice and procedure, 7.1, 7.2"12" to "14," 7.6"4," 7.8, 7.14, 7.23(2), 7.25 ARC 7542F. 4/22/87
Receipts exempt from use tax—vehicles used in interstate commerce, 32.4 ARC 7531N. 4/22/87

No recommendations were offered for Chapter 7.

32.4 Castelda said that rule 32.4 was filed in an attempt to clarify recordkeeping for Iowa Motor Truck Association. However, the Department has discovered that registration periods are from January through December and not on a fiscal year basis. A law change was on fiscal year basis and several meetings were held in an attempt to compromise. The Department will utilize the registration concept on a registration as of the effective date of the Act. This amendment will be terminated and a substitute renoticed.

REVENUE &
FINANCE
DEPARTMENT
(Cont.)

Priebe informed Castelda that "productivity" rules would be reviewed at the June meeting.

COMMERCE
DEPARTMENT
Utilities
Division

Dean Stonner, Diane Munns, Ray Vawter, Susan Allender, and Vicki Place were present for the following:

Practice and procedure—rehearings, 7.9(3) ARC 7520F 4/8/87
Gas utilities—purchased gas adjustments, annual review of gas procurement practices, 19.10, 19.11, 19.2(4)"b" ARC 7536F 4/22/87
Electric utilities—service area boundaries, 20.3(8) to 20.3(12) ARC 7519M 4/8/87
Tax reform revenue adjustment, 30.3, filed emergency ARC 7521FE 4/8/87

7.9(3)

According to Stonner, the purpose of amendment to 7.9(3) was to reduce time for filing responses to applications for rehearing from 14 to 10 days unless otherwise ordered by the Board. Commenters argued that mail delays along with the change would not allow adequate preparation time for a response. The law requires the Board to rule on application for rehearing within 20 days and their rules allowed responses within 14 days leaving only six days for the Board to act. Proposed legislation to allow 30 days (HF 553) was not passed.

Motion

Parker moved that ARRC notify the Lt. Governor and Speaker of the House to alert the respective committees of the pending bill. Motion carried.

Carried

No questions re 19.10 et al.

20.3

Place offered history of rule making in 20.3. Priebe asked for definition of "reasonable price" in 20.3(10) and response was that it will be determined after a hearing has been held.

Tieden recalled "turf fighting" among utilities and wondered if this were a resolution. Place indicated that the Board wants to set final boundaries for that reason.

Vawter told Parker that prior to 1978, the law provided customers preference for utility service. The public hearing will held June 25.

30.3

Allender explained the purpose of the tax reform revenue adjustment rule was to clarify both definitions and formula. The formula is workable this year only because of filing deadlines.

Allender continued that utilities always have the option to seek a rate increase but it is more difficult to persuade them to initiate a decrease. No action.

PUBLIC
HEALTH
DEPARTMENT

Susan Osmann appeared for the Public Health Department and Harriett Miller was present for the Board of Chiropractic Examiners. The agenda follows:

Hospitals—visitors 51.23(2) ARC 7494 F 4/8/87 17/1
Health care facilities—physician examinations, 57.15(2)b, 58.15(2)c, 59.19(2)c, 63.15(2)b ARC 7495 F 4/8/87 17/1
Chiropractors—temporary certificates, utilization and cost control review, 141.18, 141.19 ARC 7541 F 4/22/87 17/1
Residential care facilities for the mentally retarded—demonstration waiver project, 63.47, filed emergency after
Notice ARC 7496 FEAN 4/8/87 17/3

51.23(2) Osmann explained that 51.23(2) was changed to coincide with current practice of allowing visitors under age 14.

No questions re 57.15(2)b et al

141.18 Miller gave brief overview of rules 141.18 and 141.19
141.19 and described temporary certificates as being "for those not necessarily qualified, but trying to achieve qualification."

63.47 Re 63.47, Priebe mentioned legislation introduced to eliminate certificate of need but Osmann did not believe it had been enacted. No other comments.

ENVIRONMENTAL The EPC was represented by Mark Landa, Pete Hamlin and
PROTECTION Paul Lundy.
DIVISION

ENVIRONMENTAL PROTECTION DIV. [567]
Landfill regulation, containment..... ch 103
Economic impact statement, Animal feeding oper., ch 65, ARC 7507,
.....4/8/87

ch 103 Landa was present to answer questions on landfill operations, generally. He referred to current rules in Chapter 103 and additional proposed rules which are technical, detailed, and lengthy, IAB 5/20/87, ARC 7614.

Parker had several questions with respect to the landfill east of Des Moines which he described as "Mt. Everest." Parker challenged the Department as to why it would take a year to promulgate rules on groundwater. Darrell McAllister clarified newspaper accounts of his response to two different questions: He had estimated one year was needed to promulgate rules from preliminary draft to effective date. As to sludge in a landfill, rules may not be needed if a clear statute exists.

Discussion of process where sludge and garbage are composted and windrowed and allowed to decay before being sold as fertilizer.

Parker asked about toxicity of ink used in lithographs and response was that an environmental protection toxicity test would be necessary since some lead will meet standards.

Parker and Landa discussed landfill problems. Landa said that disposal of RICKRA regulated waste was banned in Iowa three years ago. A special authorization from

ENVIRONMENTAL the DNR is required when a waste is considered to be
 PROTECTION toxic. Department officials did not believe that gas
 DIVISION at the site posed a problem.
 (Cont.)

Priebe mentioned a sophisticated operation in Florida for burning of waste.

Economic
 Impact
 Statement
 ch 65

Priebe commended the Department for preparing an informative economic impact statement on Chapter 65 relative to feed lot operations. There was brief review with Ubbo Agena pointing out that no comments were received from small operators. Chapter 65 was adopted May 19.

Recess

The Committee was in recess for 15 minutes.

NATURAL
 RESOURCE
 COMMISSION

The following was before the ARRC with Arnie Sohn representing the Commission:

Recreation/tourism grants to county conservation boards, 24.1, 24.4(1), 24.4(3), 24.5(4), 24.6(1), 24.6(2), 24.6(5), 24.6(6), 24.7(1), 24.7(3)" 24.8, 24.9, 24.10, 24.11, 24.12(1), 24.12(3), 24.15(1), 24.15(4), 24.15(5), 24.15(6), 24.16, 24.17(1), 24.18, 24.20(1), 24.20(2), 24.20(3) ARC 7402	(Carried over from March and April meetings)	F	2/25/87
State parks and recreation areas, 61.2, 61.3(5)" 61.4(2)"m" ARC 7510		F	4/8/87
Park user fee 65.5(3) ARC 7511		F	4/8/87
Forested property, ch 8, Notice ARC 6777 terminated ARC 7509		NT	4/8/87
Motor regulations, 45.4(2)"b" ARC 7508		N	4/8/87

Also present: John Stuart, Wapello County Conservation Board, Ottumwa.

ch 24

Priebe asked Sohn about derivation of the funds for recreation/tourism grants to the county conservation boards and he asked if there were a list. Sohn responded that \$750,000 from lottery was available and he distributed a list of projects. Commission routinely reviews wildlife habitat stamp and land and water conservation grant applications and recommendation are made. Counties contribute 25 per cent and 75 per cent is lottery funds.

Priebe observed that several trails had been funded. It was Sohn's understanding that this was legislative intent. Criteria are heavily weighted toward multi-purpose projects. Committee members did not necessarily agree with that. Responding to Priebe, Sohn said there were 50 miles of trails by design and a significant number of these projects were submitted by counties.

Sohn anticipated that the project in Parker's district would be reimbursed 75 per cent upon completion.

Priebe reiterated his opposition to environmental issues being decided by Staff rather than the Commission. Sohn emphasized that Staff makes the recommendation, not the decision. Sohn cited one reason the Commission altered Staff recommendation on trails was because they considered the other criteria, benefits, impacts of the Van Buren County Project outweighed the fact that it did not have a multipurpose trail.

**NATURAL
RESOURCE
COMMISSION**

Doyle observed that Chapter 24 had not been modified as recommended. It was his opinion that reasons for the altering project rankings should be spelled out in Commission rules. Sohn stated that minutes reflect that alterations occur due to previous commitments, expenditures at local levels, or availability of federal funds.

It was Committee consensus that the delay should not be lifted at this time and, if by June 9, their request has not been honored, an objection could be voted.

Stuart reasoned that if the Commission created the Review Committee and directed them to set criteria, the Commission should also follow that same criteria.

Motion

After further discussion, Doyle moved to lift the 70-day delay on amendments to Chapter 24 with the exception of Rule 24.8. Motion carried. Tieden excused and not voting.

No questions re amendments to Chapters 8 and 61 or 45.4(4).

No Reps

The following agencies were not requested to appear today:

BANKING DIVISION(187)
Amend. transfer rules 140—chs 1 to 4, 8, 9, and 21 and 136—ch 1 to agency number 147, renumber 140—ch
21 as 147—n 15 and 120—en 1 as 187—ch 16, new chs 5 and 6 ARC 7532 F 4/22/87
INDUSTRIAL SERVICES DIVISION(343)
Contested cases, 4.2, 4.27 ARC 7539 M 4/22/87
REAL ESTATE COMMISSION(700)
Prelicense education and continuing education 3.4(2)(5) "Notice ARC 7355 terminating ARC 7538 M.T. 4/22/87

Adjournment

Chairman Priebe adjourned the meeting at 3:40 p.m.
Next meeting was scheduled for June 9 and 10.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary
Assisted by Vivian Haag
and Bonnie King

APPROVED

Dee E. Priebe
Chairman