MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, July 13 and 14, 1982

Place of Meeting: Committee Room 22, Statehouse, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar Holden and Dale Tieden; Representatives Betty J. Clark and Ned Chiodo.
Also present: Joseph Royce, Legal Counsel; Brice Oakley, Rules Coordinator; Phyllis Barry, Deputy Code Editor; and Vivian Haag, Administrative Assistant.

Chairman Schroeder convened the meeting at 10:15 a.m.

AGING COMMISSION

Ron Beane and Mary Ann Olson appeared on behalf of the Aging Commission for review of rules relating to the responsibilities of the State Agencies and Area Agencies on Aging in the administration, funding and delivery of services to the elderly throughout the state.

AGING, COMMISSION ON[20]
Complete revision, chs 1 to 10 ARC 2926 ...F.....6/9/82

10.3(2)

Schroeder questioned petition contents in 10.3(2), paragraphs "a", "c" and "e". He could envision problems if there were strict interpretation. He cited elderly groups who might seek a change but would not comprehend a formal practice. Oakley defended the provisions as being consistent with ARRC past practices.

Clark wondered if the Commission could advise those with questions where assistance was available with th "bureaucratic system." Schroeder referred to "c" aga and pondered whether the right to petition and amend had been waived. Beane declared that was not the inten Schroeder asked that the agency office assist petitioner in preparing the proper form.

1.2(1)

Clark pointed out lack of dates certain in CFR references in 1.2(1). Royce briefed the Committee on the constitutional question of adoption of future amendments in a statement that has the force and effect of law. He emphasized a particular date must be established. Clark noted the ambivalent definition of "state agency". She queried how "executive director" could be defined as "state agency". Beane contended the two were interchangeable.

Holden reflected on the man-hours involved in the omnibus revision and questioned whether they were justified. Beane was hopeful that the major effort would provide a base for the agency where only minor changes will be necessary in the future. Oakley interjected that basically the Commission had complied with statutory mandate.

AGING COMMISSION Continued

Clark noted areas where grammatical corrections were needed, including 2.5(4), 4.4(1)(2), 5.4(3), 6.11(1), 8.42(1), and 10.3(4)"c".

4.1

Responding to Tieden, Beane was of the opinion the agency would be funded for some years in the future. Tieden referred to 4.1 and expressed concern over the Commission's authority for input into budgets of various state agencies. Beane responded that was mandated by federal and state law. Priebe concurred with Tieden's concern. There was discussion of Iowa Code Chapter 249B. It was noted the long-term care ombudsman program has been available for six years.

AUDITOR OF STATE

John Pringle appeared on behalf of the Auditor for review of:

AUDITOR OF STATE[130]
Iowa industrial loan corporation thrift guaranty Act, 1.28, 1.28(4), 1.28(8), 1.28(12) to 1.28(15), 1.29 ARC 2934..F.....6/9/82

No formal action taken.

BOARD OF NURSING

Chairman Schroeder announced that, due to the conflict with state tests being given by the Board of Nursing, representatives were unable to be present. The following rules will be reviewed at a subsequent meeting:

NURSING BOARD[590]
Licensed practical nurse, supervisory role, 6.5(1)"c"(1) to (4), 6.5(1)"d", ARC 2764 notice amended ARC 2923 ..N.....6/9/82

HEALTH DEPARTMENT

Rules of the Health Department before the Committee were as follows:

HEALTH DEPARTMENT[470]
Health care facilities, residents' rights, amendments to chs 57, 58, 59, 63 and 64 ARC 2930...F.....6/9/82
Intermediate care facilities, personnel, 58.11(2)"g" ARC 2961 ....N.....6/9/82
Skilled nursing facilities, personnel, 59.13(2)"g" and "h" ARC 2962 ..N.....6/9/82
Podiatry examiners, temporary certificate, 139.2(5), 139.3(6), 139.4 ARC 2985..N..... 6/23/82

Representing the Department were Norman Pawlewski, Commissioner of Health; Dana Petrosky and Peter Fox, Hearing Officers; Ted Ellis, Deputy Commissioner. Also present: Bill Millen and Dianne Abdouch, Atlantic; Jack Thomson and Dan Schwieger, ABCM Corp., Hampton; Senator Julia Gentlemen, Des Moines; Representative Dottie Carpenter, West Des Moines; Representative L. W. "Joe" Gross, Mt. Ayr; Jean Kruse, LPN, Afton; Jack A. Clark, HCM, Altoona; Paul Piper, Miller Rest Home, Sutherland; Cheryl Guild, Western Home, Cedar Falls; Karla J. Miller, Bartels Lutheran Home, Waverly; R. Youells and Jack Kegel, Des Moines; Ramona Zaleski, OASIS, Des Moines; Paul & Mary Ann Bousfield, Friendship Haven, Fort Dodge; Blaine Donaldson, Storm Lake; Buck Brock and Larry Breeding, Iowa Health Care Association; Constance and Russ Proffitt, Lisbon; Roscoe Van Dye, National Retired Teachers Association/ Association of Retired Persons; Wayne Pos, Iowa Aging Coalition; Ron Moegenburg, Des Moines; Elizabeth Selk, Linn County Council on Aging; and Mrs. Sadie F. Foster, concerned taxpayer. Susan Brammer, assistant attorney general, was present on behalf of the Health Department.

Chairman Schroeder recognized Rep. Clark who asked for permission to make a clarifying statement. She referred to accusations that she "voted for the patients' bill of rights in the Legislature because she knew she could kill them in

HEALTH DEPARTMENT Continued Patients' Bill of Rights

Administrative Rules." Clark expressed her resentment and anger at the misguided letters from constituents and others. She presumed she was a target for criticism since the bill came out of her Committee. However, she wanted it understood that, consistently, her position on the issue has been to advocate the best possible legislation and rules for the benefit of the elderly. Chair asked if there were other opening statments. There were none.

Podiatry

Chairman Schroeder announced that podiatry examiners rules would be taken up. Fox cited HF 2348(69GA) as the statute being implemented by amendments to chapter 139 which pertain to podiatry schools. Responding to Holden's question, Fox assumed there would be continuing education although it was not specifically addressed in the law. No further questions.

chapters 57, 58, 59, 63 and 64

Discussion returned to amendments to chapters 57, 58, 59, 63 and 64. Petrosky stated that the Department of Health was mandated by HF 825 to draft rules concerning residents' bill of rights. Notice of intended action was published December 23, 1981. The Department was directed to apply the federal bill of rights for nursing home residents to state rules and to draft rules on four other areas which included involuntary discharge of the resident from health care facility, required holding of a bed while the resident is temporarily absent from the facility and involvement of the care review committee in investigation process. Four public hearings were held -- Des Moines, Cedar Rapids, Carroll and Red Oak.

Petrosky continued that the hearing at Red Oak was requested but the others were initiated by the Department. Hundreds of comments were received, rules were rewritten with those in mind and 62 substantive changes were made in the final draft.

Schroeder took the position that thirty pages of rules on patients' rights were excessive. Department officials defended the need for rules that are very specific, especially in the area of fining and citing a facility for violation. They emphasized that specific rules were much easier to enforce. Pawlewski commented that detailed rules apprise the operator of a facility of what is expected for compliance. He continued that the Department tries to quantify as much as possible for their own benefit as well as for the providers.

Responding to Clark, Brammer said Title XIX facilities are supposed to be following the guidelines regardless of whether they are profit or nonprofit. It was Pawlewski's understanding that "interpretative guidelines" must be included in the rulemaking process. Thus, for benefit of enforcement personnel, the Department combined the rules and guidelines. Petrosky explained the reason for the existing voluminous rules on care facilities, generally, adopted in 1972. Gross supported the method followed by the Department.

HEALTH DEPARTMENT Continued

Patients' Rights

Holden raised question as to the reason the federal residents' bill of rights was not adopted by reference. Pawlewski stated there was really no need to pass a patients' bill of rights since federal regulations were already being enforced. He continued that most facilities were, to a large degree, already complying with the federal bill of rights, but the federal interpretative guidelines did not fit Iowa in every case.

Tieden inquired about a facility that did not have a Title XIX contract, and he read from a Supreme Court ruling ".... that medicaid recipients in private nursing homes have no right to a hearing before they are transferred....". He asked for comments. Brammer said that case did not exactly fit intent in HF 825. The issue before the court was whether a resident being transferred from one level of care to another was entitled to a hearing prior to the transfer. Court held that it is essentially a private decision--there is no state action. General discussion of the matter.

Brammer, in response to Priebe, said that the Department adopted the federal rules as contained in 42 CFR, §442 which spell out circumstances under which an individual can be discharged involuntarily. Pawlewski called attention to the fact that the Department had input from the industry, activist groups, providers and the general public. He maintained that 80 to 90 percent of the facilities have no problems with the rules.

Petrosky spoke of the vagueness of the federal rules which presents a problem with interpretation. Tieden called attention to 57.41(2) concerning flexibility in daily activities. Although he was not opposed to the concept, he felt some restraint was justified. Pawlewski stressed that the residents should be given the greatest freedom possible. It was Chiodo's interpretation that the facility was still in control. General discussion.

Chairman Schroeder recognized Senator Gentleman who recalled her main concern last year had been with the involuntary discharge sections and their impact on facilities offering continuous care, which had not been addressed. She cautioned against imposing increased health costs. Although Gentleman preferred not to offer a recommendation, she tabbed the rules as "bulky" and thought legislative change might be needed.

Van Dyke, who had served in the Older Iowans Legislature, spoke in favor of the rules. Donaldson emphasized he was not opposed to the residents' bill of rights, and referenced material he had sent to the Committee. Problem areas included multilevel care. He disagreed with the attorney general's opinion on transferring from residential to ICF or from ICF to residential and mentioned the expense involved. Donaldson expressed dissatisfaction with the hearing process. In addition, he had real problems with the visiting hour requirements and he differed on the interpretation of "dignity" and "privacy."

HEALTH DEPARTMENT Continued

Patients' Rights

He called attention to the problems of unlimited visitation in long-term care facilities. Donaldson had discussed the matter with his Care Review Committee which was opposed to becoming a "complaint department." He urged a 70-day delay or delay into the next General Assembly with a request that legislation be clarified.

Pawlewski could see no merit in delaying implementation since the Health Care Professionals and administrators of multi-level facilities had over one year to comment on these rules. He noted that the Department had not been favored with a copy of Donaldson's letter. Pawlewski pointed out that most of Donaldson's opposition was to the federal rules -- not the patients' bill of rights. Pawlewski admitted there was a problem with visiting hour restrictions.

Clark asked Donaldson about counseling. She interpreted the rule as allowing someone other than a professional to counsel. Petrosky stated that federally certified facilities must provide a social worker.

Foster, as a concerned taxpayer, addressed the Committee on behalf of an aunt. She enumerated problems faced by her aunt in a facility--including being isolated from the dining hall because of eating too slowly. Foster had observed that the meals left much to be desired.

Priebe took the position that the economic statement prepared by the Health Department was inadequate. Holden declared the rules would have "more of an impact than any of us believe." He placed much of the responsibility on the legislature for seemingly indiscriminate rulemaking mandates. He noted that proponents of the patients' bill of rights were complaining about the costs. He had no idea that "these rules would be this extensive" but did not wish to be too critical about that. Holden continued that perhaps the entire legislature should be exposed to the rules -- not just the Rules Review Committee. Priebe was inclined to concur with Donaldson that fixed visiting hours were preferable. He reiterated the fact that the rules would result in increased costs which would not be borne by the state or Title XIX, but by private paying patients.

Oakley suggested the Committee provide itself with additional staff to study bills while they are in the legislative process and before they are enacted. He called attention to the fact that while the Health rules did lay over during a legislative session and a fiscal note was issued by the fiscal bureau, they were unable to provide an estimate of the impact. Oakley clarified the sequence of amendments to the CFR in January 1981. He reported that it was his understanding the Governor would not veto the rules.
Breeding knew of no organized opposition.

Priebe defended the fiscal bureau contending that at the time of the request they were unaware of the volume of rules. Oakley noted there was no appropriation for enforcement of the rules.

HEALTH DEPARTMENT Continued

He doubted there were problems with regard to patients' rights in the state at this time. Tieden had called nursing home operators in his area and although they were not taking a position on the issue, they all had complaints.

ICF

Discussion moved to proposed increase in minimum hours of daily nursing case in intermediate and skilled nursing facilities. Petrosky referenced her position paper on the subject. She responded to Priebe that the economic impact would be around $2 million. Holden questioned the need for the change since most facilities are already complying. Department officials wanted to ensure continued compliance in view of the increase in the aging population.

Chiodo made the point that the legislature, last year, specifically refused to provide reimbursement. He declared this was unfair when costs for the facilities were increased. He pondered, "Who will suffer the brunt of it?" Petrosky responded they anticipated an effective date of January 1 for the rule recognizing that it would be unreasonable for the state to increase staffing and costs without a reimbursement system. They consulted with DSS, governor's office and the Committee on Health Care Costs and the consensus was the rules were needed. Since there was no other way to bring it up for discussion, it was filed under Notice of Intended Action, and this is the minimum health standard needed.

Chiodo favored more lead time to allow the legislature a chance to face up to the reimbursement question. Schroeder wondered if a later implementation date had been considered. Pawlewski saw no difficulty in changing the date.

Breeding presented a written statement re ARC 2961 and 2962 wherein he acknowledged the issue was a difficult one -- equating quality health care and needs with dollars. It was his opinion that provisions placed in both legislation and rules requiring objectivity and burden of proof on the part of the Department had not been met in relationship to the rules. He took issue with the Department's position that the legislature sets minimums. He argued this was the Department's responsibility.

58.11(2)f

He viewed 58.11(2)f as an attempt to raise staffing without dealing with needs of residents. Industry has better knowledge as to level of care requirements. Iowa Code, §135C.2(2) was discussed. Breeding disagreed with the Department's estimated cost of $2 million, contending it would be closer to $4 million. Breeding was not aware that the Health Facilities Advisory Committee, of which the Iowa Health Care Association is a member, was ever convened for the purpose of reviewing the proposal. He cited §135C.14 which requires consultation with numerous groups that will be affected. Breeding's group had asked the Department to provide a concise statement addressing questions set forth in the letter. He asked the ARRC committee to request an accurate impact statement. Moegenburg had mailed a position paper to Committee and, for the sake of brevity, he asked them to accept

HEALTH DEPARTMENT Continued

Breeding's position as part of theirs. He took exception to the assumption patient care would improve by raising the maximum staff level in facilities. In addition, Moegenburg did not think "need" for the change had been proven.

Priebe recommended July 1983 as opposed to January 1983 effective date. Pawlewski stressed that the proposal was intended as a preventive measure--not as a reaction to a crisis situation.

Info to Approp. Comm.

Tieden supported the viewpoint that the proof of need had not been made. After further discussion, Department officials agreed to work with DSS in providing information to the Appropriations Committee in January.

Recessed

Committee was recessed for lunch at 12:30 p.m. to be reconvened at 1:45 p.m.

Reconvened

Chairman Schroeder reconvened the meeting at 2:00 p.m.

HEALTH DEPARTMENT

Schroeder brought up the matter of Health rules on residents' rights. He asked that the Committee consider a proposed objection which had been drafted by Royce at the request of the Chair. Holden expressed strong feelings that the Department had gone beyond legislative intent.

Motion to Object

Holden moved that the Rules Review Committee object to ARC 2930. Discussion followed.

Chiodo opined the rules were lengthy but reasonable. It was his position that an objection would place a very dark cloud over the concept. He stated he would not support the motion to object.

Holden felt "an obligation to say what we think ought to be done." Royce read from the proposed objection and explained that it would shift the burden of proof to the Department. Holden did not envision a court case the first time some patient has a complaint.

Pawlewski was of the opinion the Department could defend the rules successfully. He could foresee an objection as placing "a stigma on them."

A question that came to Clark's mind was how people would understand that standards already followed by large numbers of nursing homes were so objectionable. Holden interjected that the facilities were complying with the federal standard, which the legislature thought was sufficient enough to reference in the Act. Clark posed the question, "How do you go into a home and prove a case from a generalized statement?"

Pawlewski reiterated they originally thought that state rules and regulations and the state law, except for involuntary transfer, were sufficient to protect the patients' rights. However, they soon realized there was a need for more quantification as to patients' rights. Also, it occurred to them that the endowment-type facilities may suffer some financial loss if they had to leave a bed vacant.

HEALTH DEPARTMENT

There was discussion of contracts between patients and care facilities. In response to Priebe, Royce could not predict if the objection, which addresses the bill of rights, would stand up. It was Royce's understanding the legislature thought they were implementing language contained in 42 CFR 442.311, but were not aware of the interpretative guidelines.

Holden reiterated his position that the Committee should not allow agencies to promulgate rules which are "so terribly unreasonable."

Objection failed

Roll call vote on the motion to object failed to receive the necessary votes for approval. Vote was 3 ayes by Schroeder, Priebe and Holden and 3 nays by Tieden, Clark and Chiodo.

Request Special Review

Priebe requested rule re licensing of Nursing Home Administrators be placed on the agenda of the Committee for special review. So ordered by the Chairman.

COMMERCE COMMISSION

Judy O. Friedman and Ben Stead, Commerce Counsel, represented the Commission for review of the following:

COMMERCE COMMISSION[250]
Telephone utilities, 22.1, 22.2(1), 22.2(5), 22.2(2), 22.3(6), 22.3(8), 22.3(11) to 22.3(13), 22.4(1) to 22.4(7), 22.5(7), 22.5(11), 22.6(1)"g" and "h", 22.7(1), 22.8, 22.10 to 22.13 ARC 2935 ...F.....6/9/82
Accounting-telephone companies, 16.5(15)"a", 16.5(16), 16.5(17), 16.5(18), 16.5(20)"c", 16.5(34), 16.5(38), 16.5(40) to 16.5(44) ARC 2955 ...N.....6/9/82
Assessments, 17.2, 17.4(4) ARC 2998 ..N..... 6/23/82

Telephone Utilities

Stead informed the Committee that rulemaking with respect to rates and service supplied by telephone utilities was commenced March 13, 1981. Substantive changes have been made following three hearings.

There was brief discussion of Docket 81-19 which will be before the Committee at a later meeting.

In reference to question by Tieden, Stead said the Department in 22.1(3)b could include anything from a home taping device to receive messages.

16.5

Stead gave a brief overview of amendments to Rule 16.5 which resulted from a petition filed by Iowa Telephone Association. No questions were raised.

ch 17

According to Stead, amendments to chapter 17 will shift some costs from remainder to direct assessments. Stead apprised the Committee of a petition filed under Code §476.10 by Iowa Power relative to a direct assessment. By striking the last sentence of 17.2, Commissioner's salaries can be assigned on a remainder assessment.

SOIL CONSERVATION

James Gulliford, Director, and James Ellerhoff represented Soil Conservation for review of the following:

SOIL CONSERVATION DEPARTMENT[780]
Surface coal mining and reclamation operations, 4.522(11), 4.522(15), 4.522(41), 4.522(56), 4.522(65), 4.523(15), 4.523(38), 4.523(60), 4.55(1), 4.55(5), 4.311(2)"e"(1), 4.322(13) ARC 2963 ...N.....6/9/82
Financial incentives program for soil erosion control, 5.20(1), 5.20(27), 5.20(18), 5.20(20), 5.30, 5.31(1)"a" and "b", 5.31(2), 5.32, 5.33, 5.33(1), 5.33(2), 5.74(4)"e", 5.74(5)"a" and "e", 5.74(6), 5.95(1) ARC 2969 ..N.....6/9/82
Iowa abandoned mine land reclamation program, ch 27 ARC 2970 ..N.....6/9/82

Gulliford advised the Committee that most information in proposed rules governing surface coal mining and reclamation

SOIL CONSERVATION ch 4

operations was statutory. Responding to Tieden, Gulliford said that small coal mining operators understand and endorse the rules. Iowa law requires the rules to be as stringent environmentally as the federal law. Complete text of the voluminous rules will be available for inspection at the Soil Conservation office.

ch 5

Changes in financial incentives program for soil erosion control were required by SF 2286 (69GA, 1982), according to Gulliford.

Discussion of modification of the maintenance agreement that is signed by a recipient of state funds. Violators of terms of a maintenance agreement will no longer be required to pay back a pro rata share of cost share funds, but will be required to repair or reconstruct the permanent soil and water conservation practices through an administrative order procedure.

According to Gulliford, the rules require that the recipient be responsible for payback and that responsibility would transfer to a buyer of the land. He explained they intend to adopt the rules with emergency implementation in order to coordinate the program. No recommendations were offered.

ch 27

There was brief review of chapter 27 which provides for the establishment of a state abandoned mine land program. Gulliford touched on the 5-year history of reclaimed sites under a federal program. No formal action taken.

Recess

Chairman Schroeder recessed the Committee at 3:00 p.m. for ten minutes.

Reconvened

Committee was reconvened.

PUBLIC INSTRUCTION

James E. Mitchell, Deputy State Superintendent, Gary Olney and Larry Bartlett represented the Department of Public Instruction for review of the following:

PUBLIC INSTRUCTION DEPARTMENT[670]
Extracurricular interscholastic competition, co-operative student participation. 9.20 ARC 2929 ..F.....6/9/82
Hearing procedures, rules of evidence. 50.11 ARC 2960 ..F.....6/9/82

Also present: Ted O. Yanecek, Farm Bureau; Harry Kitchen, Pat Lentz, Max Schmidt of the Howard-Winneshiek School District; Dennis Brosdahl, Crestwood High School, Cresco; and Reverend Donald J. Hawes, Notre Dame, Cresco.

9.20

Mitchell told the Committee that the subject addressed in Rule 9.20 was an issue that local school officials asked the Department to consider because of declining enrollment and financial resources. The rule would extend the permissiveness of the Iowa Code which allows local school districts to share academics, personnel and facilities in the instructional program to some of the extracurricular activities. Mitchell stressed that a great deal of effort went into the rulemaking and results of a public hearing had been incorporated in the rule. The rule now allows for pilot projects to be instituted for the 1982-83 school year. School districts which had anticipated having to drop pro-

PUBLIC INSTRUCTION Continued

grams can apply this year. Local boards will have authority to make decisions about extracurricular activities. It was noted the rule will "sunset" in three years.

Responding to Schroeder, Mitchell said pilot programs will be left up to the four activity associations--speech and music, Iowa Girls' Athletic Union, Iowa High School Athletic Association.

The Chair offered opportunity for presentations from the audience. Brosdahl spoke of implications surrounding shared activities; e.g., whose code of eligibility would be followed; who will pay for equipment, transportation, etc? He discussed the shared time program for classes whereby outside students will be admitted after all public school student needs are met. He wondered if they could continue to maintain that type of philosophy with an activities program. Brosdahl referenced the mixed chorus and pondered whether public school students would be cheated as a result of Notre Dame students being in shared time activity.

He continued, "Will some of our students not make the team as a result of a parochial student being a member?" "What about the attitude of a public student parent whose child could be on the sidelines?" The Howared-Winneshiek district had made a concerted effort to reduce expenses. Their budget was reduced by $200,000 for next year and some programs were cut. In effect, they have reduced public school opportunities because of lack of sufficient funds. It was Brosdahl's opinion that by allowing parochial students to participate in their district's activities, opportunity for public school students would be further reduced. Priebe made the point it would not necessarily be limited to parochial students--it could be any small school. Brosdahl concurred.

Clark observed that the rule was not mandatory and allows flexibility. Brosdahl admitted they had had a good relationship with the parochial school and they were hopeful it would continue. Howard-Winneshiek District officials took the position the rule was not intended for public-parochial schools that reside in the same district, but instead it was intended for small public high schools with separate districts. Discussion of shared time which is implemented only when there is space for the student.

Tieden commented that the state, by law, demands that every student have an education; the district more or less determines extracurricular activities. Holden queried at what point do you determine when the participating student who has enrolled in a public school can no longer attend.

Responding to Chiodo, Father Hawes also recalled the excellent rapport between Notre Dame and Crestwood. He did not anticipate problems suggested by Brosdahl.

As Clark understood the problem, students could have all of the advantages of the public school and still attend the private school. However, if that were done en masse, the public school, because of funding, could be devastated. Clark concluded she did not see it as an immediate threat, however.

PUBLIC INSTRUCTION Continued

There was discussion of agreements for extracurricular activities. Mitchell pointed out there can be only one agreement and the number of students would have to be specified. Mitchell, in reply to Tieden, agreed there was nothing in the rule that addresses the classification of schools for activities since the Department has no authority in that area. However, Mitchell emphasized that because of the former court case and legislative action, the Department has authority and must exercise it in the case of eligibility. He added that the classification system has nothing to do with student eligibility and it is not part of the Department's rules. The classification scheme would depend upon activities association.

Holden interjected that ARRC should notify the two Education Committees of problems that need to be clarified. Tieden had grave concerns in this area and was skeptical about the rule as it relates to athletics since "everybody wants a winner." Good athletics should not be at the expense of academics, in his opinion.

Oakley recalled that the rule, when first proposed, contained a provision for sharing and there was substantial public comment. The Department eliminated the requirement and then proposed it again--definite ambivalence with regard to the academic sharing requirement. The Governor studied the matter for some weeks and met with staff, DPI and Board members. His concern was that the academic requirement on one hand might prove to be a barrier if it were too substantial a threshold--and if it were so slow, it might promote, even in a small way, some unnecessary agreements in order to meet, primarily, the desirability for sports program sharing. Oakley estimated there have been as many advocates that think it will promote reorganization as think it will be retarded. He saw no substantial impact on reorganization. In the final analysis, the Governor decided not to veto any portion of this rule.

Lentz declared they were in a no-win situation. He had requested a sample contract but none was available. Lentz expressed regret that they had not had time to attend other meetings on the rule. He reminded the Committee that the extracurricular activity program was not considered in the foundation aid program. Royce advised Priebe that the Department had authority to set eligibility criteria.

Mitchell explained to Tieden that "attendance centers" were in districts with multiple high schools. Mitchell reiterated that he would not minimize the questions raised today although they were not new. He felt they could be answered best by local boards. There was discussion of the meaning of "contiguous" in the rule. Mitchell said activity associations can approve applications for public and private schools.

Schroeder asked if the Committee wanted to defer discussion of the rule until Wednesday.

PUBLIC INSTRUCTION Continued Motion to Delay

Tieden moved to delay ARC 2929 45 days into the next General Assembly. Priebe asked for a roll call. Chiodo could see no advantage in a 45-day delay. Mitchell said that 4 schools had applied for the program but none had final approval, which hinges on the rule. He clarified that with shared time private students are enrolled in public schools to take a class--under 280.15--not involving money. Mitchell referenced the weighting plan in Chapter 442.

Recess

After further discussion, Priebe moved that the Committee arise until Wednesday at 9:00 a.m. The Committee was recessed at 4:40 p.m.

Wednesday July 14 Reconvened

The Committee was reconvened Wednesday, July 14, 1982 at 9:08 a.m. in Committee Room 22. All members were present. Also present: Royce, Barry and Haag. Oakley, not present.

CONSERVATION COMMISSION

In order to accommodate Conservation Commission officials, who had another commitment, Chairman Schroeder deferred the review of Department of Public Instruction. The following Conservation Commission rules were before the Committee:

CONSERVATION COMMISSION[290]
Rabbit and squirrel hunting seasons, ch 102 ARC 2993 ...F..... 6/23/82
Furbearing animals, regulations for taking, 104.1 to 104.4 ARC 2994 ..F..... 6/23/82
Deer hunting regulations, 106.1, 106.2, 106.4 ARC 2995 .....F..... 6/23/82
Artificial lakes horsepower limit, 30.2 ARC 2990 .N..... 6/23/82
Falconry regulations for hunting waterfowl, ch 100 ARC 2992 .N..... 6/23/82

Robert Barrett, Wildlife Superintendent, appeared on behalf of the Commission. No questions were posed with respect to chapters 102 and 104.

ch 106

In re deer hunting regulations, there was disucssion of the bow hunter licensing and Barrett said that although a hunter is permitted to hold both bow and gun licenses, he may possess only one deer per season.

In 106.2(1), Priebe questioned the fact that deer of any age or sex may be taken by bow and arrow as being unfair to other hunters. Barrett replied that the success rate for bow hunters was lower and they take a higher percentage of bucks than gun hunters. Also, many bow hunters keep trophies.

No other questions. Barrett thanked the Committee for their cooperation.

PUBLIC INSTRUCTION 9.20 Cont'd

Discussion of rule 670--9.20 was resumed. Clark favored limitation of the rule to public schools. Mitchell noted that the Department of Public Instruction does approve some private schools. He added, it is a matter of making these opportunities available to all children--not merely a matter of public and private schools.

Refer to GA

Chiodo concluded the entire matter should be decided at the local level. Holden recognized that part of the problem was impact of the private school on the public. Priebe recommended that the chairmen of the Education Committees of the

PUBLIC INSTRUCTION Concluded

Legislature be apprised of the ARRC misgiving about the rules. Priebe and Holden asked that the minutes also be included.

Motion Withdrawn

Tieden had reservations about the rules but asked and received unanimous consent to withdraw his motion to delay 9.20 45 days into the General Assembly. Royce stated that the Committee has the power to request the legislature to examine the issue without delaying the rule.

VOTER REGISTRATION

Michael Tramontina, Commissioner, Dorothy Elliott, Director, and Burlene Baker, Administrative Assistant, appeared on behalf of the Voter Registration Commission for review of:

VOTER REGISTRATION COMMISSION[845]
Newsprint voter registration by mail form, 2.4 ARC 2927 ... N 6/9/82

Responding to Clark's question as to the discrepancy between the registration of voters and the number of people who vote, Tramontina announced that in the last general election 88 percent of all registered Republicans, 83 percent of all registered Democrats and 77 percent of all registered No Party had voted. There was discussion of process used at the polls to prevent dishonesty in voting.

Tramontina explained the history of the amendment to incorprate use of a voter registration by mail form which will be printed in a newspaper, completed, and submitted by a registrant via the US Postal Services. The University of Iowa student senate orignated the concept which received the support of the Secretary of State. Tramontina displayed the form which will be restricted to a particular county.

Schroeder could envision frustration for county auditors who would receive the clippings. Elliott assured him the information would be transferred to cards.

2.4(1)

In Holden's opinion, two forms printed in the newspaper could cause confusion. After general discussion, officials agreed to change that to one form per issue. Elliott agreed to change the word "the" to "one". Royce, for clarification, asked if the words "per issue" could be inserted after "Voter Registration by Mail Form". Elliott was amenable. No other comments.

Priebe in the chair.

SUBSTANCE ABUSE DEPT.

Ron Walters, Deputy Director, represented the Department of Substance Abuse for licensure standards programs, 3.6, 3.7(1), 3.7(2) ARC 3000, Notice, IAB 6/23/82.

There was brief review of the amendments but no formal action was taken.

REVENUE DEPARTMENT

The following rules of the Revenue Department were reviewed:

REVENUE DEPARTMENT[730]
Certification of assessors, courses, 123.1, 123.3 to 123.9, 124.3, 124.6 ARC 2975 ..... F 6/23/82
Confidential tax information; updating of statutory code references, 6.3, 11.9, 38.6, 51.7, 57.6, 63.19, 73.10, 81.14, 87.2(1), 88.2(1), 89.2(1), 103.9 ARC 2932 ..... N 6/9/82
Taxes, determination of filing status, 12.13, 30.4(4), 46.3(3)"b" ARC 2933 .. N 6/9/82

REVENUE DEPARTMENT — Carl Castelda, Deputy Director, appeared on behalf of the Revenue Department. There were no questions regarding amendments to chapters 123 and 124.

6.3 — Discussion of 6.3 which, according to Castelda, reflects opinions issued by the Attorney General pertaining to the release of confidential tax information to other state agencies and the state auditor. It also provides for an exchange of tax information with Job Service since the US Supreme Court has ruled that state unemployment contributions are a tax.

Castelda explained that the AG opinion also revealed the Auditor of State could not have access to Revenue's tax information, so the rules were amended.

Clark requested removal of "that such is" in 6.3, line 6. In re 2933, Castelda stated that SF 2080 [1982 Acts] provided that certain retailers and withholding agents must deposit sales and withholding taxes semimonthly. The Department has established criteria to be used during annual review of their files. If a business would be placed in a different filing status, they would be afforded an opportunity to show Revenue records are incorrect. General discussion of seasonal businesses.

46.3(3)b — In 46.3(3)b(4), line 6, Clark called attention to use of "current" twice and wondered if the second one should read "correct". Castelda agreed. No other questions.

Committee Business — Royce called attention to a recent Iowa Supreme Court Case ruling. It held that, in corporate income tax returns, if the taxpayer has the return professionally prepared, but the preparer did not file it in a timely manner, then legally, the individual could not be assessed for a late payment penalty. The odd result would seem to encourage use of professional preparers, in Royce's opinion.

Castelda interjected that this would affect other areas of taxes as well. No formal action.

Schroeder resumed the chair.

HEALTH DEPARTMENT — Tieden brought up the matter of Health Department proposed amendments to 58.11(2)g and 59.13(2)g and h with respect to their economic impact. After brief discussion, it was decided a formal request would not be necessary since the Department had agreed to compile economic impact information for the Appropriations Committees.

COMMITTEE BUSINESS — Holden initiated a brief discussion as to the ever-present problem of agencies expanding their rule-making authority; in particular, can the adopted rule which has the force of law be challenged? Royce responded with a qualified "yes". He reviewed the burden of proof provisions of chapter 17A and resulting impact on the aging.

Holden referred to his representation on the National Council Committee which is studying regulatory approval. He favored

COMMITTEE BUSINESS Continued

perusal of a plan whereby full rule-making authority would not be granted at the time the law was written. Instead, an agency would be asked to provide a detailed proposal for implementing the law. The proposal would then be submitted to the Committee of the Legislature that developed the law. Holden recognized this procedure might be over-delegation of authority to the Legislative Committee. Discussion of the contstitutional question of a "so-called variation of a legislative veto. Holden opined the legislature should continue perusal of the issue.

Recess & Reconvened

Chairman Schroeder recessed the Committee at 10:37 a.m. It was reconvened at 10:50 a.m.

ENVIRONMENTAL QUALITY DEPT.

William D. Anderson, Chief, Compliance Section, and Charles Miller, Chief, Air Quality Program Development, represented the Department of Environmental Quality. ARC 2893, emission standards for contaminants, 4.1(2), 4.1(2)"bb" to "ee", Notice, IAB 6/23/82, was before the Committee.

Anderson briefed ARRC re proposal to adopt by reference new source performance standards for certain new facilities in Iowa: Storage vessels for petroleum liquids constructed after 6/11/73 and prior to May 19, 1978; also glass manufacturing plants, auto surface coating operations and ammonium sulfate manufacturers. Whether or not Iowa adopts the standards, they will be applicable throughout the United States. Anderson informed Schroeder that the only facilities existing in Iowa were the petroleum storage tanks and the state will deal with the facility rather than EPA in checking seals to ensure vapor loss is prevented. Miller indicated he knew of no opposition from petroleum suppliers.

Chiodo was interested in knowing who paid for monitoring. Anderson did not envision additional costs but funds earmarked for the air pollution control program could be utilized.

Anderson explained to Chiodo that whether or not the amendments were adopted, state law requires a permit from DEQ. Priebe favored leaving the inspection to EPA. Royce opined that DEQ had the authority for the rules.

Holden questioned the need for both 4.1(2)"bb" and "cc". Anderson said there were two separate standards and to reduce confusion to the public, it was decided the state rule should appear similar to the federal version. However, Anderson was willing to consider combining the two paragraphs in question. Clark wondered if it would be advisable to seek an economic impact statement before the rules were filed. Miller had attempted to determine the number of facilities regulated. He estimated about 200 tanks with approximately 50 built after 1974. Priebe indicated that when the filed rules were before the ARRC, he would move to refer them to the various State Government Committees.

Responding to Holden, Anderson stated that the complete federal regulations on the subject were voluminous.

ENVIRONMENTAL QUALITY DEPARTMENT

Tieden requested DEQ to be more definitive in paragraph "ee". Anderson was willing to clarify the paragraph that individual garage owners who do painting would not be inspected.

Informal Impact Statement

Chairman Schroeder asked that the Department compile an informal impact statement on the proposed amendments and make it available to Committee members-- also, include number of facilities anticipated to be covered.

Clark pondered if the impetus of the amendments was intended to eliminate dual regulation or, as environmentalists, was the Department concerned there would be no standards if federal regulation was lifted. Anderson agreed that if the Clean Air Act were abolished at the federal level, that would be a good argument. He emphasized that under the law the state can't be more restrictive than the federal government. In the absence of a federal standard, the state would not be precluded from adopting rules. Miller did not hesitate to agree that agency personnel were "environmentalists."

Committee Request

In a matter not officially before the Committee, the restriction on leaf burning was mentioned by members as an example of an unfavorable rule. Miller supported leaf burning. He responded that his staff was asked to do a complete documentation of the health aspects of leaf burning and results showed that 85 percent of the particulate from the residue is so fine that it goes directly into the lungs. Chiodo expressed oppositon to the method used by the Department in controlling leaf burning. Holden and Clark requested the Department to consider adding a statement to the proposed amendments to the effect they would be rescinded if the Clean Air Act were repealed.

INSURANCE DEPARTMENT

HMO

Janet Griffin, Deputy Commissioner, and Denise Horner, Attorney, reviewed health maintenance orgainzations, 40.4, Notice, ARC 2996, IAB 6/23/82.

Griffin commented that the rule will provide explicit guidelines for the selection of enrollee representatives to an HMO's Board of Directors. She continued the rules should answer questions raised by the HMO's in Iowa.

40.4(3)

Holden questioned the preamble phrase "HMO will be permitted...." and in 40.4(3), 3rd paragraph, "...may be waived..." and asked if there was a significance. Griffin commented this was not intended but she agreed to discuss the matter with the Department. Holder preferred use of "will be permitted". Griffin informed Priebe that there was increased interest in HMO's and mention was made of the ever-increasing costs of health care.

There was discussion of open enrollment and at the suggestion of Chiodo, Griffin agreed to consider inclusion of a policy on admissions criteria. Holden cautioned that the mere existence of an HMO will not reduce health care costs. Griffin noted the rates have to be approved by Insurance Department.

INSURANCE DEPARTMENT Continued Committee Request

Schroeder requested the Insurance Department to provide information concerning operational costs of HMO's--a comparison of actual health care services by HMO's and the insurance industry versus operational expenditures. Griffin suspected the HMO's would have a very high loss ratio. No formal action taken.

PLANNING & PROGRAMMING

Joe Ellis, Affirmative Action and Compliance Officer, also Complaint Officer for the CETA program, and JoAnn Callison, were present for review of the following:

PLANNING AND PROGRAMMING[630]
CETA, complaint procedure, 6.5 ARC 2963 ..N.....6/9/82
Youth affairs, 14.1(3) to (6), 14.2, 14.3 ARC 2921, also filed emergency ARC 2920..N.+.F.E.....1510..6/9/82

CETA

Ellis told the Committee that Planning and Programming administers the state CETA program and complaint procedure which will be revised in rule 6.5 Schroeder was informed that CETA employers had not been notified of the proposal. Clark referred to excess use of "opportunity", "said" and "such" in 6.5(9)b(5) and 6.5(11). She suggested deletion of "as may be" in last line of 6.5(12)c.

Youth Corps

Priebe questioned Callison re the selection program in 14.3(3) and learned there were only 19 applicants. Priebe doubted that funding was justified. Callison reminded him this was only one of many programs. Schroeder and Priebe took issue with the six mandatory items in 14.3(3). Callison defended that random selection process as opening the program to all students in Iowa; parents income is not a factor for this program.

There was discussion of equal consideration of males and females. Callison stressed that a 50-50 balance between boys and girls in the program has been quite successful. Responding to Holden, Callison said an $808,000 appropriation will serve around 250 to 300 youth. Of that amount, $220,000 will be used this summer. She added that 70 percent of the appropriation goes to the youth for wages and benefits and administration costs are 30 percent. Schroeder suggested future evaluation of the six standards in 14.3(3). Callison anticipated greater response next year. No further questions.

Recess - Lunch

Chairman Schroeder recessed the meeting at 11:50 a.m. for lunch. Committee reconvened at 1:15 p.m.

TRANSPORTATION DEPARTMENT

The Transportation Department rules on the agenda were:

TRANSPORTATION, DEPARTMENT OF[820]
Driver licensing, OMVUI and implied consent, (07,C) ch 11, 13.13(4), 13.14, 13.15(9)"a", 13.15(10), 13.18, 14.6
ARC 2973, also filed emergency ARC 2972 .....N.+.F.E..... 6/23/82

Norris D. Davis, F. R. Manager; James Fetters, Driver License; William Kendall, Director, Driver License, and Gordon Sweitzer, Director, Motor Vehicle Division, represented the Department. Also present: Officials from Public Safety,
see listing on page 1759.

TRANSPORTATION DEPARTMENT Continued

Kendall said the rules were adopted on an emergency basis to be effective July 1 to implement 1982 Acts, HF 2369. The rules were drafted by a committee comprised of officials from public safety, law enforcement academy, prosecuting attorney training officer from the AG's office, Governor's representative from OPP and various DOT divisions. Holden asked if deferred judgment, suspended sentences and deferred sentences were interchangeable. Kendall replied the intent was to restrict the rules to deferred judgment--criteria set forth for work permit issuance. The Board has heard the case but they have not passed judgment.

Royce added that with deferred judgment, the court declines at this time to make a decision whether the party was guilty or innocent. In deferred sentence, they have made the judgment of guilty, but decline to impose a sentence. General discussion of process to be used under deferred judgment.

11.3(4)

Schroeder, in re 11.3(4), recommended perusal for possible revision of work permit criteria. He took the position that the hearing officer should have discretion. Fetters, responding to Holden, recalled that within nine days, 255 individuals have been "processed" under the new OMVUI law--41 have appealed.

According to Lt. Jontz, a small percentage of drivers did not submit to the test at the time they were stopped. Testing of breath and blood for alcohol was discussed at length and the breatholizer device was demonstrated by Department officials. The problem of testing for drugs was also mentioned.

Jontz gave detailed explanation of the procedure followed by the officers when motorists are suspected of operating a motor vehicle while under the influence. He emphasized each situation would be considered on its own merit, and further explained the process followed when a breath test is requested. Rehberg referred to safeguards built into all of the tests. The officer must wait 15 minutes to administer the test after the person has been stopped. The evidentiary machine is maintained in most county jails. The preliminary screening device is utilized in the field.

Sweitzer cited Code §321.281 as authority to suspend a license. Priebe made the point that very few were being prosecuted for driving while under the influence of drugs. Sweitzer mentioned that California was developing a practical test for drugs. However, Rehberg could not authenticate that fact.

Jontz clarified that the only time there is action re the driver's license is at the evidentiary screening.

No formal action taken.

PUBLIC SAFETY

Calvin Rayburn, Criminalist, M. L. Rehberg, Lab Administrator, Lt. Dewey Jontz, Administrative Aid, and Connie White, Program Planner, represented Department of Public Safety for review of the following:

PUBLIC SAFETY DEPARTMENT[680]
Preliminary breath screening test, 7.6, filed emergency ARC 2974 ...F.E..... 6/23/82

Rule 7.6 lists approved devices for preliminary breath screening tests. Rehberg stressed that officers would not totally abandon previous techniques--this is just an additional new tool. Discussion of time required to obtain an accurate reading.

SOCIAL SERVICES

Judith Welp, Research, Policy and Analysis; Lois Berens, Program Specialist; Kristi Sheahley, Systems Analyst; Charles Bollins, Policy Specialist; Dan Gilbert, Program Manager, Medicaid; Harold K. Poore, Program Manager, Day Care Services; Bill Turner, Program Manager, Adult Services; and Mary E. Brosnahan, Administration, were present on behalf of the Department of Social Services. Also present: Eloide Manternach, Association of Retarded Citizens, Christine Luzzie and Dennis Gronenboom, Attorneys, Legal Services Corporation, Cedar Rapids, and Barbara Leiser, Senate Caucus.

The agenda was as follows:

SOCIAL SERVICES DEPARTMENT[770]
Child day care services, 132.1(7), 132.1(9) to 132.1(12), 132.3(5), 132.4(3), 132.4(4) ARC 2939 .F.....6/9/82
Jail facilities, personnel, 15.11(2), 15.11(3) ARC 2976 ..N..... 6/23/82
ADC, eligibility, resources of a stepparent, 41.1(5)"d", 41.6(2), 41.7(8)"a", filed emergency ARC 2940 .....6/9/82
ADC, assignment of support payments, protective payments, 41.2(7), 43.2(1)"e", filed emergency ARC 2941 .....6/9/82
ADC, overpayments in special alien cases, recoupment for overpayments, 46.7(4)[46.7(5), filed emergency ARC 2942 .....6/9/82
State supplementary assistance, residential care facilities, 52.1(3), filed emergency ARC 2943.....6/9/82
Shelter assistance for unemployed parents, rescinds ch 57, filed emergency ARC 2944 .....6/9/82
Co-ordinated manpower services program, ch 58 ARC 2952, also filed emergency ARC 2951 .N.*.F.E.....6/9/82
Food stamp program, ch 65, Notices ARC 2820 and ARC 2871 terminated ARC 2977 ..... 6/23/81
Food stamps, administration of program, 65.3 ARC 2978 ...N..... 6/23/81
Medical assistance, persons covered, 75.1(15)"e", 75.1(16) filed emergency ARC 2946 ...F.E.....6/9/82
Medical assistance, method of determining eligibility of individuals in a medical institution, 75.5 ARC 2950, also filed emergency ARC 2949 ....N.*.F.E.....6/9/82
Medical assistance, reimbursement to pharmacies, 78.2(2)"e" ARC 2979 ..N..... 6/23/82
Medical assistance, reimbursing hospitals in Medicaid program, 79.1 ARC 2980 .N..... 6/23/82
Providers of medical and remedial care, 79.1, 79.1(5) ARC 2948, also filed emergency ARC 2947 .N.*.F.E.....6/9/82
Intermediate care facilities, reimbursement rate, 81.6(16)"b" and "c" ARC 2981 .N..... 6/23/82
Intermediate care facilities, 81.6(11)"m", 82.5(11)"j", Notice ARC 2659, items 2 and 3 terminated ARC 2936 .N.....6/9/82
Family and group day care homes, 110.5(1)"j" and "k", 110.9 ARC 2982 ...N..... 6/23/82
Resources, eligibility, 130.3(3)"s", filed emergency ARC 2945....F.E.....6/9/82
Social services block grant, ch 131, ARC 2954, also filed emergency ARC 2953 .F.E..... 1515....6/9/82
Veterans home, spouses-medical assistance, 134.1(7) ARC 2937 .N.....6/9/82
Residential services for adults, ch 162 ARC 2938 .....N.....6/9/82

Schroeder asked if children riding in golf carts would be covered under 132.1(12). Tieden reasoned a city council would have to approve golf carts for use on streets before that could be a problem.

No questions were posed re ARC 2940, 2941, 2942, 2943, 2978 and 2946.

15.11

Tieden took issue with the continuing education requirement in 15.11(3). Clark thought that "in-service training" would be preferable. Schroeder took the position that a one-time course would suffice. Welp opined that jailers must remain knowledgeable about court decisions and changes in the law.

SOCIAL SERVICES Continued

Welp informed Priebe that undergraduate eligible parents may receive child day care services, but graduate students are precluded.

ch 32
ch 58

At the request of the Committee, Leiser reviewed the history of Chapter 58 which pertains to a pilot project to be undertaken in Sioux City and Marshalltown. It will consist of training, a job service component (one week of specialized instruction on how to search for a job), programmed activities with respect to contacting employers and a community work experience program.

75.5

In discussing new rule 75.5, pertaining to computation of countable income for individuals in a medical institution, Welp announced that the rule was a result of a Supreme Court decision. Previously, the spouse at home was allowed reasonable living expenses to be determined on a case-by-case basis. Federal regulations require that spouses be considered as individuals--not as a couple--after they have been apart for a certain length of time when one spouse is in a medical institution. Therefore, each would retain his or her own income.

Royce noted that federal law provides that one month after you are institutionalized, your spouse no longer has a legal obligation to support you. It was Committee consensus this law should be modified. However, they conceded that federal requirements would prevail. General frustration was expressed by the Committee since there was no immediate resolution for the problem.

Royce referred to 75.5(4) which basically dealt with the situation when both spouses are in an institution. If they occupy the same room, they are considered as a family and income is combined. Otherwise, the incomes are split which could easily result in one spouse being on private pay whereas the other could be on Title XIX. Berens admitted that provision was not in the federal regulation--it was an unstated policy which they elected to include in the rule.

Royce was doubtful that, under the patients' bill of rights, a nursing home could force a couple to live separately. Clark viewed this as a "policy to help the nursing home." Berens stated that spouses are living together in Title XIX facilities.

Groenenboom, on behalf of noninstitutionalized clients affected by the rule, presented a case for objection to a portion of it. He challenged the Department's use of the Herweg case as basis for the emergency implementation. Groenenboom pointed out the Herweg case was decided in February, yet the rule was not submitted for publication until June. He maintained that not all aspects of the rule confer benefits on the public. Groenenboom argued that his clients are being reduced from $600 to $284 monthly without an opportunity to comment or to adjust their budgets.

Welp defended their previous policy on this. Federal regulations were challenged and when the Supreme Court decision up-

SOCIAL SERVICES Continued

held the federal regulations, DSS felt there was no choice but to adopt the rule as published. She explained that the Herweg Case concerned a spouse at home who had the money and the spouse in the nursing home did not. The other case is the opposite, in her opinion.

Groenenboom indicated that several requests for hearings had been filed on the Notice of Intended Action. Schroeder was interested in knowing how many clients would be affected and Berens estimated 640.

Groenenboom recalled the Herweg Case challenged only the regulation that required Mr. Herweg, who had money at home, to pay for his wife in a nursing home. According to Berens, DSS interpreted federal and state regulations dealing with availability of spouses income as inseparable. There was discussion of possible objection by the Committee and the resulting effect.

Schroeder commented on the ARRC tough policy with respect to emergency rules. He asked if the Department would consider rescinding the rule. Welp was doubtful. Royce advised that an objection would have some impact in that DSS would have to demonstrate that it does not matter that one group is harmed.

Holden inquired whether the Committee could object to a part of the rule. Royce preferred not to offer an opinion on the complex issue.

Motion to Object ARC 2949

After further discussion, Holden moved that the Committee object to ARC 2949 of the Department of Social Services rules. The formal text was prepared by Royce as follows:

Pursuant to the authority of §17A.4, the Code, the committee has voted the following objection:

At its 14 July 1982 meeting, the administrative rules review committee objected to the "emergency" adoption and implementation of ARC 2949, on the grounds that action constituted an abuse of the "emergency" rule-making powers of §§17A.4 and 17A.5, and was therefore unreasonable. ARC 2949 appears in IV IAB 25 (6-9-82) and is codified as 770 IAC rule 75.5. The rule relates to the division of income between spouses when one or both spouses are placed in a care facility. In essence the rule provides that when a spouse enters a facility there is no longer an obligation to support, or be supported by, the spouse remaining at home.

The department supports its action by stating 1) that it was impracticable to provide notice and public participation since the substance of the rule was mandated by the United States Supreme Court in Herwig v. Ray; and 2) that the rule conferred a benefit on the public by removing the burden of supporting an institutionalized spouse.

It was the opinion of the committee that while the rule does confer a benefit on some individuals, it places a burden on others; specifically, those who rely on the income or pension of the institutionalized spouse for their sole support. Under the provisions of ARC 2949, these individuals would receive only enough income from their institutionalized spouses to raise their personal income to the federal supplemental security income rate. This is a radical change from the earlier policy, which allowed the non-institutionalized spouse to retain sufficient income to maintain the current standard of living. The committee believes that such a major change, possibly adversely affecting more persons than are

SOCIAL SERVICES Concluded Objection ARC 2949

benefited by it, should be preceded by notice and public participation. This would serve several important functions: 1) it would warn non-institutionalized spouses that substantially less income may be available to maintain their home, and provide them with a period of time to adjust their finances accordingly; 2) it would provide an opportunity to accurately determine whether the majority of affected persons are benefited or harmed by the rule.

The committee is aware of the need to speedily implement the rulings of the Supreme Court. In this case, the committee questions whether an "emergency" rule is necessary. The change did not go into effect until 1 July 1982, over three months after the Supreme Court issued its opinion. If immediate implementation was necessary the department could have adopted by reference the federal standard, 42 CFR §435.723. Instead the department took three months to re-draft the language and provide additional detail. If there is time for this there should also be time to provide public notice of the impending change and to elicit public comments on the impact it will have upon affected individuals. It is the opinion of the committee that the opportunity for notice and public participation is essential when a proposal will have a substantial and adverse impact, and that the time taken by the department to re-draft the federal provisions and adopt them into the Iowa administrative code indicates that the need to speedily implement the Supreme Court decision was not so pressing as to render an additional delay, for notice and public comment, impracticable.

The Holden motion carried viva voce.

No questions were posed for ARC 2936, 2937, 2938, 2945, 2948, 2979, 2980 and 2981.

Schroeder raised question in 131.3(3) and Brosnahan said counties can extend care according to available funds. No further recommendations for DSS rules.

No Reps No agency representatives were asked to appear for the following:

AGRICULTURE DEPARTMENT[30]
Determining gallonage on gasoline or diesel motor fuel, 55.49 ARC 2997 ..F..... 6/23/82

BEER AND LIQUOR CONTROL DEPARTMENT[150]
Liquor licensees, insufficient funds, 4.19, 4.20(2), 4.20(3) ARC 2924 .F.....6/9/82
Address and phone number change, amendments to chs 1, 2, 5, 7, 8, 9, 10 and 12, filed emergency ARC 2925 ...F/E.....6/9/82

CITIZENS' AIDE[210]
Investigations, confidential information, 2.3(2)"a" and "b", 5.2(3), 5.3, 5.4(2) ARC 3001 ..N..... 6/23/82

COLLEGE AID COMMISSION[245]
Iowa parental loans for undergraduate students program, amendments to ch 10, filed emergency ARC 2922 ..F/E.....6/9/82

COMPTROLLER, STATE[270]
Deferred compensation, 4.3(2), 4.4(3) ARC 2931 .N.....6/9/82

EMPLOYMENT SECURITY[370]
Employer's contribution and charges, 3.41(1), 3.43(10)"a", "b" and "e" ARC 2964 .N.....6/9/82
Job search assistance program, 4.1(67)"c", 4.2(1)"a"(2), 4.2(1)"c"(4), 4.29(5) ARC 2963 .N.....6/9/82
Job placement services, 7.3(19) to 7.3(24) ARC 2966..N.....6/9/82
Forms, 10.3, 10.4, 10.6, 10.7(11) ARC 2967 ..N.....6/9/82

MERIT EMPLOYMENT DEPARTMENT[570]
Pay plan, 4.5(1)"b" ARC 2956 ...N.....6/9/82

PHARMACY EXAMINERS[620]
Minimum standards for evaluating practical experience, 2.3(2), 3.5(2)"b" and "c" ARC 2957..N.....6/9/82
Pharmacists, continuing education, 6.8(1) ARC 2958..N.....6/9/82

PROFESSIONAL AND OCCUPATIONAL REGULATION COMMISSION[637]
Evaluation of professions and occupations, 5.2(2), 5.2(3), filed emergency ARC 2999 .....F/E..... 6/23/82

PUBLIC INSTRUCTION DEPARTMENT[670]
Approvals for elementary and secondary teachers, 16.4, 16.5 ARC 2959 .N.....6/9/82
Iowa industrial start-up training program, 27.1 ARC 2928 ..N.....6/9/82

No Reps Cont'd

REAL ESTATE COMMISSION[700]
Brokers and salespersons, 1.28, 1.33, 2.3 ARC 2984 ..F..... 6/23/82

REGENTS, BOARD OF[720]
Personnel, pay plan, 3.1(20), 3.1(21), 3.39(2), 3.39(7), filed emergency ARC 2986 .....F/E..... 6/23/82
Personnel administration, 3.1(27), 3.127, 3.67(2) ARC 2987 N..... 6/23/82
Personnel, project appointment, 3.85 ARC 2988 .....N..... 6/23/82
Personnel, probationary period, 3.90(2), 3.90(4) ARC 2989.....N..... 6/23/82

TRANSPORTATION, DEPARTMENT OF[820]
Functional classification review board, (08,C) 3.15 Notice ARC 2434 terminated ARC 2971 ..N..... 6/23/82

Minutes

Moved by Priebe that minutes of the May and June meetings be approved as submitted. Carried.

The next meeting will be held August 3 and 4 in lieu of the statutory date of August 10. The September meeting was scheduled one week early also to be held September 7 and 8.

Chairman Schroeder adjourned the meeting at 3:25 p.m.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assisted by Vivian Haag

APPROVED:

Lawrence Schroeder

CHAIRMAN