

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

Tuesday, May 13, 1986, 10:00 a.m., and Wednesday, May 14, 1986, 9:00 a.m., Committee Room 116, State Capitol, Des Moines, Iowa.

Members Present

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

Meeting Convened

Chairman Priebe convened the meeting.

Minutes Approved

Doyle moved approval of minutes for the March and April meetings. Motion carried.

MERIT EMPLOYMENT

Clint Davis, Division Director, represented the Merit Department for the following:

Definitions, state service, pay plan, recruitment, application and examination, eligible lists, certification and selection, appointments, promotion, reduction in force, general. 1.1. 2.1. 2.2. 4.5(1)\*b(4), 4.5(2)\*b, 4.5(7)\*b and "c," 4.5(17)\*a, "c" to "e," chs 6 to 7, 8.2, 8.5, 8.8, 8.9, 10.1, 11.3(5)\*a(1), 11.3(5), 11.3(6), 19.1 ARC 6515..F..... 4/23/86

Also present: B. L. Donaldson, Edward Moses and Joan M. Rowley. Davis explained intent of the Department relative to miscellaneous amendments in ARC 6515. Provisions of reorganization might preclude employees from transferring to the successor agency. New language was included to benefit those people and there would be no opportunity for recall in the new agencies. However, Davis noted that absence of certain language in the rules seemed to be creating problems so decision was made to rescind the new language in Item 9 and restore previous language [11.3(5), 11.3(6), ARC 6577].

Clint continued that the issue surrounding reduction in force and recall had become moot -- organizations would go forward effective in new departments with necessary reductions being made in the new departments before July 1 under existing rules.

Moses, DOT employee, read from Code Supplement §19A.9(7): "For the appointment by the appointing authority of a person standing among the highest 6 scores on the appropriate eligible list to fill a vacancy."

19A.9(4)

He quoted Rule 7.1 and contended that "original appointment" was not defined. With respect to 7.5 -- selection -- Moses argued that the Department would not be bound by the top six. He viewed this type of rule as 'unreasonable' and it flies in the face of the laws of the state." Davis noted that 7.5 was in the original Notice of Intended Action and no comment had been received. He quoted from §19A.9(4) as authority for making the change. In several instances, references are made to appointments and promotions. The Department construes the intent as two distinct matters -- appointment and promotion. Decision has been made that the system should provide more flexibility in appointments for promotions. According to Davis, the noncompetitive approach -- allowed by law -- is extended to department heads, i.e., the normal process for placement on the list can be followed without competition. Employees must have permanent status and be past the probationary period. Also, they must have competed for original appointment within the top six scores and must have minimum qualifications established for job classification. Provisions for noncompetitive promotion would allow a list of names without designating top six. Royce asked permission to study the statute before advising the Committee.

19A.9(7)

Moses contended that "appropriate eligible list to fill a vacancy" must be from the top six. Moses did not appear at the hearing since he learned about the rules only one week ago. He questioned legality of adopting rules prior to enactment of the reorganization law. Davis stressed that the rules were based on current law, not proposed law, where the terms "appointment" and "promotion" are used together. Section 19A.9(7) uses "appointment" without the word "promotion" one of the few times. Davis continued that the intent of §19A.9(7) was for original appointments to be certified within the top six scores and promotions, when read with §19A.9(4), can be noncompetitive and need not be within the top six.

19A.1

Moses explained his interpretation of the process and insisted that the rules as written would eliminate opportunity for advancement in state government.

Davis cited §19A.1 which uses term "...all appointments and promotions...", 19A.9(4), specific rulemaking with regard to promotion; 19A.9(5), establishing eligible lists for appointment and promotion; and 19A.9(7), specifically addressing appointments and certification within top six scores.

5.6

Clark observed that 5.6 lacked language in Noticed version which listed conditions under which the director might postpone application filing date. Davis responded that the Commission decided to leave that open. Clark recommended numbering changes for subrules 6.5(5) to 6.5(8) for clarity.

MERIT There was concurrence by Davis and the ARRC that Barry  
 EMPLOYMENT could make the change editorially. Priebe viewed 5.8(2)c  
 5.8(2)c as virtually eliminating applicants who are not state  
 employees. Davis explained that Merit gives opportunity  
 for application to current state employees. He recalled  
 previous years when number of applications was prohibi-  
 tive. Processing those applications was costly for the  
 few opportunities afforded. Priebe interpreted 5.8(2)c as  
 precluding the "person on the street" from taking the  
 test. Davis indicated the word "performance" referenced  
 a typing test. He added that departments have always  
 had discretion as to whether they "hire from the street  
 or within."

Motion to After further discussion, Tieden moved that chapters  
 Refer 5 and 6 of Merit rules be referred to the respective  
 Carried legislative committees for study. Motion carried.

[See also page 3338 for 70-day delay]

- 6.4 O'Kane questioned lack of criteria for canceling a list  
 in 6.4. Davis said that if a new test is developed,  
 the Department will notify applicant of opportunity  
 to be added to the new list and that they should make  
 application. O'Kane could foresee possible abuse.
- 8.5 Priebe concurred with O'Kane. O'Kane asked the reason  
 for changing length of an intermittent appointment--8.5.  
 Davis responded that 960 hours were excessive calculation  
 of intent of law. Difficulty had arisen from intermittent  
 and temporary employment as a result of PER Board decision  
 concerning substitute school teachers and their rights  
 to coverage under contract provisions where there is  
 implied continuation of employment. O'Kane thought  
 the 700 hours would exceed 4 months. Doyle noted use of
- 5.5(4) "political pressure" in 5.5(4) and asked if it were  
 statutory. Davis responded that "endorsement" was used  
 in the law [19A.18, 3rd para.]. He knew of no problems  
 but was open for suggestion. O'Kane suggested striking  
 of "or attempted to use" leaving "Has used".
- 5.5(9) Doyle had reservations re 5.5(9)--disqualifications of  
 applicants. He cited case of a bulldozer operator where  
 an insurance company had refused coverage for the county  
 even though it had been a year since the operator's arrest  
 for drunken driving.

In closing remarks, Moses told the Committee that he had  
 been employed by the state 11 years prior to the merit  
 system. He was one of six state employees who worked  
 with Grassley, Fischer and O'Malley in drafting the  
 legislation. He recalled that one intent of the bill  
 was to remove patronage from state government but he was  
 convinced that rule 7.5 would reinstate the practice.

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WATER, AIR Jim Humeston, Randy Clark, Diana Hansen, and Morris L.  
AND WASTE Preston appeared on behalf of DWAWM for the following  
MANAGEMENT agenda:

Registration of water well contractors, ch 37 ARC 6478 ..... 4/9/86  
Water quality standards, water use designations, 61.215"e" ARC 6479 ..... 4/9/86  
Use of recycled oils for road oiling, dust control, and weed control, 140.1, 140.7, ch 143 ARC 6480 ..... 4/9/86  
Special - Sewer Grant List

- 37.3(2) Randy Clark presented brief overview of proposed chapter 37. Clark advised Priebe that new legislation was implemented in 37.3(2)--registration requirements for water well contractors--to ensure pollution-free wells. Randy Clark said the Commission was considering comments presented re 37.3(2) as to whether the requirement should be imposed on pump installers who sometimes must drill. Discussion of definition of "construction". Humeston noted that provision "when not required" was included to exclude pump repair and installation unless significant modification was planned.
- 37.6(1) Discussion of cost involved in 37.6(1) which would require a registered contractor to supervise water well construction activities in progress. It was noted that an application accompanied by \$30 would result in registration. Tieden failed to see benefit of rule but Clark pointed out the legislation was limited to a registration program. The Department will have a mechanism to revoke registration. Re 37.6(2)a, Priebe recommended striking "but is not limited to the following". Doyle asked for information on penalties for violations. It was his opinion that this matter should be addressed in the rules. In addition, he requested the Department to provide information on nonresident contractors and respond at the next meeting.
- 37.6(2)a
- 6.3(5)e Discussion of amendment to 6.3(5)e intended to comply with EPA requirement. Sentiment at the public hearing was that additional project costs would be incurred for the City of Rock Valley. Problems would still exist with runoff of agricultural chemicals, etc. Priebe was interested in equitable enforcement of the law against pollution and asked what was being done about the raw sewage being dumped into the Des Moines River. Department officials indicated they were working with the City of Des Moines.
- ch 140 Preston advised that amendments to chapter 140 were revised after previous Notice. The revision pertains only to commercial applicators and suppliers of recycled oil for dust control. Priebe reasoned that the individuals should also be subject to the regulation. Preston responded that it was not their intent to authorize anyone to dispose of hazardous waste in this manner--it is a question of the extent to which DWAWM requires testing and reporting. Tieden was

WATER, AIR AND WASTE MANAGEMENT informed that dioxin is not necessarily found in recycled oil but waste oil does contain lead. Preston lacked information as to possible health risks involved.

ch 143 O'Kane recalled warning on oil that prolonged contact could be cancer causing. He questioned definition of "supplier" and wondered if a gas station selling used oil would be affected. Answer was if the station operator acts as a broker and supplies to an applicator, he would be a supplier. If he supplied to an oil scavenger, then that person would be responsible.

Doyle called attention to lack of a date certain for SWA 846, 3rd edition in 143.3.

Sewer Grants At the request of Priebe, Preston reviewed selection process for sewer grants. Priebe was interested in learning why Algona had not moved up on the list and expressed his dissatisfaction with the process.

REVENUE DEPARTMENT Carl Castelda, Deputy Director, appeared on behalf of the Revenue Department. The following agenda was before the Committee:

Taxable and exempt sales, sales of breeding livestock, fowl and certain other property used in agricultural production, drainage tile, 17.9, 18.35 ARC 6476	4/9/86
Sale or rental of computers, industrial machinery and equipment—refund of and exemption from tax paid, 18.45 ARC 6477	4/9/86
Assessment practices and equalization, industrial real estate, point-of-sale equipment, 71.1(6), 71.1(7) ARC 6481	4/9/86
Special fuel, key/card activated pumps, 65.21 ARC 6508	4/23/86

17.9 et al Castelda gave brief overview of 17.9, 18.35 and 18.45. Castelda told Tieden that determining depreciable repairs would be difficult--for federal purposes, the standard is very broad. Castelda advised that 17.9(3)f was a statutory definition but he would review possibility of broadening the language. Responding to Priebe, Castelda said research of Code and federal case law revealed that Christmas tree operations are not recognized for agricultural purposes. No recommendations were offered for amendment to rule 71.1. O'Kane was informed that the issue of sales tax on bakery items had been resolved. Doyle and Tieden mentioned proposed legislation on lobbying and it was noted that nothing had come out of the Committee. An AG opinion has held that sales tax cannot be imposed on lobbyists involved in an employer-employee relationship. Rules on the subject will be forthcoming.

71.1

65.21 Castelda said that rule 65.21 was in response to request from Iowa Petroleum Marketers Association. Priebe questioned how an individual would justify purchase of fuel by card with no operator present. Castelda explained that, previously, an exemption from tax certificate was completed. The industry suggested a 30-day exemption certificate to be on file. Revenue will give industry benefit of doubt with certain restrictions. The Department plans to monitor the entire issue of tax exemption on fuel.

Recess Committee in recess for lunch.

Reconvened Chairman Priebe reconvened the Committee meeting at 1:40 p.m.

HEALTH DEPARTMENT The following individuals were present:  
 R. L. Minkler, Donald Kerns, Susan Osmann, Mark Wheeler, Ken Choquette, Health Department; Harriett L. Miller, Chiropractic Examiners; Cheryl Brinkman, Professional Licensing; Henri Minette, Iowa Methodist Medical Center; Daniel Aten, Mercy Hospital Medical Center, Mary K. Hogen and Mary Jane Oakland, Iowa Dietetic Association.

The following agenda was taken up for consideration:

Hospitals, medical staff, 51.427e	ARC 6485	F	4/23/86
Reports, ch 97	ARC 6488	F	4/23/86
Physical and occupational therapy examiners, continuing education, disciplinary actions, 138.8, 138.104	ARC 6509	F	4/23/86
Standards for certificate of need review, 203.11(3)b	ARC 6453	F	4/9/86
Plumbing code, 25.1, 25.2	ARC 6487	N	4/23/86
Advanced emergency medical care, 132.1, 132.8(1)b and "n," 132.8(4), 132.8(10), 132.9(7)	ARC 6459	N	4/9/86
Physical therapy continuing education, 138.3(4)	ARC 6510	N	4/23/86
Chiropractic examiners, continuing education, 141.16(5)	ARC 6449	N	4/9/86
Speech pathology and audiology examiners, license fees, 155.7(1), 155.7(7)	ARC 6450	N	4/9/86
Board of dietetic examiners, ch 162	ARC 6512, also filed emergency	ARC 6511	N * # 4/23/86
Certificate of need program, definitions, 262.2(3)	ARC 6464		4/9/86

TB testing in care facilities--70-day delay VII IAB 16,ARC 6314 1-29-86

51.4(2) O'Kane expressed preference for statement to the effect that "there would be no cost impact" rather than the sentence, "A cost impact statement was not requested by the ARRC." No questions were posed re ch 97.  
 ch 97 O'Kane suggested addition of "continuing" before "education" in 138.8, line 3. No changes were made in 203.11(3)b following the Notice.

25.2(13)r Wheeler stated that as of 1:15 p.m. no one had appeared at their 1:00 p.m. hearing on plumbing code amendments. Tieden observed that the verb "be" was missing from 25.2(13)r. Choquette emphasized that the amendments essentially comply with the 1985 Edition of the Uniform Plumbing Code. Discussion of the fact that the Administrative Authority was either the State Health Department or the local jurisdiction enforcing and adopting the plumbing code. Choquette explained merger of the plumbing codes adopted by health department and the building code officials with UPC code being adopted. In review of 25.2, Choquette responded to question by O'Kane by stating that the state's role in routine licensing and inspection of mobile home parks would be eliminated under reorganization.

O'Kane in chair O'Kane took the chair.

132.1 et al Tieden was assured by Kerns that amendments to chapter 132 were no more restrictive than before. The reorganization bill will eliminate the Advanced Medical Council.

138.3(4) Brinkman gave brief overview of 138.3(4). No recommendation.

141.16.(5) Miller reviewed 141.16(5) which will impose a \$100 penalty

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DEPARTMENT  
(Continued)

for failure of chiropractors to complete continuing education within the compliance period. The board was aware of much smaller penalties by other boards but wanted an effective deterrent for tardiness. Responding to Tieden, Miller said that nearly all of the 14 Chiropractic Colleges provide continuing education programs.

- 155.7 According to Brinkman, speech pathology fees for application and licensure were combined--no fee increase or proration.
- Renewal fee will be \$100 for two years.
- ch 162 Discussion of chapter 162 pertaining to the Board of Dietetic Examiners established in 1985. Board Chairman Mary Jane Oakland was present for questions. Royce was informed that continuing education programs for dietitians were currently in place. O'Kane contended that would not apply to the license being granted in the rules. Tieden questioned authority for 162.6 and was told that the Commission on Dietetic Registration was a national organization. O'Kane questioned timing of the whole process since legislation passed in 1985 with the grandfather provision which expires June 30, 1986. Brinkman commented that licensees must meet academic criteria as well as other requirements to become dietitians.
- 162.104 Doyle referred to 162.104 and asked why banking of continuing education hours was not allowed. Reasons cited by the current board included too much paper work and lack of storage room for audit purposes. There are 750 requests for applications. Doyle spoke of the advantage of banking hours. O'Kane took the position that licensing issues tended to be somewhat controversial and that the emergency filing probably inhibited some peoples' comments on the rules. Department officials cited heavy workload contributed by licensing of social workers.
- 162.211(8)b Discussion of 162.211(8)b--betrayal of professional confidence with Royce indicating that every profession has a policy against unauthorized release of information.
- 202.2(3) Osmand explained that "expenditure" was defined in 202.2(3) upon recommendations of the Attorney General. Aten and Minette spoke in support of the subrule. Osmand pointed out that a letter of opposition including recommendations for definition had been received from the University of Iowa. A hearing process involving 15 providers was used to develop the proposed definition.
- TB Testing Priebe resumed the Chair and recognized Donaldson who reiterated his opposition to amendments to rules 57.15, 57.15 et al 58.15, 59.19 and 63.15. The rules were under a 70-day delay. Minkler cited nursing home groups and others who have supported the amendments which require residents

HEALTH  
DEPARTMENT  
Continued

in care facilities to have a tuberculosis test every 3 years. There was brief discussion of cost which Minkler estimated would not exceed \$1000 per year. O'Kane was supportive of the Department's attempt to combat TB but was concerned about cost because of many positive reactors. Minkler lacked information as to the number of reactors but said results vary with type of test given. The Department recommends the Mantoux test. O'Kane reasoned that the best test should be mandated but Minkler stated that the Department lacked that prerogative. Tieden thought cost could be factor in use of other tests. Minkler stressed that Department responsibility was to protect the patient. General consensus of the Committee was that more information from the Department was needed, including cost factors. Doyle asked if Medicare or Medicaid pay on tests and Minkler reported that Medicaid was considering them as provider costs. After further discussion, Clark recommended that appropriate legislative committees be notified of the problem.

Motion to  
Delay to GA  
  
Carried

O'Kane moved to delay the effective date of 57.15(2), 63.15(2)a,b, 58.15(2), and 59.19(2)c forty-five days into the 1987 session of the General Assembly. Motion carried. The Department was requested to provide more technical information. Minkler said they would send out a mailing.

CORRECTIONS  
DEPARTMENT

Carrie Mineart appeared on behalf of the Department for the following:

Community-based corrections administration, 40.5(8) ARC 6516...*N*..... 4/23/86  
Work release, violations, 44.6(6) ARC 6518, also filed emergency ARC 6517...*N.F.F.E.*..... 4/23/86

40.5 (8)

In reviewing 40.5 (8), O'Kane asked for definition of "discretionary" program funds. Mineart indicated this would be something considered over and above the original contract. Mineart said that a pro rata clause would allow local income--a small percentage of income that comes into the district--to be expended at the same rate as state income. O'Kane will be interested in comments from the public hearing. Mineart explained that "department" as used in the rules was the district Department of Corrections--one of the 8 districts.

44.6(6)

Mineart said that 44.6(6) was promulgated in response to an Attorney General's opinion re work release transfers. Doyle expressed opposition to incorrect use of "found guilty" and Mineart agreed to rewrite the provision. Tieden requested that 40.5 (8) be

40.5 (8)

written to be consistent in use of "district department" and "state department" in 44.6(6). Mineart was amenable.

HEALTH  
DEPARTMENT

Wheeler appeared before the Committee to report on a public hearing held in Cedar Rapids relative to

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HEALTH DEPARTMENT Continued

intermediate care and skilled facilities. Sixteen opponents to the rules asked for stricter requirements. A number of letters of opposition were also received. The Board of Nursing and Nursing Association opposed rules and Iowa Health Care Association favored them. O'Kane inquired as to statutory authority to write stricter rules. Wheeler thought it was a possibility.

IOWA FAMILY FARM AUTHORITY

William Greiner and John W. Judge were present for the Authority to review the following:

Iowa agricultural loan assistance program, ch 6 ARC 6483, also filed emergency ARC 6482... N. \*FE..... 4/9/86

ch 6

According to Greiner, chapter 6 contains rules for the Iowa Agricultural Loan Assistance Program--interest buydown program. Greiner responded to question by Priebe that the banks were not as cooperative in extending credit as had been anticipated. Greiner learned from surrounding states that acceptance of the program is low the first year. General discussion of the problems. Doyle referred to the appeals process in 6.9 as being deficient. He asked that Royce assist Greiner in rewriting the rule.

SOIL CONSERVATION

James F. Ellerhoff appeared for Iowa Department of Soil Conservation to review:

Surface coal mining and reclamation operations, 4.522(15) "c" and "g" ARC 6493... N..... 4/23/86

Also present: Greg McConville, McConville Coal Corporation.

Ellerhoff stated that the amendments were promulgated in response to petition by the McConville Coal Company to be consistent with new federal regulations. Flexibility will be provided with respect to design of sedimentation ponds on coal mine sites. Four mines are operating in Iowa.

REAL ESTATE COMMISSION

Kenneth Smith reviewed the following:

Continuing real estate education requirements, 3.3(2) ARC 6475... F..... 4/9/86 1572

3.3(2)

O'Kane raised question as to the requirement for "three hours on affirmative marketing" in 3.3(2). Smith said the course covers the entire scope of social laws and ethics relative to civil rights as they apply to housing and activities of the real estate licensee. HUD uses the expression which has no reference to selling technique. O'Kane favored clarification and Smith was willing to file an emergency amendment to the definition portion of their rules. Committee concurred.

Library

Discussion of the fact that the Library Commission had never submitted rules for certification of librarians.

Reorganization

Barry sought guidance as to what will be expected from agencies and her editing staff in implementation of reorganization legislation. It was agreed that Barry, Burnett and Royce would prepare suggestions for perusal.

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Recessed

Chairman Priebe recessed the meeting at 3:45 p.m.

Reconvened

Chairman Priebe reconvened the meeting Wednesday, May 14, 1986 at 9:00 a.m. with quorum present. Meeting dates were set for June 10 and 11, July 1 and 2 and August, 18, tentatively. It was noted that filed rules from May 7 Bulletin will be considered on June 10 agenda.

HUMAN SERVICES

The following representatives were present for the Department:

Mary Ann Walker, Julie Dettman, Kawn Peslowski, Lorena Griffith, Marie Thiesen, Linda Foster, Don Bice, Dan Gilbert, Bob Lipman, Bob Schoene.

The agenda is as follows:

Community supervised apartment living arrangements, ch 38	ARC 6502	F	4/23/86	
ADC, resources, 41.6(10)	ARC 6464	F	4/9/86	
Medical assistance, application and investigation, 76.1 to 76.4, 76.11	ARC 6466	F	4/9/86	
Developmental disabilities, governor's planning council, basic grant program, 1.7, ch 38	ARC 6503	N	4/23/86	
ADC, eligibility, unearned income, food stamp program, 40.1, 40.7(1), 40.7(4)(1), 41.7(1)(1), 65.1, 65.10, 65.19(6), 65.19(19), 65.22(1), 65.29	ARC 6462	N	4/9/86	
Food stamp program, administration, treatment centers, 65.3, 65.9	filed emergency	ARC 6461	F	4/9/86
Food stamp program, utility allowance, 65.8(1), 65.8(3)	ARC 6504	N	4/23/86	
Medical assistance, persons covered, 75.1(2), filed emergency after notice	ARC 6465	F	4/9/86	
Medically needy, 86.1 to 86.4, 86.8(2), 86.8(4) "a" and "e", 86.8(5) "b", 86.8(2), 86.8(4), 86.10(4), 86.10(5), 86.14(4), 86.15, filed emergency after notice	ARC 6484	F	4/23/86	
Work incentive demonstration program, program area, 90.1(4)	ARC 6463	N	4/9/86	
Work incentive demonstration program, 90.12, 90.13, 90.13(2), 90.13(2)a and "e", 90.13(3), 90.13(4)a, "e", and "m", 90.16(1), 90.16(2), 90.16(4)	ARC 6505	N	4/23/86	
Purchase of service, prospective payment pilot project, 150.3(11), filed emergency after notice	ARC 6467	F	4/9/86	
In-home health related care, payment, 177.4(9)	ARC 6508	N	4/23/86	

ch 36

Dettmann told of minor changes in chapter 36 as result of public hearing.

41.6(10)

Walker said that under 41.6(10), supplies and inventories are not resources when considering eligibility for ADC if they are required for self employment. Stored grain will be exempt until it is sold. Tieden was interested in the financial impact and Walker said it would be nominal--few clients would be involved. It would benefit farmers in financial difficulty.

76.1 et al

In re 76.1 to 76.4 and 76.11, Walker said staff will complete a redetermination if someone is canceled from medical assistance under one coverage group to ensure eligibility under another.

1.7(6)

1.7(3)b

Discussion of 1.7 and chapter 38, which describe organization and operation of governor's 24-member Planning Council for Developmental Disabilities which, in Priebe's opinion, was entirely too large. Clark noted use of "council" in 1.7(6) and Walker said "committee" was intended. Re 1.7(3)b, Priebe cited quorum requirement as differing from ARRC preference of majority of the entire council. Walker was under the impression that advisory committees would not be subject to the 2/3 requirement--only 50 per cent for quorum and a majority, once that quorum was present. No questions re 40.1 et al, 65.3, 65.9. In review of 65.8, Doyle was told that commodities are available in halfway houses. Although food stamps are allowed, they are not being utilized. O'Kane called attention to stricken language in 65.9 and asked how

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they participate in the food stamp program. Foster said the facility must be willing to participate, be accepted and then residents are eligible. Once authorized, the center oversees the distribution of the stamps. No recommendation for 75.1(2). According to Walker, amendments to chapter 86 extend the medicaid coverage to Supplemental Security Income related persons effective April 1, 1986. Discussion of possible insufficient appropriation and Priebe asked Walker to provide costs for the first 60 days. The Department agreed to provide available information.

86.2(3) O'Kane viewed 86.2(3) as being difficult to implement with respect to "immediate" availability of applications. Priebe suggested striking "in the next outgoing mail". Department officials were amenable.

90.1(4) Amendment to rule 90.1 will add Poweshiek and Tama counties to the list of WIN/CMS program counties as CMS model volunteers. Lipman said there was a possibility that cuts would be made and a number of projects would be reduced. Committee discussed the possibility of referring the matter to respective legislative chairmen but decided on word-of-mouth. Rule 90.12 modifies the work incentive program to eliminate some impact of the cuts.

150.3(11) Walker had distributed copies of public hearing comments and the Department's responses re 150.3(11). The rule will provide for a smoother cash flow for some providers. O'Kane was interested in reason for delay of implementation since the legislation passed in 1985. According to Walker, much controversy had surrounded the issue and request for hearing further delayed the process. Also, all providers were contacted. O'Kane thought it was unfortunate that emergency filing was utilized.

177.4(9) Priebe questioned why the designated person would not continue to make payments for the client payee after they became incapacitated--177.4(9). Department officials assured ARRC that almost every person in the program is incapacitated to a certain extent. No action.

AGRICULTURE DEPARTMENT

Bette Duncan, J.E. Wakefield and Dr. L. M. Schmall represented the Department for the following:

Livestock movement, 18.4(5), 18.11 ARC 6455 ..... F ..... 4/9/86 /555  
Dairy, tests for abnormal milk, 30.26 ARC 6456 ..... F ..... 4/9/86 /555

30.26

Duncan gave brief overview of the filed rules and Priebe was assured there would be no increased costs. It was explained that a "licensed" veterinarian is one licensed to practice in Iowa and "accredited" is one that is also approved by the USDA to perform federal functions. Duncan stated that reduction of somatic cells/ml in 30.26(2) was intended to conform with federal standards. No action taken.

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TRANSPORTATION DEPARTMENT

Carol Coates and Don Alexander presented review of:

Procurement of equipment, materials, supplies and services, female and minority small business set-aside. (01.B) 4/9/86 1543  
2.6 ARC 6462 .....  
Petroleum overcharge funds. (09.B) ch 4 ARC 6490, also filed emergency, ARC 6489 ..... 4/23/86 1627

[01,B]

Coates reported that an amendment had been filed to delay implementation of [01,B]2.6 to allow time to coordinate efforts with Regents and General Services. Royce thought language had been agreed upon by factions. Coates understood that legislation last year applied only to General Services but this year, it applies to all.

[09,B] ch 4

Alexander said that [09,B]chapter 4 was designed to allow DOT to make loans to transit systems for capital improvements. In the event a transit company does not repay a loan, it will be deducted from their federal funds. O'Kane recalled that legislation passed this year allows operating assistance funds to come from the overcharge funds. Alexander pointed out that the Warner amendment specifically forbids petroleum overcharge money to be used for operating assistance. Department officials explained that criteria was statutory. In essence, it says the day-to-day responsibility is that of the transit system manager. Provision relative to default of loan payment--4.5(6)--was also statutory and it is found in other rules pertaining to state transit systems.

4.5(6)

Recess

The Committee was in recess for ten minutes.

LABOR BUREAU

Walter Johnson, Deputy, appeared on behalf of the Bureau of Labor and gave brief overview of the following agenda:

Hazardous chemical risks right to know. 10.20, chs 110, 120, 130 and 140 ARC 6468 ... F ..... 4/9/86 1559  
Miniature boilers and miniature model boilers, 45.1, 45.10 to 45.21, filed emergency, also notice, ARC 5882  
terminated ARC 6514 ..... F.F. & M.T. .... 4/23/86 1625

10.20 et al

No questions re 10.20 et al. Tieden expressed dissatisfaction with the fact that amendments to chapter 45 were filed emergency. Johnson pointed out that the subject was Noticed in March 1985 with a full public hearing in April. Considerable research and study followed and the Department was unable to adopt the amendments within the statutory time frame. Emergency rules were necessary to overcome concerns of some legislators.

PUBLIC SAFETY

Wilbur Johnson, Fire Marshal, and Connie White, represented the Public Safety Department for the following:

Fire marshal, flammable and combustible liquids code, 5.301, 5.304(5), 5.305(2), 5.307, 5.308, 5.350, 5.400, 5.450 ARC 6474 .N. .... 4/9/86 1544

Johnson called attention to 5.305(2) which reflects the fact that under national standards, certain trucking firms may utilize 6000 gallon aboveground tanks. Discussion of duplication of rulemaking by Department of Public Safety and DOT because of statutory recommendations.

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PROFESSIONAL  
TEACHING  
PRACTICES  
COMMISSION

Since a Commission representative was unable to appear at today's meeting, it was agreed that the following should be placed on June ARRC agenda.

Complaints - rules of practice and procedure, 2.2(2), 2.4(1), 2.8(1)c, 2.8(1)g - ARC 6492, also filed  
emergency ARC 6491 ..... N.F.P. 4/23/86 1626

PLANNING AND  
PROGRAMMING

Jude Conway appeared to discuss the following amendments which are required by the U.S. Department of Housing:

Community development block grant nonentitlement program, 23.12(5)a(15) and (17), filed emergency ARC 6473 F.P. .... 4/9/86 1554

No formal action taken.

No agency  
Representa-  
tives

No agency representatives requested to appear for the following:

BEER AND LIQUOR CONTROL DEPARTMENT[150]  
Private wine sales, agency stores, trade practices, chs 14 to 16, notices ARC 5854, ARC 5856, ARC 5858, and  
ARC 5956 terminated ARC 6460 ..... N.F. 4/9/86 1532  
COLLEGE AID COMMISSION[245]  
Iowa guaranteed student loan program, 10.10, 10.17, 10.57 ARC 6457 ..... N. .... 4/9/86 1532  
DENTAL EXAMINERS, BOARD OF[320]  
Gender changes, 7.1(2)a, 11.2(2)b, 12.3(1), 12.3(2), 20.5, 21.1, 21.3, 22.7(1), 51.5, 51.7(1), 51.7(3), 51.8(2),  
51.10 ARC 6451 ..... F. .... 4/9/86 1556

MERIT  
EMPLOYMENT  
DEPARTMENT

Chairman Priebe called for further discussion of Merit rules which were before the ARRC yesterday. Royce recalled discussion had centered on whether the Merit Department could lawfully change their rules to provide that appointments would be only from the top six applicants. Royce advised that the change followed Code chapter 19A. He continued that the Department also has broad authority to handle promotions in the manner they deem most appropriate. Clark agreed that promotions should not be limited to the six--job performance should be considered.

11.3(5)  
11.3(6)

Discussion of the emergency filing to reinstate previous language in subrules 11.3(5) and 11.3(6) [5/21/86 IAB, ARC 6577]. The subrules were relative to reduction in force and recall rights. Discussion of possible delay of all the rules on yesterday's agenda. Royce commented that reorganization would not be effective until July 1. He reminded ARRC that chapter 5 and 6 had been referred to the next General Assembly. There was discussion of a policy question by Royce as to whether there should be a rigid, virtually automatic promotion system or should management be given an unfettered choice. Clark favored allowing management more flexibility. She cited post office department as example of overprotection of employees. O'Kane appreciated that philosophy because he had seen similar situations in city government. O'Kane moved a 70-day delay on Merit rules ARC 6515 for further study. Motion carried. Parker absent.

Motion to  
delay.  
Carried

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CONSERVATION  
COMMISSION

Marion Conover, Richard A. Bishop, Al Farris, Rick McGeough, Nancy Exline and Robert Walker, Administrator of County Conservation Board Program represented the Commission for review of:

Mussel regulations. 12.1, 12.1(1), 12.1(3) to 12.1(6) ARC 6494	.....F.....	4/23/86 1629
Safety equipment, water skis and surfboards. 27.13(9) ARC 6495	.....F.....	4/23/86 1629
Mississippi River lock and dam safety zone zoning Harpers Slough. 30.10, 30.27 ARC 6496	.....F.....	4/23/86 1629
Motor regulations. 40.4(1)" 40.4(2)" 40.5 ARC 6497	.....F.....	4/23/86 1630
Park user fee permit, excluded areas. 5L3 ARC 6498	.....F.....	4/23/86 1631
Cost assistance program to promote wildlife habitat on private lands. ch 22 ARC 6499	.....M.....	4/23/86 1601
Snowmobile fund allocation. 52.3(6) ARC 6500	.....M.....	4/23/86 1605
Trapping limitations. ch 114 ARC 6501	.....M.....	4/23/86 1605

Also present: Butch Ballenger, Mississippi Valley Shell Co., Inc. and Bill Broydrick, Attorney, representing the Mississippi Valley Shell Co., Inc. and S and S Shell Company, and Carole Carlson, Editor, State Snowmobile Association.

Conover stated that rule 12.1 establishes areas, seasons, methods of take, and size limits for freshwater mussels, sometimes referred to as "clams." No real opposition had been expressed when the rule was Noticed.

Chairman Priebe recognized Broydrick who spoke of the uniqueness of his clients in that they are the only direct exporters of shells to Japan. The shells are harvested and made into pellets by the Japanese to become nuclei for cultured pearls. He supported the legislation [HF2463] and commented about the out-of-state license fee. Broydrick was aware of over-harvesting by professionals in the southern states. The group has moved into Iowa, Illinois and Wisconsin and created problems by ravaging the resource. He favored a \$1500 fee. It was explained that Wisconsin adopted a \$400 fee prior to final action by Iowa legislature so the Senate reduced the House proposal of \$1500 to \$400. [HF2463] Broydrick mentioned two problems with the rule: "Rules call for minimum size limit of 3 1/2 inches for washboard mussels--our bread and butter--and 2 3/4" minimum for other shells." Broydrick could foresee enforcement problems in the taking of three-ridge shells--Wisconsin sets a limit of 2 5/8", whereas Iowa has a 2 3/4" limitation. The industry and the Department of Natural Resources compromised on a smaller size for cooked shells. He suggested sizes for cooked shells and that they be smaller for maple leaf, pigtoe and pimpleback; 2 7/8" for three-ridge, and 3 1/2" for the washboard. Also, Broydrick wanted other species added--ebony shell and mucket mussels.

General discussion of underwater "clamming" and shell sizes. Priebe advised that Committee prerogatives are limited. Tieden added that the Committee can suggest changes which the Department may accept or reject. Another alternative is to change the law at a subsequent session. In addition, the Governor or Attorney General can veto a rule. Conover was confident that the

CONSERVATION  
COMMISSION  
(Cont.)

Conservation Commission would be working with the industry and that another rule would be forthcoming.

Ballenger produced a display of shells--both alive and dead. He was unsure of the "backwater" definition and indicated an interest in permission to harvest in all of the waters.

O'Kane questioned authority to regulate the taking of mussels by size. Conover said they relied on the biological balance statutes and he quoted from Code §109.38. He observed that presentation by the industry today differed from the one at the public hearing, except for their request not to be regulated. Conover emphasized that Iowa met with Illinois and Wisconsin officials in an attempt to develop a uniform regulation. Original recommendations for washboards were 3 3/4". He spoke of a harvest increase--91 tons in 1983, 728 tons in 1984 and 1492 tons in 1985. Mussel "dieoffs" along with increased harvest alarmed resource managers in the three states and the intent of the rules was to reduce harvest. Size limits are in line with Illinois since Iowa borders more water there than with Wisconsin. Conover continued that shrinkage for the cooked-out shells is allowed. Discussion of lobbying efforts and the three-state recommendation for seasons. Farris clarified that Commission intent was to limit commercial taking of mussels to the Mississippi River and backwaters that are openly connected to it.

12.1(3)

Ballenger had harvested many shells during 12 years in the business. He contended that the 91-ton harvest was closer to 650 to 1000 tons, all on the Iowa-Illinois side. He stressed that the Department of Natural Resources had never questioned him about the shells. Tieden questioned the practicality of underwater sorting in 12.1(3). Farris cited the importance of returning the mussels to the same place from which they were taken. Department officials saw no impact on the industry but were willing to clarify the rule when summer research is finished. Conover assured the ARRC that one-eighth inch will be allowed on cooked-out shells.

O'Kane saw significant difference between the Noticed and the Filed Emergency versions of the rule and suspected a legal problem of giving adequate notice. Royce concurred. Farris asked for source where standard is set out as to extent change from Notice is acceptable. Royce agreed to provide that information.

Objection  
12.1

After further exchange of views, O'Kane moved to object to rule 12.1 on the grounds that the Department exceeded its authority. Motion carried with 5 ayes.

CONSERVATION  
COMMISSION  
(Cont.)

The following was prepared by Royce:

Re: Committee objection: mussel rules/ARC 6494

Dear Mr. Wilson:

At its May 14th meeting the committee voted to object to the provisions of ARC 6494 on the grounds that the filing is beyond the authority of the department. This objection does not go to the substance of the rules; it is the opinion of the committee that the filing itself is invalid because all of the items contained in it did not appear in the original notice of intended action. This filing appears in VIII IAB 22 (4-23-86) and is codified as 290 IAC 12.1

The adopted rule, in subrule 12.1(4) enumerated six species of mussel which could be taken and established a closed season on the rest. The proposed rule stated only that there was a closed season on one particular species. The adopted rule also contained subrule 12.1(5), limiting the harvest to the Mississippi and its connected backwaters. This subrule did not appear in the notice at all.

The committee believes these two subrules were not set out in the notice of intended action in sufficient detail to inform the public that only six species of mussels could be taken and that commercial harvesting could only occur on the Mississippi and its backwaters. Since the notice did not provide an opportunity to comment on these restrictions prior to their adoption, it is the opinion of the committee that the notice is invalid.

To determine the extent to which an adopted rule may vary from the original proposal, the committee uses three standards, developed in 1980:

- 1) THE EXTENT TO WHICH AN INDIVIDUAL CONCERNED WITH THE ADOPTED RULE SHOULD HAVE UNDERSTOOD THAT THE PROPOSED RULE COULD HAVE AFFECTED THEIR INTERESTS.
- 2) THE EXTENT TO WHICH THE SUBJECT MATTER OR ISSUES INVOLVED IN THE ADOPTED RULE DIFFERED FROM THOSE OF THE PROPOSED RULE, AND,
- 3) THE EXTENT TO WHICH THE EFFECTS OF THE ADOPTED RULE DIFFERED FROM THE EFFECTS THAT WOULD HAVE OCCURRED IF THE PROPOSED RULE HAD BEEN ADOPTED.

In this particular case it appears that both standards one and three have been exceeded. In essence the notice dealt with the size of clams, but the adopted rules deal with species and geographical limitations as well. It appears to the committee that both the interests impacted by the adopted rules and the effects of the adopted rule are significantly different than the interests and effects of the proposal.

Motion  
carried

Motion carried.

Priebe commented that the Governor or the Attorney General has the opportunity to veto rules.

27.13(9)

In review of 27.13(9), O'Kane asked if a skier would be granted exemption by name. McGeough said the event would be recognized as providing the limitation. He responded to question by Doyle by stating that installation and costs for flashing red lights for safety zones were responsibility of the Corps of Engineers.

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CONSERVATION  
COMMISSION  
(Cont.)

Discussion of possible impact to chapter 40 as a result of legislation passed in the 1986 Session relative to exceptions to horsepower limitations.

51.3

Exline reviewed the list of areas to be exempted from park user fees. The areas provide access to small boats and canoes and are extremely remote from managing agencies. She assured the Committee there was statutory authority for the exemptions. Priebe reiterated his continuing opposition to the park user fee. Bishop discussed the cost assistance program for promoting wildlife habitat on private lands--funds will be available for areas north of Highway 30. Pheasants Forever

22.5(5)

have expressed interest in the program. Subrule 22.5(5) lists guidelines for habitat plots. In re 22.5(6)a, Bishop said ASCS has advised that corn cannot be left for two years but must be replanted. It will be subject to investigation by wildlife biologists. Bishop briefed the Committee as to changes that will be made before the rules are adopted. According to Walker, a major change

52.3

in rule 52.3 will allow payment up to \$600 per year from snowmobile program funds to pay for more comprehensive liability insurance coverage. Trail liability is one big concern today. Priebe questioned whether it would be appropriate to pay liability insurance for a private club. Walker said that 75 per cent of the program was conducted under a leased basis from the county. Walker anticipated no problems. The liability insurance is purchased by the Club and they name the County as coinsurer. O'Kane pointed out that the funds are derived from license fees. Priebe had heard complaints from private individuals. Committee members could see unfairness in that some would realize greater benefit from the funds. Walker sought guidance from an assistant attorney general on this matter. Priebe could foresee problems. No action taken.

ch 114

Farris reviewed proposed chapter 14 which includes limitations on use of snares and conibears along public road rights of way. Other restrictions are also proposed. In response to Priebe, Farris noted that coon and fox hunters contend the rules should be more prohibitive and trappers take the opposite position. O'Kane was informed that the Conservation Staff was directed by the Commission to draft this Notice.

COMMERCE  
COMMISSION

The Commission was represented by Ray Vawter, Allan Kniep, and David Lynch for the following:

Mobile telephone service and paging service ARC 6458 .....N..... 4/9/86 /533  
Telephone utilities, directory assistance. 22.3101b" ARC 6513 ..N..... 4/23/86 /601

Also present: Barb Johnson, Public Affairs Assistant, United Telephone.

Lynch gave overview of Commission investigation relative to competitiveness of telecommunications services. The

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COMMERCE  
COMMISSION  
(Cont.)

Commission has been approached to deregulate mobile telephone and paging services. Initial comments favored that approach. However, concern has been expressed that Northwestern Bell could utilize its local exchange monopoly to compete unfairly. Lynch suspected that Northwestern Bell would be deregulated; otherwise, all should be regulated. No questions. Lynch stated that Iowa Telephone Association had submitted petition for the rulemaking in 22.3(10). Under the proposal, the number of free monthly directory assistance calls will be reduced from four to two. Local exchange carriers support the rule, not surprisingly, since they are members of the ITA. Disadvantaged individuals will not be affected by the proposal. General discussion of legislation pertaining to directory assistance.

22.3(10)

PHARMACY  
BOARD

Norman Johnson, Executive Secretary, was present to review:

Licensure examination, 1.13(1) ARC 6469 ... *N* ..... 4/9/86 1539  
Pharmacy business licenses, reference material, 2.3(1) ARC 6470 ... *N* ..... 4/9/86 1540  
Controlled substances, dispensing without prescription, 8.13(15) ARC 6471 ... *N* ..... 4/9/86 1540  
Controlled substances, purpose of issue of prescription, requirement of prescription, 8.21, 8.22 ARC 6472 ... *N* ..... 4/9/86 1544

1.13(1)

Johnson noted a change in the licensure examination-- 1.13(1) necessitated an amendment. A minimum passing grade was also established. O'Kane was informed that the 75 per cent score had been enforced previously. A five-part examination required no less than 75% in another part and no less than 75% average of all parts. There is national reciprocity with the exception of Florida and California and a single examination will be administered. Re 2.3(1), Doyle recalled complaint from a pharmacist that the reference material was costly. Johnson said the material was required under Code chapters 203A and 155 and in his opinion, were valuable sources of information.

chs 203A,  
155

Discussion of amendments to chapter 8. Tieden mentioned the fact that some states allow pharmacists to write prescriptions. Johnson was doubtful that the Iowa Board would support that concept. However, Florida has such a law and California has an experimental program.

Adjourned

Chairman Priebe adjourned the meeting at 12:40 p.m.

Next meeting

Next regular meeting was scheduled for June 10 and 11, 1986.

Respectfully submitted,

*Phyllis Barry*

Phyllis Barry  
Assisted by Vivian Haag and  
Bonnie King

APPROVED:

*Bel E Priebe*

CHAIRMAN