

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, October 12 and 13, 1982

Place of Meeting: Senate Committee Room 22 and Committee Room 116, Statehouse, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar Holden and Dale Tieden; Representative Ned Chiodo. Not present: Representative Betty J. Clark. Also present: Joseph Royce, Legal Counsel; Brice Oakley, Rules Coordinator; Phyllis Barry, Deputy Code Editor, and Vivian Haag, Administrative Assistant.

CONSERVATION  
COMMISSION

The Conservation Commission was represented by Robert Barratt, Wildlife Superintendent, Stanley Kuhn, Chief, Administration, and Roy Downing, Superintendent of Waters, for review of the following:

CONSERVATION COMMISSION[290]  
Docks. 33.1(1), 33.1(6), 33.3(2), 33.3(3), 33.5 ARC 3232 ..F..... 9/29/82  
Pheasant, quail, and gray (Hungarian) partridge hunting seasons, 103.1 to 103.3 ARC 3233 ..F..... 9/29/82  
Land and water conservation fund grants-in-aid for local entities, 72.2(2), 72.3(2), 72.3(3), 72.4, 72.5(2), 72.6(3), 72.6(4),  
72.6(5), 72.7, 72.8 ARC 3234 .....N..... 9/29/82  
Waterfowl and coot hunting seasons, 107.1 to 107.4, filed emergency after notice ARC 3231.....F.A.A.N..... 9/29/82  
Wild turkey spring hunting regulations, 111.1, 111.2, 111.4 ARC 3235 .....N..... 9/29/82

33.3(2)

With respect to 33.3(2), Schroeder inquired as to whether problems had been resolved. Downing reviewed the controversy and the original proposal which would encourage more than one family to share a dock, etc. The rules had been liberalized but Downing suspected there would always be those who request special privileges.

There was general discussion of riparian rights and size of lake front lots which average 25 to 30 feet in width. No formal action taken.

Tieden was informed that rules for docks along the Mississippi River would be ready in approximately 2 months.

chapter 103

In considering hunting season rules, Schroeder pondered whether the quail population could provide adequate harvest. Barratt responded the "numbers were there" but hunters would find a greater challenge. Priebe argued there were fewer birds. Priebe and Schroeder preferred that bag and possession limits be adjusted to coincide with the reduced population. Barratt emphasized that very few hunters take the limit.

Priebe voiced opposition to the January 31, 1983 closing date. He declared January 2 was entirely too late for pheasant season to end. He maintained that more birds are shot on stormy days in January

10-12-82

CONSERVATION than during the rest of the season. He reported his constituency's opposition to length of the pheasant season which, in their judgment, should be closed in the middle of December. Schroeder saw the late closing date as "a vehicle for obtaining extra funds" for the Department. Barratt did not believe that to be true and pointed out that hunters would buy 1983 licenses anyway.

Objection - Priebe moved to place an objection to rules 290--130.1(109) and 290--130.2(109) on the grounds that the pheasant and partridge hunting seasons are too long and, therefore, are unreasonable. Discussion as to ramifications of an objection.

Barratt defended the seasons which provide "a reasonable sort of balance." He reasoned the road stock would not be hurt by this length of season.

Motion Lost Roll call vote on Priebe's motion was 3 no votes by Chiodo, Holden and Schroeder and two ayes by Tieden and Priebe. Motion lost.

chapter 72 Kuhn explained amendments to chapter 72 which provide guidelines to entities of local governments to obtain federal funds through the Commission for outdoor recreation projects. Currently, according to Kuhn, there are no funds but the rule is proposed in anticipation that it is possible that a greatly reduced apportionment might be forthcoming. Planning requirements are less rigorous--basically local planning with public input is required. Hopefully, this approach will reduce administrative burden.

Chiodo failed to understand how arbitrary ceilings could be imposed on population groups. He considered the rules to be unfair to heavily populated areas. He opposed penalty points for active projects--72.6(3)"b". Chiodo concluded, "There is a one-man, one-vote principle in this state and this principle applies to dollars, too." He strongly opposed rules that continually "skew things toward smaller population centers."

Kuhn's cogent argument was that the rules referred to by Chiodo were not before the Committee. However, he admitted Chiodo made some valid points. Kuhn added that the other side of the issue is the concern on the part of smaller cities that the clout of larger cities will preclude them from any funding. The intent of this is an attempt to simplify funding of smaller projects if and when money becomes available. Kuhn could not provide Chiodo with information as to how many projects were active in the central part of the state. Schroeder requested Kuhn to compile a list of projects and amounts involved for cities and counties over the last 3 years. Kuhn concurred.

72.2(2). Tieden was informed that \$4 million was the amount of the last grant. Tieden questioned criteria for the local share of the annual apportionment--72.2(2).

CONSERVATION Kuhn agreed to consider Chiodo's suggestion that a ceiling  
COMMISSION for population should reflect equality for every person  
Continued as much as possible.

72.3(2) Holden took the position there should be an explicit definition of "entity" in 72.3(2).

chapter 107 In re amendments to chapter 107, Tieden called attention to a newspaper report which indicated the field biologist for the Department had recommended October 16 as the beginning date for one of the duck hunting seasons, but the Commission ignored the recommendation and adopted the October 23 date. It was noted the rules had been filed emergency.

The ARRC members compared the Noticed language with the adopted version and noted that the Notice did not include dates. According to Barratt, Director Wilson concurred with the 16th but, because of comments received, the date was changed to October 23.

107.4 Oakley inquired if there had been comments with regard to closed areas. Barratt stated there had been none with respect to 107.4. Oakley called attention to the nebulous language in the Notice and Barratt replied that changes were made to answer complaints that hunters were shooting into wildlife areas from the road. Most hunters concurred with amendment to 107.4.

Objection Tieden moved an objection to 290--107.1(109) based on the  
107.1(109) fact that the Conservation Commission did not adhere to recommendations of their biologist and the rule is unreasonable.

Royce advised that the objection would have the effect of reversing the burden of proof on this rule if it is challenged in court. He added that it would no longer have a presumption of validity as is accorded to most rules and the Commission would have to affirmatively prove that it was valid--indeed, a reasonable decision on the part of the Conservation Commission to overrule the biologist. It makes it somewhat more difficult to uphold the validity in court. Royce concluded, until such time the rule is successfully challenged in court, it remains valid. The Commission would be liable for court costs and attorney's fees if they were to lose in a court action. Barratt asked what would most likely be challenged and Royce indicated the dates which were set.

Holden recognized the problem confronted by the Commission of setting the various seasons under the normal rulemaking process. The following objection was drafted by Royce:

The committee objects to the promulgation of ARC 3231, by the conservation commission, on the grounds that the period established for duck hunting is unreasonable. These provisions were emergency adopted after notice and appear in V IAB 7 (9-29-82).

It is the opinion of the committee that the creation of a 23 October to 6 December duck season was unreasonable, especially in light of opinions by conservation biologists that the season should run one week earlier. These opinions were proved correct when unusual climatic conditions have apparently encouraged ducks to migrate earlier than expected. This provision is codified as 290 IAC rule 107.1.

10-12-82

CONSERVATION  
COMMISSION  
Continued  
Objection

After general discussion, question was called. Priebe requested a roll call vote which showed 5 ayes by Chiodo, Tieden, Priebe, Holden and Schroeder. Motion carried.

ch 111

Barratt informed the Committee there was little change in chapter 111. The turkey population was reviewed. Priebe was informed that it was close to normal in southern Iowa. Barratt reported there was an excellent hatch in NE Iowa--approximately 800 turkeys were taken last season--success rate was about 25 percent. It was Priebe's understanding there had been an overkill of adult hens. Barratt admitted that was true. Zones for turkey hunting were reviewed and Barratt agreed to provide zone maps later in the day.

AUDITOR OF  
STATE

John Pringle, Director, Financial Institution Divisions, appeared on behalf of the Auditor of State for review of:

AUDITOR OF STATE(130)

Incorporation and organization, 2.2, 2.5, 2.6, 2.8 ARC 3246 ... *N* ..... 9/29/82  
Savings liability, mutual deposits, 3.1, 4.1(2), 4.2(2) ARC 3247 ... *N* ..... 9/29/82  
Conversion from mutual to capital stock ownership, ch 6, filed emergency after notice ARC 3219 ... *FEAN* ..... 9/15/82

chapter 2

Pringle's overview revealed that amendments to chapter 2 coincide with legislative changes. The supervisor now approves all types of incorporation and conversions, etc. Previously, the executive council made approvals for newly incorporated associations. Pringle did not envision problems with the rules which deal specifically with branching. Pringle agreed to make gender changes before the rules are filed. He continued that amendments to chapters 3 and 4 were designed to update language concerning savings accounts to conform with Federal Home Loan Bank Board. He noted that bonus accounts have not been issued for many years.

chapters 3 &  
4

3.1(6)

Schroeder raised question that 3.1(6) might exceed legislative intent. Chiodo concurred. Schroeder was curious if there had been requests to create new Savings and Loans and Pringle replied in the negative.

Royce was directed to research the Banking Department rules to learn if there were restrictions. Schroeder preferred a tightening of the rule without imposing undue constraint on S & L's. Pringle had received no response with respect to the hearing at this time.

chapter 6

Pringle informed the Committee that the rule was needed to address an existing situation where a Savings and Loan institution would not survive unless they can convert to capital stock. New capital will be placed into the system whereas a merger would not do that. He was aware of two other S & L's which might need the rule, also. The association in question is aggressive and confers a benefit to the community, according to Pringle.

In response to Schroeder's question as to its worth, Pringle reported it was \$75 million. He called attention to changes in 6.2(6), which now define "supervisory case."

General discussion of the Department's authority to work with



AUDITOR  
OF STATE  
Continued

a Savings and Loan institution which might be in a precarious financial position. Pringle referred to Code §534.46. He emphasized he was not interested in promoting this rule for every S & L in trouble--the other alternative would be the merger route. He pointed out the change in 6.7(3), second sentence, as requested by Chiodo.

6.7(3)

No formal action.

Committee  
Business  
ch 17A

Chairman Schroeder called for general review of chapter 17A. Holden recalled that, from time to time, the ARRC has considered whether changes should be made in chapter 17A. He thought it might be helpful if they, as a Committee, could make a recommendation as opposed to another legislative committee which would not have broad support. In Schroeder's opinion, ARRC should have the same rights as standing Committees of the legislature.

Royce advised that the ARRC is a statutory creature whose power is to review rules--the authority to introduce bills is not addressed in the law. Royce opined the house and senate could accomplish that.

Schroeder took the position the ARRC should have a better mechanism for slowing down the process as well as allowing the Governor a longer time in which to veto a rule. Discussion of Governor's veto. Royce reasoned there should be a minimum of one year's time and perhaps, there should be no time limit and extend this to all rules. In addition, the Committee's power to object to a rule should not be limited, in his judgment. Chiodo concurred.

Tieden recalled his frustration during the morning review of Conservation rules where the Committee was placed in the position of voting a somewhat meaningless objection. In his opinion, it was highly unlikely that the objectionable rule would ever be challenged in court.

Schroeder favored seeking legislative standing committee status. He presumed that as the Rules Committee, they would probably function under their own set of rules which would provide bipartisan agreement before legislation could be passed out of Committee to the General Assembly. Royce observed that if the Committee had that power, the 45-day delay option would not be needed. General discussion.

Holden expressed interest in a joint meeting of leadership and the ARRC to discuss the issues. Priebe felt it would be important for the ARRC to introduce bills as a Committee of the Whole, requiring 4 out of 6 votes to bring out bills. The Committee would decide from which House the bill would originate. Schroeder concurred with Holden's recommendation to approach the Legislative Council. Tieden announced that he is now a member of that body. After further discussion, the Committee agreed to seek agenda time for Thursday's meeting of the Council.

Motion

Priebe moved that Schroeder, Tieden, Chiodo and Royce be authorized to appear before the Legislative Council Thursday, October

10-12-82

COMMITTEE 14, if possible. After further discussion, Chairman Schroeder  
BUSINESS restated the motion which was to authorize three committee  
Continued members to appear before the Legislative Council concerning  
17A statutory changes; to grant the ARRC standing committee  
status in order to introduce legislation and to determine from  
which house it would be introduced. Further, to address the  
time frame for the Governor's veto of the rules.

Vote Motion carried.

The Committee requested Royce to prepare a synopsis of the 1982  
revision of the Model Administrative Procedures Act.

Recess The committee was recessed at 11:45 a.m. to be reconvened at  
1:30 p.m.

Reconvened Committee was reconvened at 1:45 p.m. with Chairman Schroeder  
in the Chair.

INSURANCE Craig Goettsch, Superintendent, and R. Cheryl Friedman, Attorney,  
DEPT. Securities Division, appeared for review of rules pertaining to  
the Iowa business opportunity sales Act, being chapter 55, ARC  
3244, filed, IAB 9/29/82.

ch 55 Friedman informed the ARRC that the Department had received ap-  
proximately 200 applications and 30 or 40 are pending. Four  
or five have been registered and the remainder have been exempted.  
Goettsch reviewed the purpose of the Act, which is intended to  
curtail illegal business operations in Iowa.

Goettsch, responding to Schroeder, said the Department does not  
handle investigatory matters--they deal with registration or  
exemptions. Violations must be reported to the Attorney General.  
Schroeder was interested in knowing at what point the referral  
is made to the AG. Goettsch replied the decision as to legality  
is made within the Insurance Department.

Holden observed that a large number of changes were made after  
the Notice but Friedman assured him there were only 2 substan-  
tive changes. These were requested by ARRC.

55.4(2) In response to Schroeder's question on 55.4(2), Friedman stated  
that the law allows the Department to assess applicants in order  
to defray administrative expenses and they determined that \$25.00  
was reasonable for the time and paperwork involved. The statute  
does authorize a \$200 registration fee. Schroeder envisioned  
problems.

Goettsch said most requests come from legal counselors whom he  
doubted would oppose the \$25 fee. Goettsch emphasized that it  
is clearly understood the Department does not act as an attorney.  
Royce pointed out the agency cannot prosecute.

Department officials were not opposed to reconsidering their  
position if problems develop. No formal action taken.

10-12-82

REVENUE  
DEPARTMENT

Carl Castelda, Deputy Director, Cynthia Eisenhaur, and Don Cooper, Director, Income Tax Division, were present on behalf of Revenue Department for review of the following:

REVENUE DEPARTMENT[730]

Taxable status of real estate contract sale transactions, 79.2(7)	ARC 3249	.....F.....	9/29/82
Practice and procedure, contested case, rehearing, 7.17(5), 7.20	ARC 3248	.....N.....	9/29/82
Individual income tax, extension of time for filing returns, payment, 39.2(2), 39.5(3)	ARC 3214	.....N.....	9/15/82
Individual and corporation income tax and franchise tax, 39.5(7), 39.6, 39.7, 40.6, 40.9, 40.10(3), 40.11, 40.14, 40.17(3), 41.5(3), 43.3, 43.4, 52.5, 53.2(3) "b", 53.7, 53.8, 58.5, 59.2(3), 59.7	ARC 3215	.....N.....	9/15/82
Cigarette tax, manufacturer's samples, 82.10	ARC 3216	.....N.....	9/15/82
Games of skill, chance, bingo and raffles, 91.4, 91.5(2), 91.6(1), 92.8, 94.8, amended notice	ARC 3217	.....AN.....	9/15/82

39.2 and 39.5(3) No questions re 79.2(7), 7.17(5), 7.20. In re 39.2 and 39.5(3), Holden questioned statutory authority. Cooper said more time for filing, not payment, would be extended to taxpayers. Castelda confirmed that tax receipts have dropped. He was willing to provide members with a quarterly analysis. Castelda continued that amendments published in ARC 3215 reflect statutory mandates of 1982 Acts--HF 2171, HF 2747, SF 400, SF 2180, HF 396, HF 2486 and HF 2479.

40.9 Holden referred to 40.9 and questioned meaning of the "alcohol fuel credit." Castelda thought it was fuel used in making gasohol.

43.3(7)b Although requirements in 43.3(7)b were not new, Holden was bothered by the fact that the taxpayer was required to notify the Department.

Priebe thought the Iowa Revenue Department was notified by federal authorities whenever the taxable status for an individual or corporation was changed. Castelda explained the exchange agreement for audits over certain amounts and declared that, from a practical standpoint, that audit program was one of the most cost-effective.

43.3(5) Castelda reviewed the process used by the Department in 43.3(5) with respect to overpayment credit. He pointed out that the normal audit time is three years. Castelda commented the Department believed the problems with sample cigarettes was being resolved. A formal AG's opinion [AGO#82-7-10] reached a different conclusion than that of the informal opinion. Clarifying legislation on the matter would be offered to the next General Assembly, also. Castelda noted the amended Notice to 91.4 gambling rules added proposed changes to rule 91.4. Legislation is planned to implement technical corrections. Castelda admitted there are problems with the gambling law and he offered to meet with any legislative groups relative to the law.

PLANNING & PROGRAMMING The following agenda was before the Committee:

PLANNING  
PROGRAMMING

PLANNING AND PROGRAMMING[630]

In-school public service employment program, 14.4	ARC 3253	.....F.....	9/29/82
Purpose of the agency, ch 1	ARC 3245	.....N.....	9/29/82
CETA, complaint procedure, 6.5, filed emergency after notice	ARC 3227	.....FEAN.....	9/29/82
Community development block grant technical assistance program, ch 24	ARC 3229, also filed emergency	ARC 3228	N 9/29/82

Planning and Programming was represented by JoAnn Callison, Dave Patton, Joe Ellis, Delores Abels-Farmer, Mike Miller and Jane Horning.

14.4 Holden inquired if there were a duplicative effort with Public Instruction in regard to rule 14.4. Callison responded that the

10-12-82

PLANNING & rule pertains to activities outside school hours. Tieden  
PROGRAMMING called attention to the fact that all 99 counties were not  
Continued included in 14.4(12). Callison admitted that the program was  
not active in all counties but she declared that all 99 counties  
should have been listed in the rule.

ch 1 Priebe in the chair. According to Abels-Farmer, Chapter 1  
dealt with reorganization of the Department since Ed Stanek  
became Director. Also, the criminal and juvenile justice  
agency was addressed.

Ellis, CETA complaint officer, explained the program will  
continue until implementation of the new jobs training pro-  
gram. Ellis said some specific changes would be made. Ac-  
cording to Ellis, the rules were adopted under emergency pro-  
visions for compliance with federal mandate. No opposition  
was voiced at the public hearing.

ch 24 General discussion of chapter 24, community development block  
grant technical assistance program. No formal action.

Recess Priebe recessed the Committee at 3:00 p.m. to be reconvened  
at 3:05 p.m. Committee was reconvened at 3:10 p.m. in Com-  
mittee Room 116.

HEALTH The following Health Department rules were considered:  
DEPARTMENT

HEALTH DEPARTMENT[470]  
Funeral directors, unembalmed bodies and license renewal. 146.1(7), 147.2(3), 147.2(9), 147.98(3), 147.101(4) ARC 3201 F. 9/15/82  
Medical examiners, fees. 135.102(1), 135.108(1) ARC 3240 N. 9/29/82  
Funeral directors, mandatory disclosure, services defined. 147.7, 147.200(3) ARC 3202 N. 9/15/82  
Barbers, license fees. 160.6(1), 160.6(3) ARC 3203 N. 9/15/82  
Certificate of need review for HMO, exemptions. 202.4(4) and 202.4(5) ARC 3255, also filed emergency ARC 3254 N.F.F.F. 9/29/82  
Certificate of need, extension of review time. 202.7(4) ARC 3257, also filed emergency ARC 3256 N.F.F.F. 9/29/82  
Certificate of need, standards. 202.5(5) ARC 3259, also filed emergency ARC 3258 N.F.F.F. 9/29/82  
Cosmetology - Special Review - School instructors 149.2(5) IAC

Health Department representatives included: Peter Fox, Mark  
Wheeler, Hearing Officer and Legal Advisor, P. Carlsen, D.  
Ancell, Jeanine Freeman, Assistant Attorney General, Jim Krusor,  
Medical Examiners. Also present: David Hagemeier and Art  
Spies, Iowa Hospital Association; Marian Lakken, Cosmetology  
Institute; Luella Hubbard, H.A.I.R.; Nancy Welten and Grace  
M. West, Cosmetology Board; and Salvador Salgado, president,  
Iowa Beauty School.

chapter 147 No questions were posed concerning amendments to chapter 147.

135.102, Krusor explained the rationale for increasing the fee from  
135.108 \$150 to \$250 in 135.102(1) and 135.108(1). The license will  
be issued for one year, plus part of a second year.

147.7 According to Fox, there was some confusion in 147.7 as to who  
is required to sign the statement of funeral costs so the  
Board is clarifying the rule.

Priebe recommended that 147.7 be amended by adding "or his  
apprentice" following "director." Fox was amenable. No  
questions were posed re 160.6(1).

160.6(3) In reviewing 160.6(3), Fox said the barbers are encouraged to  
renew their licenses on time. Schroeder indicated he had



HEALTH received complaints about the continuing education programs for  
DEPART- barbers. Freeman, with respect to rules governing Health Main-  
MENT tenance Organizations and Certificate of Need, presented the  
Cont'd Health Department's perspective as to why the rules were proposed  
HMO's at this time.

Royce called attention to the central issue from the standpoint of ARRC which was the question of statutory authority concerning the exemption of HMO's. In his opinion, there is a limited exemption and he contended that could be expanded only through the statute.

Freeman responded that the Department utilized rulemaking in order to maintain federal funding--\$600,000. They recognized the legal issue but cited §135.72 as the Department's authority to adopt procedural rules and additional criteria.

The Department was cognizant of the argument presented by the Iowa Hospital Association as to whether the rule was inconsistent with the Iowa Certificate of Need law. [1982 Acts, ch 1194] However, Freeman declared "The Health Department is in a real bind as far as federal funding is concerned" and they wanted to protect the public. According to Freeman, it was unlikely the rule would ever be used--certainly, not within the near future. The Department was willing to seek legislative support in January, but meanwhile, they "just wanted to preserve funding."

Responding to Tieden, Freeman said the Iowa Hospital Association had presented comments to the Health Facilities Council. The public hearing was scheduled for October 20.

Spies spoke to the fact that the Iowa Hospital Association believes rule changes would be more appropriate after the law change--law clearly states that HMO's are subject to rules review. He contended that all providers of Health Care should be subject to the Certificate of Need review.

There was discussion of a possible sunset date of June 30, 1983. Freeman indicated a willingness to include such a provision in the rule.

Freeman informed Holden that 202.9(5)--definition of "medically underserved"--was federal language. No other questions.

Special At the request of the Committee, Cosmetology officials were present  
Review for special review of subrule 149.2(5) which requires a minimum of  
Cosme- 2 instructors for every 30 students enrolled in a cosmetology school.  
tology Tieden apologized for a misunderstanding involving some of his constituents who had planned to attend this meeting. He reported that a Calmar area school with 15 students opposed the minimum requirement as being unnecessarily restrictive.

West introduced Welter who was unaware of communication with the Calmar School. Welter emphasized that the rule had not been changed--only clarified. The Board's position was that one instructor could not adequately manage the operation and instruct students. The public must be protected.

HEALTH DEPT. Cont'd Cosmology Salgado pointed out that Iowa achieved the highest standards in the United States. He referred to student problems of tardiness, absenteeism and responsibility in general. Holden queried, "Is that the state's responsibility?"

Lakken reasoned the Board has an obligation to ensure that students receive proper education in cosmetology facilities. After general discussion, the Committee tentatively agreed to place the subrule on the December agenda, preferably, afternoon of December 14.

Recess Chairman Schroeder recessed the Committee at 4:45 p.m. to be reconvened Wednesday, October 13.

Reconvened Chairman Schroeder reconvened the Administrative Rules Review Committee at 9:05 a.m. in Committee Room 22, Statehouse, Des Moines, Iowa. Members present: Schroeder, Priebe, Holden, Tieden, Chiodo. Not present: Clark. Also present: Royce, Oakley, Barry and Haag.

SOCIAL SERVICE Judith Welp, Rules and Manual Specialist, C. S. Ballinger, Dan Gilbert, Chris Ill, Norma Ryan, M. E. Imlau, Harold Poore, Don Kassar and Jim Krogman represented the Department of Social Services for review of:

SOCIAL SERVICES DEPARTMENT[770]  
 Jail facilities, training for personnel. 15.11(2)a"(1), 15.11(2)b", 15.11(3) ARC 3193...F..... 9/15/82  
 Food stamp program, administration of. 65.3 ARC 3194 ...F..... 9/15/82  
 Intermediate care facilities, determining the maximum reimbursement rate. 81.6(16)"b" and "c" ARC 3195 ...F..... 9/15/82  
 Family and group day care homes. 110.5(1), 110.9 ARC 3196 ...F..... 9/15/82  
 President's free food program, ch 73 ARC 3197 ...N..... 9/15/82  
 Medical assistance, transportation to receive medical care. 78.13 ARC 3198 ...N..... 9/15/82  
 Principles governing reimbursement of providers of medical and remedial care. 79.1, filed emergency ARC 3192 ...FE..... 9/15/82  
 Principles governing reimbursement of providers of medical and health services. 79.1 ARC 3238 ...N..... 9/29/82  
 Child support recovery, setoff against state and federal income tax refunds. 95.6, 95.6(2), 95.7 ARC 3236 ...N..... 9/29/82  
 Child support recovery, offset unemployment benefits. 95.8 ARC 3239 ...N..... 9/29/82  
 Social services block grant, advisory committees. 131.7 ARC 3199 ...N..... 9/15/82  
 Foster care services, definitions. 136.1(1), 136.1(2), 136.1(4) ARC 3200 ...N..... 9/15/82  
 Foster care services, eligibility, review committees. 136.2, 136.3, 136.6(4) ARC 3237 ...N..... 9/29/82  
 Foster care, temporary payment system. 137.11(3), filed emergency ARC 3191 ...FE..... 9/15/82

15.11(2) Schroeder and Tieden concurred that 15.11(2)b(4) was somewhat unrealistic. However, Royce reported the amendments were viewed as technical in nature by those who work with jail standards.

65.3 No questions were raised re 65.3.

81.6(16) In re 81.6(16), Tieden questioned incentive factor to the 74th percentile. Welp noted the rule had been initiated several years ago when the federal government required the payment standards to be reasonably cost-related. The ceiling in place at that time was the 74th percentile. She agreed to provide further information after research.

110.5(1) Discussion of 110.5(1) which sets forth standards to be met by group day care homes. Responding to Priebe, Welp explained the registration of the homes is "self-type" with only spot checks and follow-up on complaints by the Department. Priebe questioned prohibition of occupancy beyond the second floor in the group homes. Poore pointed out that the rule coincides with rules of the fire marshal. There was general discussion. Priebe declared there are many potential 3-and 4-floor structures which are precluded by this rule. He requested the Department to reconsider and Poore agreed to review the matter with the fire marshal and make amendments, if possible.

SOCIAL  
SERVICES  
ch 73

In re chapter 73, Priebe voiced opposition to the heading "President's Free Food Program" as being inappropriate. Welp distributed material containing proposed amendments for chapter 73 which title would be changed to "Federal Surplus Food Program. Welp explained the eligibility certification process which was simplified so that volunteers could continue to distribute food at the local level. There was general discussion of the surplus food program.

In response to Holden, Welp admitted the Department was presumptuous in printing a manual before the rules were adopted.

78.13(1) In re 78.13(1), Medical Transportation Claim, Schroeder questioned necessity of paper work for each trip. In his opinion, submitting the claim once a month would be sufficient and he recommended that DSS submit an alternate solution.

79.1 Under rule 79.1, hospitals will be reimbursed prospectively according to Welp. Priebe had problems with use of "reasonable cost." Ballinger explained a per diem rate will be in effect for the entire fiscal year. The Department will use a "market basket index" based on goods and services purchased by hospitals and carried from the base year, 1981. That will set the amount to be paid for each Title XIX recipient.

Priebe questioned "For hospitals where medical assistance recipients account for fifty-one percent or more of hospital's total bed days...the hospital and department will negotiate an appropriate rate...." Kassar indicated that was federal language and no hospitals meet that criteria. Holden opined there would be no long-term effect on state payments and he was interested in knowing how DSS would contain costs.

Kassar referred to the supplemental request and noted there were few "lined items" for hospitals in their Title XIX budget. He continued the percentage of the base year would dictate the amount to be spent, taking into consideration caseload, hospital utilization, length of stay, etc. Oakley questioned department officials regarding the appropriation and funding process. Kassar maintained the index was more predictable than hospital costs. He concluded the index would be between 8 and 9 percent.

Kassar informed Oakley that the formula was not based on the amount of money available now--the supplemental request was based on their anticipated need for hospital reimbursement. The index was based on the percentage of increase anticipated for this year and next year. Adjustments will not be made.

Holden pointed out two defects. In his opinion, the base may be faulty and include unreasonable cost, which could encourage overutilization in order to keep costs up. According to Kassar, last April the Department addressed this issue by mandating changes for medical assistance. They mandated that over 100 types of treatment would be performed on an outpatient basis as opposed to inpatient care. When the length of hospitalization exceeds the 50th percentile, controls trigger review by the Iowa Foundation.

10-13-82

Tieden inquired if any allowance was made for unusual expenses which might occur and push costs higher. Kassar indicated they were cognizant of that possibility--an example, adding a new wing in a year.

Welp noted that, due to the very complicated reimbursement Medicaid system, the Department rewrote the first part of the rule and used a chart for methodology. She reported that the following language "Noninstitutional providers are reimbursed under medicare methodology--other types of providers are reimbursed on methodology established by the Department" would be inserted in the final version. Welp emphasized the rule does not affect the 2½ percent reduction.

79.1(2)

Welp informed Holden that 79.1(2) implemented the appropriations bill. Holden understood the reimbursement to be to services. He maintained DSS was including product cost in services and service should not include the product. Kassar stated legislation would be sought to change that. Priebe and Holden questioned statutory authority. Department had requested an AG opinion which held that the product cost could not be exempted for optometrists. Kassar pointed out pharmacy had been exempted in the legislation. The Department had requested the 2½ percent reduction. Department officials agreed to supply **Copies of the AG opinion to Committee members.**

ch 95

Re amendments to chapter 95, Ill informed Schroeder that DSS works with other states when necessary to collect child support payments.

131.7

Priebe expressed opposition to a 32-member committee in 131.7. He suggested that legislation should be drafted to reduce the size of the Advisory Committee.

136.1

Welp stated that language which was inadvertently omitted in 136.1(2) would be included in the adopted version. Schroeder referred to 136.2(5)b and d and voiced the opinion that foster parents should be allowed to participate. Imlau responded that under federal law parents' rights are not forfeited. The ultimate goal is to return the child to the parents. Holden concurred that foster parents should still be involved.

Priebe viewed 136.2(5)a as providing too much authority to the district administrator. He opined there should be representatives from the judiciary and he recommended revision of the rule. Imlau defended the practice proposed by the Department. Oakley spoke in support of the Department's position.

Welp agreed to review Schroeder's request. No recommendations re 137.11(3).

Chairman Schroeder rescheduled review of rules of Credit Union, Blind Commission, Commerce Commission, Housing Finance Authority, and Department of Transportation had been notified to appear in the afternoon.

Recess

Committee was recessed for five minutes at 10:45 a.m.



10-13-82

PUBLIC  
EMPLOYMENT  
RELATIONS  
BOARD

John E. Beamer and Steven F. McDowell appeared on behalf of the Public Employment Relations Board for review of:

PUBLIC EMPLOYMENT RELATIONS BOARD[660]

General practice and hearing procedures documents 2.13, 2.15(1)"d" ARC 3220 .N..... 9/15/82  
Elections, certification of results, 5.1(1) ARC 3221 .N..... 9/15/82  
Negotiations and negotiability disputes, acceptance of proposed agreement, 6.4 ARC 3222 .N..... 9/15/82  
Impasse procedures, fees of neutrals, 7.2 ARC 3223 .N..... 9/15/82

No questions were posed with respect to 2.13, 2.15 and 5.4(1). Discussion of rule 6.4, which was amended to provide more flexibility for negotiating units. There was lengthy discussion of qualifications for the 130 arbitrators--10 of whom are located in Iowa. A Master's Degree or doctorate in industrial relations would provide a good background for an arbitrator. In addition, experience in school finance, economics and money matters would be helpful. The ability to remain neutral was probably the most important prerequisite.

According to Beamer, the agency had made a concerted effort to encourage Iowans into the continuing education program for arbitrators. Schroeder asked Beamer to provide him with a copy of the necessary qualifications.

Priebe thought length of day should be defined. Beamer preferred to omit that because of the possibility of a hourly charge after 8 hours. He concluded that entering the field of arbitration was a step-by-step process of education, conditioning, training and experience. The process used in random selection of arbitrators was reviewed.

Tieden inquired if school boards were well aware that PERBoard provided arbitration service. Beamer said they were encouraging smaller communities to utilize their office. Parties are billed, costs are split and receipts are forwarded to the comptroller.

PHARMACY

Norman Johnson was present for review of the following agenda:

PHARMACY EXAMINERS, BOARD OF[620]

Minimum standards for evaluating practical experience, 3.3(2), 3.5(2)"b" and "c" ARC 3241...F..... 9/29/82  
Continuing education program attendance, 6.8(1) ARC 3242 .....F..... 9/29/82  
Medical assistance Act participation, 6.10, filed emergency ARC 3210 ....N..\*FE..... 9/15/82

No substantive questions or comments.

EMPLOYMENT  
SECURITY  
(Job  
Service)

Joseph Bervid and Paul Moran represented Job Service for review of:

EMPLOYMENT SECURITY[370]

Employers, temporary emergency tax for 1983, 3.40(7) ARC 3208 .....F..... 9/15/82  
Claims and benefits, unemployed parents, child support intercept, 4.41, 4.42, 4.59 ARC 3209 ..F..... 9/15/82  
Federal supplemental compensation program, 4.50, filed emergency ARC 3250 ....FE..... 9/29/82

No changes had been made in the filed rules since they were before the Committee under Notice. According to Bervid, subrule 4.50(5) would terminate on April 2, 1983. However, there was some indication the federal government might extend the date.

ENVIRON-  
MENTAL  
QUALITY

Bruce Hemming and Ron Kalpa appeared on behalf of Environmental Quality for review of refuse of solid waste, chapter 39, ARC 3211, Notice, IAB 9/15/82. In response to Schroeder's question as to how strict they were with respect to coal residue, Kalpa said most power plants do not use plant sites for any sort of long-term storage. There had been a situation where DEQ inter-

ENVIRONMENTAL  
QUALITY  
Continued

vened to have an ash pile removed from wetlands. Kalpa explained that if ash is designated for road use, it does not fall within the definition of solid waste. DEQ has worked with utilities association in developing the rules. Schroeder asked that DEQ officials call Pottawattamie County Engineer to ensure the rule would not create problems for them with respect to fill base.

Kalpa pointed out if they stay within these engineering limits, they can do so without DEQ review before the fact and they can apply for a variance. Schroeder suggested that DEQ consider changing "ton" to "3000 lbs."

No formal action.

PUBLIC SAFETY Wilbur Johnson, State Fire Marshal, Peter Adler and Jen Worthington appeared on behalf of the Department of Public Safety. Also present: Don Hauser, Iowa Manufacturers Assn. The following was before the Committee:

PUBLIC SAFETY DEPARTMENT(680)

Fire escapes and exits, 5.50 to 5.65, 5.100 to 5.105 ARC 3243 ..... 9/29/82

Johnson pointed out Iowa Code Chapter 103 re exits and fire escapes was repealed. [1981 Acts, ch 46, §3] He had attempted to remove conflicts between the Building Code and the Fire Code at the request of the legislature.

5.52(3)

Johnson suspected that some of the proposed rules might conflict with OSHA. He noted the public hearing was scheduled for October 19. He continued that his objective would be to work out all conflicts. Johnson called attention to a word that was omitted from 5.52(3), 4th line, "diagonal" should be inserted before "dimension."

Holden was informed there are 10 inspectors. Royce called attention to the fact that the Uniform Building Code is not a statewide code. Johnson stated that adoption of this code was voluntary. Johnson thought the Fire Marshal's inspections should be limited to public buildings but that would require legislation. Holden envisioned sporadic enforcement even if cities were to have a uniform code. Johnson had been informed some cities would assure inspection but not enforcement.

Holden called attention to the fact that the State Capitol would not meet specifications. Johnson agreed but added it should be "sprinklered." Exits and escapes for the building have been explored, but the overhanging ledges prohibit their use. There is a plan designed for a smoke and heat protection system for the building. He had concern for offices on the upper floors. The attic is equipped with heat detectors and security guards offer some protection.

Johnson declared he would continue to maintain the present inspection program for nursing homes, hospitals, schools, child care facilities and complaints.

5.58(1)

Responding to Schroeder's question of meaning of exception 3 in 5.58(1), Johnson said that 3-story structures would

PUBLIC  
SAFETY  
Cont'd

not be required to have stairwell enclosures, if sprinklered. There could be open atrium, open stairways, etc.

Hauser quoted from Code §100.35 "all buildings or structures in which persons congregate...whether publicly or privately owned...." He interpreted that as not being limited to manufacturing. Hauser emphasized IMA would support reasonable rules. He stressed the manufacturers were well regulated in the employment safety by OSHA--exemption for manufacturers by the Fire Marshal would be an appropriate action.

Holden interjected that such an exemption should not be limited to manufacturing. Johnson reiterated the rules were not intended for manufacturing.

Schroeder was of the opinion that 5.65(2)c could create problems for buildings such as Veterans Auditorium. Johnson referred to Nepstead and Wilson cases which held there is a liability on the part of the state.

## Recess

Chairman Schroeder recessed the Committee at 12:05 p.m. for lunch. Committee was reconvened at 1:25 p.m.

CREDIT  
UNION

Betty Minor and Jim Brody appeared on behalf of the Credit Union Department for review of:

## CREDIT UNION DEPARTMENT[295]

Bylaw amendment voting procedure — mailed ballot, ch 12 ARC 3212.....F..... 9/15/82  
Merger voting procedure — mailed ballot, ch 13 ARC 3213 .....F..... 9/15/82

Minor reported that chapter 12 was identical to the Noticed version. She noted a conflict between 13.5(2) and 13.4(1), which would be corrected under emergency provisions if the Committee had no objection. In conclusion, Minor said that four mergers were pending at this time.

BLIND  
COMMISSION

Anthony Cobb was present for review of organization, 1.3, ARC 3218, Notice, IAB 9/15/82. No questions were raised on the "housekeeping" amendment.

COMMERCE  
COMMISSION

The following agenda was before the Committee:

## COMMERCE COMMISSION[250]

Uniform systems of accounts — electric, gas, water, 16.2(9), 16.2(10), 16.3(9), 16.3(10), 16.4(2) ARC 3225 ...F..... 9/15/82  
Uniform systems of accounts - telephone, 16.5(15)"a", 16.5(16), 16.5(17), 16.5(18), 16.5(20)"c", 16.5(34), 16.5(39), 16.5(40) to 16.5(44) ARC 3226 ..F..... 9/15/82  
Licensed grain dealers, filing of bond, 13.9, filed emergency ARC 3224 .....FE..... 9/15/82  
Certification of gas appliances, ch 26, filed emergency ARC 3187 .....FE..... 9/15/82

Ron Polle and Ben Stead, Commerce Counsel, represented Commerce Commission.

## 13.9

In re 13.9, Schroeder had received complaints about inspections and frequency of same. Polle defended the emergency adoption of 13.9 which was intended to conform with the law change. Priebe was puzzled by the delay in implementation of the rules since the law became effective in May.

Tieden had received complaints with respect to audit costs but Priebe pointed out that was the fault of legislation.



COMMERCE  
COMMISSION  
Continued  
HOUSING  
FINANCE  
AUTHORITY

No questions were posed with respect to chapter 26.

George Cosson was present for review of:

HOUSING FINANCE AUTHORITY[495]

General revenue bond procedures and small business loan program, chs 4 and 5 ARC 3207.

also filed emergency ARC 3206.....N.Y. F.E..... 9/15/82

Cosson briefly stated the purpose of the rules which were intended to implement HF 2464, 1982 Acts, Chapter 1173, was to allow the Authority to provide loans to small businesses. Workshops were held in different parts of the state and many comments were received. However, no one appeared at the public hearing.

In September, the agency succeeded in selling \$31 million in bonds--\$14 million for single-family dwellings and \$17.4 million for apartment projects. Cosson stated that funds were available. However, there are extremes from one lender to another. He continued that procedures set out in chapter 4 would also be followed for loans to group homes for developmentally disabled. Because loans are revenue bonds of the agency--not general obligation bonds, the Authority considers underwriting of loans to be a matter between the lender and borrower. Also, the interest rates secured are negotiated between the lender and borrower as are security agreements. Cosson described the revenue bond concept which involves a bank making a loan for small business development with some of the paper work passing through the Housing Authority. The interest rate being paid to the lender is exempt from federal income tax. The tax equity and fiscal responsibility Act of 1982 will result in the Authority making changes in the program. Certain recreational activities will be restricted. Congress spelled out very clearly that loans could not be made for massage parlors, suntan parlors, hot tub facilities, etc.

4.6 On the right to audit--4.6(220), 1st line--Schroeder recommended that "or its designee" be added after "authority." Cosson concurred.

5.10(6) Royce pointed to one problem that was largely created by the statute. The Act defines small business but excluded the "practice of a profession." The Authority had defined "profession" by listing some, but not all, licensed professions. In Code Chapter 258A, every profession is listed--Royce wondered if it were legislative intent to exclude them from participation in this program.

Cosson admitted that was a strong point over which the Authority had labored at great length. He would welcome further legislative explanation. Cosson noted that when the rules were adopted, a motion had been made to exclude Barbering and Cosmetology but it lost on a 5-3 vote. He pointed out that a subsequent filing provides a sunset of January 25, 1983. The Authority will definitely make some changes in the rules.

Discussion of definition of "good moral character" and inherent problems with the vague term--5.23. No other questions.



TRANSPORTATION The following agenda was before the Committee:  
DEPARTMENT

TRANSPORTATION, DEPARTMENT OF [S20]  
Contested cases, [01.B] 3.1, 3.2, 3.14, 3.15 ARC 3230 ..... F..... 9/29/82  
Rural railroad-highway grade crossings, highway-railroad crossing projects, [06.A] ch 1; [06.C] ch 3 ARC 3204 F..... 9/15/82  
Railroad transportation division, [10.A] ch 1; [10.B] chs 1 to 6; [10.C] chs 1 and 2 ARC 3205 ..... F..... 9/15/82

Department representatives present were R. H. Given, Deputy Director, Les Holland, Dan Franklin, Neil Volmer, Mike Fitzgerald and Stephen W. Roberts, Railroad Finance Authority attorney.

Priebe questioned need for attorneys to send address changes to DOT [01,B 3.15]. Fitzgerald was unaware of any problems.

According to Holland, amendments in ARC 3204 and 3205 were intended to update all rules of the Railroad Division to comply with federal statutes, uniform manuals and for clarification. The amendments were published under Notice and sent to all railroads. No adverse comments were received.

Schroeder asked about ordinances which allow communities to notify railroads 3 or 4 times and then, proceed to repair a crossing and assess the railroad. Holland said that procedure was working quite well. Schroeder consulted with Holland concerning two problems in his area.

Holland called attention to the fact that legislation changed the branch line assistance program which was reflected in the rules. There was discussion concerning the litigation with respect to railway diesel fuel tax.

Highway  
Division

In a special review, Tieden reported he had received complaints from 3 farmers who were stopped from harvesting "hay" grown adjacent to the highway along their land. Given cited Code section 317.11 which prevails. However, the Department had provided Tieden with a copy of their enforcement policy. Priebe interpreted the law as being specific. One problem would be responsibility under other Code sections to prevent obstructions on rights of way--chapter 306.

Tieden maintained there was misunderstanding and lack of uniformity in enforcement of the Department's "policy." Royce took the position that DOT should utilize rulemaking procedure since the policy statement affects the public. Priebe concurred. Department officials admitted there was a wide variation of enforcement throughout the counties. Given agreed to provide Priebe a report on expenditures for rights of way. It was agreed the matter should be studied further.

Committee  
Business

Priebe moved that the minutes of the September meeting be approved as submitted. Motion carried.

Discussion of possible amendment to chapter 17A to provide for staggered terms for Committee members. General agreement--as the law exists, all terms will expire in 1983.

There was discussion of Senator Holden's plan to attend the NCSL meeting in Oklahoma City November 17-19. In the event

10-13-82

Committee the Senate does not follow past policy of reimbursing him for  
Business related expenses and per diem, the Committee agreed that he  
should be paid from 17A funds.

Royce asked and received unanimous consent to purchase a monthly  
newsletter with a quarterly master report concerning licensing  
matters at a cost of \$65 per year.

Royce also informed the Committee of the availability of a more  
comprehensive publication priced \$500 and entitled "Clearing-  
house on Licensure." Schroeder asked that Royce contact  
Legislative Service Bureau as to whether or not it was in their  
library.

No Agency representatives were not requested to appear for any of  
Reps the following:

REAL ESTATE COMMISSION[700]

Brokers and salespersons, branch office, 1.25(2) ARC 3251 ..F..... 9/29/82  
Brokers, broker-associates, and salespersons, trust account, responsibility, 1.27, 1.27(5), 1.30 ARC 3252 ..F..... 9/29/82


REGENTS, BOARD OF[720]

Personnel administration, "days" defined, appeals, duration of eligibility lists, 3.14(27), 3.127, 3.67(2) ARC 3188 ..F..... 9/15/82  
Personnel administration, project appointment, 3.95 ARC 3189 ..F..... 9/15/82  
Personnel administration, probationary period, 3.90(2), 3.90(4) ARC 3190 ..F..... 9/15/82

The next meeting was scheduled for November 9 and 10, 1982.

Adjourned Chairman Schroeder adjourned the Committee at 3:30 p.m.

Respectfully submitted,

  
Phyllis Barry  
Assisted by Vivian Haag

APPROVED:

\_\_\_\_\_  
CHAIRMAN