

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting

The special meeting of the Administrative Rules Review Committee was held Tuesday, Wednesday, and Thursday, August 18, 19 and 20, 1987, State Capitol, Des Moines, Iowa.

Members Present

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

Convened

Chairman Priebe convened the August 18 meeting at 10:10 a.m. Representative Parker on vacation.

NATURAL
RESOURCE
COMMISSION

The following agenda was before the ARRC and was presented by Mark Landa, Morris Preston, Rick McGeough, Nancy Exline, Doyle Adams, and Vic Kennedy:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"

Saylorville multiuse trail, 66.1"4," 66.2"3" ARC 7791 F 7/29/87

Motor regulations, West Lake, Osceola, 45.4(2)"b" ARC 7789 N 7/29/87

Keg beer rules, minimum age to sign responsibility agreement, 63.3, 63.7 ARC 7790 N 7/29/87

NATURAL RESOURCES DEPARTMENT[561]

State emergency response commission, mission and operations, chs 100 and 101 ARC 7763 F 7/15/87

Groundwater hazard documentation, ch 9, filed emergency ARC 7769 F.E 7/29/87

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"

Amended economic impact statement, underground storage tanks, amendments to ch 135, IAB 5/20/87 N 7/29/87

45.4(2)

Discussion of amendment to 45.4(2) which, according to McGeough, was in response to request by the city of Osceola. No questions.

ch 63

Landa gave brief overview of amendments to 63.3 and 63.7. Doyle raised question as to specifying age 21 and recommended use of "legal age to consume beer or alcohol." Landa agreed to ensure compliance with the statute.

chs 100,101
ch 9

No recommendations re chapters 100 and 101. Kennedy reviewed chapter 9 which was mandated by 1987 Acts, HF 631. Forms had been sent to all 99 County Recorders prior to July 1, 1987. A second set of emergency rules was submitted July 31 to address problems of administration re filing of the forms. [8/29/87 IAB] Priebe had received complaints from county recorders re increased workload and cost. Kennedy pointed out that very few hazardous dump sites exist in the state. He urged the Committee to wait for results of the public hearing before taking any action. There was Committee consensus that an economic impact statement should be requested. Kennedy pointed out that there were no penalties. A signature on the form is not required.

NATURAL
RESOURCES
DEPT
Continued

Kennedy indicated that subrules 9.2(5), (6) and (7) were rescinded in the amended version, which became effective July 31. No formal action taken since the Committee wanted to contact County Recorders.

ch 135

Preston discussed the amended Economic Impact Statement on underground storage tanks. He noted that nonpetroleum tanks were required to have secondary containment which nearly doubles the cost of a tank. Priebe and Landa discussed the need for a five-year variance in emission standards so that Iowa coal can be used by an REC in Priebe's area.

ch 63

Chairman Priebe recognized Exline who responded to Doyle's recommendation relative to chapter 63. She stated that their Assistant Attorney General had concurred that it would be impractical to require an 18- or 19-year old to be "responsible" for the conduct of a 21-year old. An administrative decision was made for responsible party to be 21. Doyle could foresee problems with statutory conflict and Adams agreed to visit with the staff attorneys on the matter. No questions re 66.1"4".

GENERAL
SERVICES

The following was before ARRC with Jerry Gamble, Kathy Williams, and Major Earl Usher, Capitol Police:

GENERAL SERVICES DEPARTMENT[450]

Use of grounds in the capitol complex. 1.6(13), filed emergency ARC 7760 7.15.87.

1.6(13)

According to Williams, the amendment was emergency adopted to address incidents occurring after hours on the capitol grounds. A Notice of Intended Action would also be submitted to allow for public input.

Usher advised Tieden that a good working relation exists among capitol police, city law enforcement personnel, and the state patrol. Discussion of the definition of "public use." Department officials stressed that it was not their intent to create problems for the legislature or employees or to limit public access. Usher cited problems with large groups in garden areas south of the capitol. No arrests have been made, however.

Tieden emphasized the importance of maintaining good public relations. Priebe wondered about the possibility of requiring groups to ask permission for assembly after hours or extending the curfew to midnight.

Doyle suggested exceptions for those who might be on the grounds before 6 a.m. and he asked if the intent were to parallel hours with those of city or state parks. Usher assured the Committee that problems had ceased following the posting of signs in prominent locations on July 1. Clark voiced support for eleven o'clock curfew which coincides with all other parks. No action taken.

PUBLIC
SAFETY.
DEPARTMENT

Wilbur R. Johnson, Fire Marshal, and Micheal R. Coveyou appeared for residential facilities, and self-service motor fuel dispensing stations, 5.305, 5.306(3), 5.607 to 5.613, ARC 7757, Filed, IAB 7/15/87.

Johnson explained that amendments in Item 2 would be helpful to facilities in obtaining federal funds. National standards were followed. Several hearings had been held on the rules and Johnson was not aware of major opposition. Changes had been made in response to comments. No Committee action.

INSURANCE
DIVISION

Fred Haskins represented the Insurance Division for review of financial guaranty insurance, chapter 22, ARC 7752, Filed, IAB 7/15/87. The scope of reserve requirement had been narrowed following Notice. No Committee comments.

AGRICULTURE
& LAND
STEWARDSHIP

John Whipple and Daryl Frey were present for review of new rule 8.7 relative to groundwater protection fee, ARC 7776, Notice, IAB 7/29/87. No recommendations.

ARCHITEC-
TURAL
EXAMINING
BOARD

K. Marie Thayer and William Dikes were present for consideration of registration, rules of conduct, 2.1(3), 2.4, 4.1(6), ARC 7751, Notice, IAB 7/15/87. Dikes indicated that the amendments were the first of several intended to comply with 1987 legislation.

Thayer noted that reciprocal application fee would now be set out in the rules. In response to Tieden, Dikes expressed his opinion that continuing education requirement was good for only certain elements of the profession. Many out-of-state registrants drop out because they oppose the paperwork involved with CE. Dikes stated that NCRB did not favor Iowa's CE requirements.

He continued that businesses would be listed and identified but not registered. Each architect would have a different identifying seal.

Profession-
al Licen-
sing &
Regulation

Priebe brought up the matter of placement and numbering in the IAC for the five examining boards under the Professional Licensing and Regulation Division within the Commerce Department, i.e., Accountancy, Architectural, Engineering, Landscape, and Real Estate. Barry had sought guidance in this matter and Thayer had requested separate numbers for each Board. Suggestions for the agency identification numbers were 193 for the Division and 193.1 to 193.5 or 193A to 193E for the Boards. Thayer emphasized that each Board was autonomous with respect to rule making. Burnett agreed to work with the Division and Barry.

CORRECTIONS
DEPARTMENT

Fred Scaletta represented the Department for classification criteria and procedures for inmates regarding level of security and treatment, 20.16, ARC 7781, Notice, IAB 7/29/87.

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CORRECTIONS DEPARTMENT Continued William Angrick, Citizens' Aide/Ombudsman, spoke in support of the rule. Scaletta advised Clark that "availability of resources" in the definition of "Classification" meant "at the time" and was not relevant to financial resources.

NURSING BOARD Ann Mowery represented the Nursing Board for accredited or approved nursing program, 3.1(1), ARC 7730, Notice, IAB 7/15/87. Mowery explained that Nursing Boards exist in Washington, D.C., Guam, Virgin Islands, American Samoa, and that "State" is defined in Chapter 1 to include all jurisdictions which control nursing.

Committee Business Royce brought to the attention of the ARRC the fact that his chair had broken. In addition, the windows in his office (Room 116A, Capitol) would be sealed and new shades would be needed. Discussion as to whether such a purchase would come under the purview of General Services. Doyle recommended that the ARRC Chairman draft a letter of request for shades which would become part of the Capitol Complex inventory. Royce was directed to do so and to send copies to the Secretary of the Senate and Chair of the Legislative Council. There was unanimous consent to pursue the matter in this manner. Purchase of a new chair for Royce was approved by the ARRC.

Minutes Doyle moved approval of the minutes of the July meeting as submitted. Motion carried.

Objections General discussion of editorial procedure to follow with respect to objections still attached to rules being transferred to implement reorganization. Consensus was that objections should transfer with rules unless there had been amendments to the objectionable rule.

Discussion of hearings for education standards with Priebe expressing concern that a hearing had not been held in his area. He supported holding six additional hearings, one in each Congressional district. Tieden recommended waiting until the ARRC had reviewed the rules at their Wednesday meeting.

Recess Recessed for lunch at 12:02 p.m.
Reconvened Reconvened at 1:35 p.m.

HUMAN SERVICES Department representatives included Mary Ann Walker, Lorena Griffith, Dan McKeever, Bob Lipman, Julie Dettmann, Vernon Woodard, Darlene Clark, Sharon Dozier, Bob Schoene, C. S. Ballinger, Mary Helen Cogley, Mary Nelson, Barb Momberg, and Cynthia Tracy. Also present: Carmela "Cookie" Brown and other interested persons.

HUMAN
SERVICES

The following agenda was before the Committee:

| | |
|---|---------|
| Medicaid reimbursement for physicians' assistants' services, 78.1(13)c" ARC 7733 | 7 15:87 |
| Standards for services to persons with mental retardation, developmental disabilities, ch 22, Notice terminated ARC 7783 | 7 29:87 |
| Granting assistance, unemployed parent, 41.2(14), 41.7(2)p," 41.7(11), 42.4(3) ARC 7731 | 7 15:87 |
| Aid-to-dependent-children eligibility under the grant diversion program, grant diversion program, chs 47 and 91, filed emergency after Notice ARC 7732 | 7 15:87 |
| Work and training programs, 55.2(1)b" and "e," 55.2(2)a," filed emergency ARC 7734 | 7 15:87 |
| Federal surplus food program — new income guidelines, 73.4(3)d"(2), filed emergency ARC 7735 | 7 15:87 |
| Conditions of eligibility — SSI recipients 75.5, ARC 7736 | 7 15:87 |
| Amount, duration and scope of medical and remedial services — human organ and tissue transplants, 78.1(20), 78.3(10) ARC 7742, also filed emergency ARC 7741 | 7 15:87 |
| Rates for Medicaid and service providers, reimbursement methodology, payments for special needs children, sheltered work or work activity clients' vacation days, 79.1(2), 79.1(5)g," 79.1(8)a" and "e," 79.1(9)b" 81.6(16)e," 150.3(5)p," 156.3(1)e," 172.3(3) ARC 7740, also filed emergency ARC 7739 | 7 15:87 |
| Checking of child abuse reports and criminal convictions, access to information, 107.8(1)c," 108.4(2)d," 108.4(3), 108.4(4), 109.4(7), 109.9(4)c" to "e," 109.9(5)c" to "e," 110.7(3), 112.6(1)c" to "e," 112.6(1)e" to "e," 112.6(2)b," "d" and "e," 113.1(3), 113.1(4), 114.7(3)f" to "h," 175.1, 175.5(1) to 175.5(3), 175.8, 175.8(4)a," 175.8(5), 176.1, 176.10(3) to 176.10(9), 176.11, 200.1(2), 200.2(1), 200.3 ARC 7744, also filed emergency ARC 7743 | 7 15:87 |
| In-service training for foster parents, 113.8(3), 117.1(2)d," 117.3(4), 117.5, 117.5(1), 117.5(2), 117.5(4)a" and "b," 117.6, 117.7, 156.18(1), 156.18(4) ARC 7746, also filed emergency ARC 7745 | 7 15:87 |
| Income guidelines for child day care services, local match not required, 130.3(1)d"(2), 130.3(3)v," 153.5(6), 153.6(2), 153.6(7), filed emergency ARC 7737 | 7 15:87 |
| Expanded eligibility for independent living foster care program, services defined, time limit and requirements for purchasing services, transition period, 156.12, 202.9 ARC 7750, also filed emergency ARC 7749 | 7 15:87 |
| Adolescent pregnancy prevention and services to pregnant and parenting adolescents, ch 163 ARC 7748, also filed emergency ARC 7747 | 7 15:87 |
| Attorney and witness fees removed from juvenile justice reimbursement by department, 209.5(2)a," 209.5(3)a," 209.5(4)a" to "c," filed emergency ARC 7738 | 7 15:87 |

No questions re 78.1(13)c or termination of chapter 22.

41.2 et al Discussion of unemployed parent assistance. McKeever noted the implementation date had been delayed to allow time for additional comment. He advised Tieden that 41.2(14)a(8) was based on federal regulations. Tieden labeled referral provisions in 41.2(14)a as confusing. McKeever explained that everyone would be automatically registered but not physically referred to employment services. McKeever admitted there might be a better word than "referral."

chs 47 No recommendations for Chapters 47 and 91. Discussion of
91 the Department's concern for inequities in application
55.2 of the work and training programs--55.2. Lipman was aware that many people were discouraged from pursuing training and, as a result, remain on public assistance. Lipman viewed the amendments as a positive approach with a good system of checks and balances in lending institutions. The funds are awarded on the basis of educational need.

73.4(3) Amendment to 73.4(3) was emergency adopted to implement federal guidelines which benefit the client. Clark was interested in criteria used for determining eligible income. Walker was unsure but noted that the State uses preschool guidelines for the cheese distribution program. Tieden wondered if it should be a legislative program and Walker said it was optional. Originally, the State was allowed to set guidelines and Iowa chose the school lunch program--the most liberal guidelines allowed.

75.5 Clark in the chair. Walker said 75.5 was intended to comply with federal law. Discussion of amendments to
78.1 78.1 and 78.3. Walker assured Committee that copies of
78.3 federal guidelines are sent to Royce and Burnett. Tieden raised question re cost of transplants. Walker admitted it would be quite expensive.

HUMAN SERVICES DEPARTMENT Continued They were projecting six heart transplants at a cost of \$105,500 and seven liver transplants at \$144,000 each. The State share will be \$621,700 out of \$1,6000,000. Tieden recalled that the program had been supplemented twice last year and funds were transferred at the end of session. Momberg had no figures on the number of states providing the service.

79.1 No recommendation re 79.1(2) et al. Amendments to
107.8 107.8(1)c et al mandated that all adoptive parents and foster parents have child abuse registry checks before approval.

Doyle questioned Department officials re disposal of unfounded cases of child abuse. Department official said expungement takes place after six months. Notices are sent to those who had an initial report, e.g., county attorney, local agency offices, etc. It was noted that the matter had been referred to the Legislature. Department emphasized that notices are sent but the Department has no authority over attorneys or other law enforcement personnel.

113.8(3) No questions re 113.8(3) et al, 130.3 et al or 156.12.

202.9 Doyle recommended that 202.9(6)a(7) be revised by substituting "aggravated misdemeanor" for "felony". No recommendations for chapter 163 or amendments to 209.5(2).

INSPECTIONS & APPEALS Priebe resumed the Chair. Chuck Sweeney, Howard A. Palmer, Chuck Dales, Robert Woods, Sherry Hopkins, Zenda Lindel-Prine, and Mary Oliver were present for the following:

| | | | |
|---|----------|-------|---------|
| Health care facilities administration, ch 50 | ARC 7756 | | 7/15/87 |
| Administration, 1.1(3), 1.1(4), new 1.2, renumber remaining rules and amend renumbered 1.3 to 1.6 and 1.8 to 1.11 | ARC 7754 | | 7/15/87 |
| Foster care facility inspections, ch 40 | ARC 7755 | | 7/15/87 |
| Health care facilities, transfer 470—chs 56 to 64 to 481—chs 56 to 64 | ARC 7753 | | 7/15/87 |
| Recoupment section, ch 71 | ARC 7784 | | 7/29/87 |
| Medicaid fraud control bureau, 73.1 to 73.3, 73.7 to 73.9, formerly ch 6, Medicaid provider audits | ARC 7785 | | 7/29/87 |
| Economic assistance fraud bureau, ch 74, rescind 481—7.1 | ARC 7786 | | 7/29/87 |

ch 50 Oliver informed the Committee that Chapter 50 explains the function of health facility inspections. The rules had been reviewed by Public Health Department and no suggestions for change were made.

ch 40 No questions re amendments to Chapters 1, 40, 56 to 64,
ch 73 71 and 74. In review of amendments to Chapter 73, Woods clarified that the Medicaid Fraud Control Bureau and the Bureau of Criminal Investigation were separate units.

SUBSTANCE ABUSE 3.22 Janet Zwick and Allen VanderLinden appeared for consideration of licensure standards for substance abuse treatment programs, 3.22(4), filed emergency, ARC 7762, IAB 7/15/87. Zwick said that duplication would be eliminated. A copy of the federal audit is received annually. No Committee action.

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TRANSPOR-
TATION
DEPARTMENT

Al Chrystal, Norris Davis and Harry Miller represented Transportation Department for the following:

Seat belt exemption for physically handicapped person who uses collapsible wheelchair. 600.16 ARC 7767 ✓ 7/29/87
Aeronautics administration, ch 700 ARC 7765 ✓ 7/15/87
Iowa airport registration, ch 720 ARC 7766 ✓ 7/15/87

According to Chrystal, 600.16 was intended to implement SF 311. Miller explained chapters 700 and 720--registration of airports has been brought up to current national standards. Miller recalled that 22 airports do not meet minimum standards. With the change in standards, that figure will be reduced to 13 on waiver. Miller agreed to provide Tabor with a list of affected airports.

Committee
Business

Barry distributed copies of objections to rules which were transferred from the Health Department to Inspections and Appeals. Brief discussion.

Motion
Objections

Doyle moved that the ARRC reaffirm objections to 470--57.23(2)b, 58.26(2)b, 59.32(2)b, and 63.21(3)b [12/13/78] and that they be transferred to the respective rules in Inspections and Appeals [481]. Royce was directed to inform affected agencies of this action and advise them to review the objectionable language and make necessary amendments. Motion carried.

Burnett agreed to work with the Natural Resources Department to resolve the Iowa coal issue mentioned earlier by Chairman Priebe.

Meetings

Subsequent meetings were scheduled for September 8 and 9, October 13 and 14 and November 17 and 18.

Recess

Committee in recess at 3:10 p.m.

Wednesday
August 19

Chairman Priebe reconvened the August 19 meeting at 9:05 a.m. in Senate Committee Room 24. All members and staff were present.

ELDER
AFFAIRS
DEPARTMENT

Betty Grandquist, Executive Director, and Mary Ann Hollander were present to discuss rules of Elder Affairs which appeared as ARC 7610 in the 5/20/87 IAC. A 70-day delay had been imposed on the rules by the ARRC at their June 9, 1987 meeting to allow time for further study.

Grandquist and Hollander indicated that the Department planned to emergency adopt amendments to the delayed rules to be effective September 2. That date would coincide with the complete package. This procedure was acceptable to the Committee. Parker arrived.

Committee
Business

There was further discussion of the identification numbering in the Iowa Administrative Code for the examining Boards created within the Professional

Committee
Business

Licensing and Regulation Divisions [193] of the Commerce Department. The Division administrator had requested that separate numbers be assigned to each Board to avoid confusion as to their autonomy with respect to rule making. There was Committee consensus that the numbering should relate to the Division since the statute clearly created the Boards within the Division.

Priebe suggested that the Lt. Governor and Speaker of the House be apprised with recommendation that they review the matter with the Division.

Recess

Recess for ten minutes.

ECONOMIC
DEVELOPMENT

Jude Conway and Bob Brooks represented Economic Development for the following:

| | | | |
|--|----------------------|-------------------|---------|
| Community economic betterment program, ch 22 | ARC 7803 |F..... | 7/29/87 |
| Community economic betterment program — new business opportunities program, 22.9 | ARC 7802, also filed | | |
| emergency | ARC 7801 |N.....F..... | 7/29/87 |
| Community development block grant nonentitlement program, 23.4(3)"m" and "o," 23.5(3)"b," 23.5(3)"e"(6) and | | | |
| (7), 23.6(1)"i," 23.7(1)"a," 23.8(5), 23.9(1), 23.9(5)"a"~3," 23.9(6)"a"(5), 23.10(6), 23.10(7), 23.12(2), 23.12(5), | | | |
| 23.12(6) | ARC 7804 |N..... | 7/29/87 |
| Satellite centers — allowable costs, contents of application, confidential records, 41.4, 41.7, 41.15 | ARC 7782 |N..... | 7/29/87 |

No questions re Chapter 22 or emergency rule 22.9.

In reviewing the synopsis of amendments to chapter 23, Tieden observed that the Governor's waiver provisions would be deleted. He questioned whether the Department had that authority. Royce recommended that this matter be brought to the attention of the House and the Senate and that Department officials confer with the AG prior to adoption of the rules.

ch 41

No questions on amendments to chapter 41.

PUBLIC
HEALTH

Chiropractic

Harriett Miller appeared on behalf of the Chiropractic Examiners Board for proposed amendment to 470--141.13(1)d, clinical competency examination, ARC 7761, IAB 7/15/87. Royce pointed out that the dates certain should not be removed from the paragraph and Miller agreed to consult with the Board.

The following Public Health rules were before the Committee:

| | | | |
|--|--------------------------------|-------------------|-------------------------|
| Advanced emergency medical care, temporary pilot study of conditionally authorized paramedic service programs, 132.15 | ARC 7799 |F..... | 7/29/87 |
| Amend and transfer chs 1 to 37, 72 to 134, and 170 to 204 from [470] to [641]; and 470—chs 152 to 154 to 645—chs 20 to 22; 470—ch 141 to 645—ch 40; and 470—chs 149 to 151 to 645—chs 60 to 62; rescind 470—ch 71, filed | | | |
| emergency | ARC 7794 |F.....E..... | 7/29/87 |
| Community water fluoridation grant program, ch 20 | ARC 7796 |N..... | 7/29/87 |
| Governor's alliance on substance abuse, ch 91 | ARC 7775, also filed emergency | ARC 7774 |N.....F.....E..... |
| Medical examiners, license fees, reinstatement of lapsed license, renewal of resident physician's license, 470—135.10(1), 135.10(2), 135.10(3), 135.110, 135.110(1)"b," | ARC 7797 |N..... | 7/29/87 |
| Cosmetology continuing education, 151.2(1), Notice | ARC 7666 terminated | ARC 7798 |N..... |
| Certificate of need review of organ transplant services, 202.4(4), renumber existing 202.4(4) and 202.4(5), filed | | | |
| emergency | ARC 7795 |F.....E..... | 7/29/87 |

Mike Guely, Don Kerns, Bill Maurer, Susan Osmann, Mike Magnent, and Dennis M. Carr were in attendance.

132.15

Guely gave brief overview of 132.15. No questions re 132.15 or transferred rules.

PUBLIC
HEALTH
DEPARTMENT
ch 20

Maurer stated that Chapter 20 was proposed to implement a federal grant program for water fluoridation. Such programs result in a high rate of return in prevention of tooth decay and dental care costs. It was noted that rural water systems have fluoridation. One person had voiced objection to the rules at the public hearing. Estimated costs to provide fluoridation to a community were \$4,000 to \$5,000. Committee members concurred that a date certain would be necessary in 91.10(2)a. Osmann was amenable.

No questions re Chapter 135 amendments, or 151.2(1).

Brief discussion of 202.4(4) which, according to Osmann, was intended to implement HF 671, \$106.

Recess

Chairman Priebe announced a 15-minute recess.

REVENUE &
FINANCE

Carl Castelda presented the following:

| | | |
|---|----------------------|---------|
| Withholding of state income tax from winnings from pari-mutuel wagers, 46.1(1)r | ARC 7771. also filed | 7/29/87 |
| emergency ARC 7770.....X.v.F.E. | | 7/29/87 |
| Tobacco tax audit, assessment, and appeal periods, 81.4, 81.4(2)r, 81.11(2), 83.7 | ARC 7800 .X. | |
| Household hazardous products, retailer fee, H631, \$507 | | |

Also present: Laverne Schroeder; Jim Heywong, Bluffs Run; George S. Beno; Barry Sevedge, James A. Campbell, Iowa West Racing Association.

46.1(1)

Castelda said that the Department had received a request for a concise statement on 46.1(1). In addition, an attempt had been made to enjoin the Department from implementing withholding requirements and hearing was held in Council Bluffs last week. No decision has been made.

Castelda continued that the Department takes the position that there is a statutory requirement for withholding. They have responsibility to determine the rate and under what circumstances withholding should be made.

Parker questioned the emergency filing and Castelda pointed out that the ban was retroactive to January 1, 1987, and the Governor's Office had suggested emergency adoption.

Castelda spoke of the difference in withholding tax for residents and nonresidents. Under current law, amounts paid to nonresidents which will subject individuals to taxation are required to be withheld. If a nonresident files estimated declaration, withholding can be avoided. A decision to audit race tracks' withholding from the day of opening to January 1, 1987, has not been made, even though it would be legal. Definition of a professional gambler is made at the federal level.

Campbell spoke in opposition to the emergency rule because of major impact of withholding on the track.

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He labeled the law as being "eleventh hour without a lot of thought." Sevedge spoke from a report which he provided to Committee members. The report was based on studies in the pari-mutuel industry and Sevedge discussed the financial impact on various industries involved and the impact of the rule on the tracks. He was hopeful the studies could assist in seeking reasonable estimates of cost of the proposal to the track, kennel owners and taxpayers of the state. Sevedge alluded to the unfairness in the federal law distinction between "professional" and "casual" gamblers. Only a professional gambler can deduct losses as a business expense against winnings without itemizing. Many track patrons fall into the category of middle and lower income taxpayers who do not itemize.

Sevedge offered his views on the financial impact that withholding would have on various entities involved. He was doubtful of net benefit to the state. In conclusion, Sevedge said that some long-term studies had been made but he lacked information on long-term effect of withholding on gambling winnings. He supported a less severe approach to the regulation--possible reporting on winnings over \$1,000 and studying effect on the state's revenues.

Campbell explained that they had initiated court action on the grounds that there was no basis for the emergency action.

Royce commented on Committee options with respect to the rules but advised that it is usual policy to take no action when an issue is in court.

Parker mentioned possibility of an economic impact statement request. Castelda reiterated that the Department was following legislative mandate.

As to an economic impact, Castelda said the Department had no way to challenge information in the Sevedge report. The five per cent figure was an average rate--a little bit low, if anything. Castelda pointed out that the "statute is there whether or not there is a rule."

Campbell suggested that the Racing Commission be involved in preparation of an Economic Impact Statement. He was willing to work with the Revenue Department for resolution. He disagreed that the Committee was restricted from any formal action since the rule was filed under both Notice and emergency.

Tabor concurred that a rule was needed but a question would be whether the five per cent rate and the \$1000 figure were the acceptable level. Castelda declared the Department had "done the best they could by tying it to the federal standard."

8-19-87

REVENUE &
FINANCE
DEPT.
Continued

Castelda noted that a public hearing was scheduled for August 20. Priebe urged attendance at that hearing by all interested parties.

For the record, Parker asked for an economic impact statement. Doyle preferred allowing time for both factions to review the Sevedge document. Castelda agreed to evaluate the document and report to the ARRC. He added that if the General Assembly were to repeal the statute [HF 675,\$1], he would suggest amending Code section 422.16.

Responding to Priebe, Castelda said Dubuque and the Harness Racing Association were in compliance; the Waterloo track was not open yet. There was further discussion of Parker's request for an Impact Statement. He was willing to withdraw the request if an informal process would provide the same information. No other action. No recommendations were offered for 81.4 et al.

Hazardous
Household
Products

There was discussion of the AG opinion which had held that the licensing fee for retailers of household hazardous products should be based on gross retail sales of hazardous product sold for residential purposes. Castelda indicated that rules to reflect the opinion were in process. Parker requested a copy of the AG opinion. Castelda continued that correspondence would be sent with applications to be returned--4000 out of 12,000 were received.

RACING &
GAMING
DIVISION

Mick Lura was present for review of contested case procedure, 4.14, ARC 7729, Filed, IAB 7/15/87. No questions.

STATUS OF
WOMEN
DIVISION

Charlotte Nelson represented the Division for description, duties, Iowa Women's Hall of Fame, chapters 1 to 3, ARC 7764, Filed, IAB 7/15/87. She reported that the filed rule was identical to the Notice. Priebe recalled that the Committee had requested some changes.

Nelson indicated that the quorum requirements had been an issue but was not changed since rule 1.2 was in compliance with Code §4.1(30). Priebe reiterated ARRC policy on quorum requires 2/3 of the voting members to take formal action.

Royce could foresee a problem because the Committee serves in an advisory capacity only. Tieden pointed out that an exception had been made for the MACC council. Priebe took the position that 13 members would be required to take action.

Parker suggested that an executive committee could conduct business and some of the quorum problem would be alleviated. Nelson responded that an executive

STATUS OF
WOMEN
Continued

council makes decisions. She called attention to the reorganization Act which dropped quorum requirements from the statute.

Nelson agreed to add language to provide: "A majority vote of the entire commission is necessary to pass an issue." No further comments.

IOWA
FINANCE
AUTHORITY

Larry Tuel introduced Ted Chapeler, the new General Counsel for the Authority. Tuel presented the following:

Title guaranty division, participation requirements for lenders. 9.15 ARC 7787 7/29/87

Recess

Tuel commented it will enable more lenders to participate in the program. Committee in recess at 11:57 a.m.

Reconvened

Chairman Priebe reconvened the meeting at 1:30 p.m. in the Wallace Building Auditorium. The following agenda was before ARRC:

EDUCATION
DEPARTMENT

Accredited schools and school districts, ch 4 ARC 7758 7/15/87
*Review scheduled in Wallace State Office Building Auditorium, 1:30 to 4 p.m., 8/19/87.

Department representatives in attendance included David Bechtel and A. John Martin. Also-present: Jim Sutton and Bill Sherman, ISEA; State Representatives Tom Swartz, Marshalltown, and C. Arthur Ollie, Clinton.

Chairman Priebe asked ARRC members to introduce themselves and state their districts. He also introduced Committee Staff and the Governor's Coordinator. Anyone wishing to speak would be given opportunity. Priebe referenced the large volume of mail generated by the proposed rules and the public hearings which had been held. He anticipated that additional hearings would be scheduled, at least in his district.

Phil Dunshee, Association of School Boards, had extra copies of comments from the August 5 public hearing. He commended the Department of Education for outstanding work on the advisory committee, informational meetings, as well as formal hearings held in the last two weeks. Areas of concern for him included the 200 minimum-day-calendar and the impact of 20 additional days for supplemental duty, staff development, etc. He suspected that confusion would outweigh any benefit and suggested withdrawal of that portion. Dunshee cited prekindergarten and all-day kindergarten as other confusing mandates. His association could not fully support those programs based on "possible assurance that the General Assembly and the Governor might support additional funding."

With respect to curriculum, Dunshee questioned whether local districts could comply with the 41 units to the degree that they are specified by statute. Current standards require 27 units. Dunshee referenced the accreditation process and contended that standards should be applied to all schools, including nonpublic.

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(Cont.)

Although the General Assembly has sent a message to districts that administrative costs should be reduced, many of the proposed standards would increase those costs. He urged the ARRC to request an Economic Impact Statement relative to local districts.

Tabor asked if the Association had made any studies in this area and Dunshee indicated they would be willing to work with the Department in that effort. He stated that one and a half billion dollars of general funds are spent for local district programs. Only 25 per cent of the districts offer full-day Kindergarten. Few are offering limited "preK".

Responding to Tieden, Dunshee pointed out the importance for distinction between calendar days and school contract days.

Pat Shipley, Educator, Corning School District, spoke in support of kindergarten and preschool programs because of a changing society--60 per cent of women with children under 18 are in the work force. She estimated that 90,000 to 100,000 3-to 5-year-old children would be served. Shipley pointed out that the school aid formula would be reviewed in 1990. Currently, \$20.77 per day is spent per child for education in Iowa. She declared that Iowa must become visionary in education and become a leader. Tabor was told that one state had appropriated \$9 million for a "preK".

Clark mentioned the possible impact on existing "preKs" if the state establishes a program. Shipley was concerned about quality education for children. She was an advocate of the public school system and concluded there had always been freedom of individual choice which would remain.

Jim Sutton stated that schools are reimbursed on a cost-per-pupil basis whether or not the child attends school a full day. He did not view the health issue as a problem since it is not mandated. He indicated that the ISEA had followed the development of the rules. Sutton observed the low turnout for the hearing today and wondered if the rules were really controversial. He reminded the group of the 5-year lead time for implementation. Sutton viewed the rules as addressing minimum standards, not excellence and he declared, "If support is not shown for minimum standards, you can kiss excellence goodbye." Generally, he favored the rules and urged cleanup of ambiguous portions.

Clark felt that most schools would have increased costs. Sutton was opposed to districts making money on kindergarten. Clark's point was that Sutton had indicated cost per pupil was already there but she saw

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(Cont.)

a problem for schools that do not offer all-day Kindergarten. Their extra funds are utilized in other areas. Clark was not convinced that an in-depth study had been made to determine whether provisions would really improve education. She had not heard from the education community.

Sutton felt the General Assembly had been generous with Phase III money. However, it was his opinion there should be 10 to 15 pilot projects. He saw a need to change building climate from "a corporate atmosphere to a collegial one."

Priebe in
Chair

Priebe took the Chair.

4.5 -

In response to Priebe, Bechtel said "if offered" in 4.5(1) exempted nonpublic schools from offering prekindergarten. Bechtel was willing to clarify the provision. Priebe had received many complaints about "preK". Sutton commented that most educators believe that the age of children should not be the determining factor for starting school. He informed Cherlyn Matthew of Waterloo that scholastic rating depends on the measure used. Iowa does well because of two per cent minorities, i.e., a population with similar ethnic origin is easier to teach. He hastened to add that "we should not be patting ourselves on the back."

4.2

Representative Tom Swartz spoke from a prepared statement and commended the Department for their effort to "challenge the way we think about education in the state." In his opinion, their plan showed thought and commitment. However, it appeared to him that a new section 56 of HF 499 was overlooked re student achievement and performance goals and he had proposed language. The 5½ hours of instructional time provided in 4.2(3) seemed to negate new section 256.18 [HF 499, §29] which allows districts to choose their school structure. More flexibility is needed, not less. Swartz recommended that the number of hours in school should be calculated in years, not days. He reasoned that the vocational education requirement would result in expensive capital outlays. He recommended language to provide that "contracting with area colleges would fulfill any requirements toward vocational education." Swartz urged completion of a study on mental retardation and how it might be related to substance abuse.

Tieden had suggestions which he would provide to the Department.

Marcella Gruever, Waterloo, spoke from a prepared statement in opposition to HF 499. She saw the role of legislators as one of obligation to protect rights of citizens under both constitutions. She opposed

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(Cont.)

language "if deficiencies have not been corrected, the state board will merge the territory of a school district....." Gruever took the position that psychology courses for K-12 were absurd. She voiced opposition to career education and "preK", contended that schools have failed to "educate" students, and that "enforcement of HF 499 would annihilate the system of checks and balances provided in the Constitution." Gruever cautioned against allowing national authority over education.

Jim Wise, Urban Education Network Program Coordinator, spoke of the potentially significant costs to local districts even though the Network supports the standards. They were supportive of a thorough study on costs, as well as the disparity between public and nonpublic schools. Wise continued that the standards were ambiguous in many areas. He stressed the importance of strong standards for both systems. Russel Mahaffey, School Superintendent, was opposed to distinction between public and nonpublic schools.

Susan Kline, mother and interested parent with Master's in education, favored the option for "preK" for 4-year olds. She reasoned that cognitive development was more successful in group situations. Kline cited the importance of adequate funding and teachers with a heavy background in early childhood education. Priebe questioned the advisability of sending children to school at age four.

Cynthia Deck, School Board President, Sioux City Community Schools, addressed the Committee, first for the school board and then as a parent of four children under age 9. Her district was concerned about fiscal accountability. Deck had written data as to costs to her district to implement the standards. The Sioux City district had reservations that all-day Kindergarten and "preK" would be in the best interest of children. As a parent, Deck stressed that standards must be measured against what is good for the child, not for their education only. She disagreed with the decision by society that children are not fragile, that they will "adapt." Deck maintained that "government should not take over when kids are 4" and suggested spending the funds at the top when they are 18 or 19 by providing a year of education. She further maintained that at age four, children belong at home where they can "learn what parents think about life, family values, what is right and wrong, how to get along with kids next door, grandparents--not how to stand in line and raise their hands to go to the toilet." She was well aware of the fact that, in many cases, parents are not at home but thought Iowans should advocate becoming number one in

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(Cont.)

parenting. Deck urged rejection of prekindergarten provisions as being arbitrary and capricious.

Larry Waugh, Board Member, Whiting Community Schools, suspected that the purpose of the standards was not to "improve children's education but to force reorganization by financial starvation of rural schools." He took the position that the decision for all-day kindergarten should be made by the local board. He declared that "preK" would be a "baby sitting service at taxpayers expense." In addition, Waugh thought that the increase to 41 curriculum units was unrealistic and that vocational education would duplicate functions of Iowa's technical colleges. He questioned the exception for nonpublic schools. Waugh urged the Committee to reject standards which are biased against individual districts. He estimated a cost of \$100,000 to his district and \$160 million for the state.

Ollie was interested in obtaining the objective basis used to determine the estimated costs. He suspected that by the time debate ended, estimates would have a direct relationship to the opinion of the standards.

Clark was concerned that estimates were "floating" from different presuppositions and she wanted to make a motion on the issue whenever it was in order. Priebe discussed possibility of a fiscal note. Tieden thought that accountability on costs would need to be provided when the rules are in final form.

Nancy Erickson spoke against the standards which she considered to be prejudiced against small school systems. She stressed the importance of local control.

Jim DeWitt, Washta, concurred with comments by Deck and Waugh. It was his opinion that "good things in the standards were outweighed by the bad." He was especially concerned with "preK" and recalled an earlier study which had revealed that kindergarten was ineffective. It was his observation that the "nation is producing professional students."

Clark, in reference to studies, cited a problem of legislators in that studies are produced on both sides of almost every issue. She emphasized the need for legislators to hear from the public.

Judy Rutledge spoke as a citizen and member of Day Care Services, Inc., which provides care for children of low-income families throughout Polk County.

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(Cont.)

Because of changes in family structure, Rutledge viewed proposed "preK" as major assistance to women in minimum wage jobs. Many children of one-parent families are in desperate need of these services. In answer to Tabor, Rutledge said their Board had taken a neutral position on the issue but are aware of need. One hundred seventy-five families in Polk County have been waiting 14 months for subsidized day care. One-third of those are on welfare.

Clark reminded that the basis for ADC was to permit the mother to remain at home to care for dependent children. However, society has turned full circle and those women are expected to work outside the home. She urged proponents of the original concept to support legislation to finance those women who cannot do it alone.

In response to question from the audience as to why existing standards should be changed, Clark reasoned there was no simple answer. She recalled that state financing was adopted to equalize funding for education throughout the state and that responsibility for financing includes responsibility for oversight. The people of Iowa recognized a need for further improvement and "excellence in education" was promoted. Clark concluded that the Department was responding to legislation.

Motion

After further discussion, Clark moved to request an Economic Impact Statement on each standard in Chapter 4 of rules of the Department of Education on the basis of per pupil cost and per school district cost. Seconded by Tieden. Motion carried.

Recess

Chairman Priebe recessed the meeting at 4:10 p.m.

Reconvened

The Thursday meeting was reconvened by Chairman Priebe at 9:45 a.m. Representatives Parker and Tabor not present for roll call. All Staff was present.

NO REPS

Chairman Priebe called for disposition of the following.

No Representatives requested to appear

| | |
|--|---------|
| FAIR BOARD[430] | |
| General rules—returned checks, 1.5 ARC 7768 | 7/29/87 |
| LABOR SERVICES DIVISION[347] | |
| EMPLOYMENT SERVICES DEPARTMENT[841] "umbrella" | |
| Administrative hearings, 1.6, rescind 1.7 and ch 78, reserve chs 141 to 199, new ch 200 ARC 7778 | 7/29/87 |
| Child labor, 32.5, 32.7, 32.8, 32.11, 32.17 ARC 7777 | 7/29/87 |
| PUBLIC DEFENSE DEPARTMENT[650] | |
| State emergency response commission, emergency planning districts, ch 102, transfer 561—chs 100 and 101 to 650—chs 100 and 101 ARC 7793, also filed emergency ARC 7792 | 7/29/87 |
| SECRETARY OF STATE[750] | |
| Election forms, 4.3. ARC 7773, see also filed emergency ARC 7772 | 7/29/87 |
| UTILITIES DIVISION[199] | |
| COMMERCE DEPARTMENT[181] "umbrella" | |
| Uniform system of accounts—telephone, 16.5(48) to 16.5(85) ARC 7780 | 7/29/87 |
| Tax reform revenue adjustment, ch 30 ARC 7759 | 7/15/87 |

FAIR
BOARD

Doyle asked for temporary deferral of Fair Board rule 1.5 so the statute could be researched.

Clark moved that the remaining rules be accepted as published. Carried.

INSPECTIONS
AND APPEALSSpecial
Review

At the request of the Committee, the following persons were in attendance for special review of the role of the Department of Inspections and Appeals and the Health Department in promulgating rules for care facilities, hospitals and hospices.

Senator Bob Carr, Dubuque; Charles Sweeney, Director, Dana Petrowsky, Mary Oliver, Beverly A. Zylstra, Inspections and Appeals Department; Susan Osmann, Public Health Department; Gary A. Peasly, M.D., President, State Board of Health; Carolyn Jacobson, Iowa Health Care Association; Jeanine Freeman, Iowa Hospital Association; Maureen McGuire, Scott Newhard and Elizabeth Osenbaugh, Assistants Attorney General and Richard Johnson, Legislative Service Bureau.

Carr provided history of Inspections and Appeals beginning with government reorganization. The first proposal was for an office of Inspector General which was rejected. The original proposal authorized police power to the Director of the Department and that was abolished along with the name. The name Inspections and Appeals was agreed upon in Conferenc Committee.

Carr continued that rule-making authority was considered and the Hospital Licensing Board was transferred to I and A. Restaurant inspection was moved from Agriculture to I and A, also.

It was Carr's opinion that Care Review Committees should be with the Department of Public Health, or in the case of the elderly, with Elder Affairs Department. The legislative committee did believe that I and A had the background or expertise to make rules on patient care and preferred to delegate this responsibility to the Public Health Department. Carr understood that the agency making the rule has enforcement of it. He cited the importance of involvement by a citizens' board in the rule-making process. Carr referenced Royce's memorandum of August 7 wherein he had recommended the establishment of an advisory board by statute. That approach would be a contradiction of state government reorganization since so many boards and commissions were eliminated. Royce clarified that the advisory group would receive only necessary expenses, meals, hotel or motel, and mileage--no per diem.

Carr said that legislative intent was to have citizen input without establishing more boards. He admitted an apparent conflict existed between HF 669 and SF 163 concerning adoption of rules.

INSPECTIONS
& APPEALS
Continued

Sweeney advised Priebe that all Health Facilities rules are submitted to the Board of Health for their perusal.

Carr was informed that a nursing home inspector must be a registered dietitian or registered nurse and that restaurant inspectors are sanitarians. He recalled that there had been a great deal of discussion about the powers of Inspections and Appeals. A proposal to authorize I and A to impose a \$100 fine for each red check in a restaurant died in State Government Committee. Carr observed that legislators are often guilty of being fashionable and reacting to what is happening by making laws. He recalled three years ago when missing children resulted in proposed bills which were really frightening.

Sweeney responded that I and A never sought police powers-- that issue came up because the Pharmacy and Medical Examiners had those powers. He said they continue to advocate Board of Health approval for Care Facility rules. Priebe contended that this concept should not be limited to Public Health. He reasoned that the agency doing the work should draft the rules. The ARRC concurred.

Tieden asked for interpretation from the Iowa Hospital Association and Freeman referenced their position as set out in a letter to the ARRC. In summary, Freeman said that the Department of Inspections and Appeals was created to enhance government efficiency but those agencies empowered to establish standards should maintain those powers and I and A should perform the technical act of inspecting the whole process. It was the Association's position that standards governing behavior of hospitals in the state should remain with the Iowa Board of Health. However, if policy-making issues were transferred to I and A, the Association would no longer be supportive. General discussion.

Zylstra pointed out that all Health Department employees with rule-making expertise had transferred to I and A. Freeman advised Johnson that the Hospital Licensing Board was comprised of five administrators from across the state and were appointed by the Governor. Essentially, the Department of I and A has initiated a change and taken it to the Board. From that process, I and A, after a vote of the Hospital Licensure Board, takes rules to the Department of Health where they have final say from the public policy point of view. An exception would be for rules pertaining to how an inspection or appeal would be processed.

Osenbaugh commented on the AG opinion which determined that rule-making authority on standards was in the Board of Health and Inspections and Appeals Department was authorized to carry out technical functions. This would be more consistent with a typical administrative agency.

8-20-87

INSPECTIONS & APPEALS
Continued Sweeney took the position that if expenses were paid to advisory groups, he would favor consumer groups, not entities that have agency or association sponsors.

Royce spoke in support of an advisory committee. Beasley stated that the Board of Health has been comprised of experts in the area of Health but now has several lay members.

Osenbaugh stressed the importance of the statutes.

Recess Chairman Priebe announced a 15-minute recess.


FAIR BOARD
Delay 1.5 Before returning to discussion of Inspections and Appeals, Doyle moved a 70-day delay on Fair Board rule 430--1.5, which increased the fee for a returned check to \$15. The Code provides for \$10. Motion carried.

INSPECTIONS & APPEALS Royce reviewed alternatives for clarification. Clark preferred that rules by I and A be approved by the Board of Health. Burnett thought citizen input was important and that those committees should not be established in the Code.

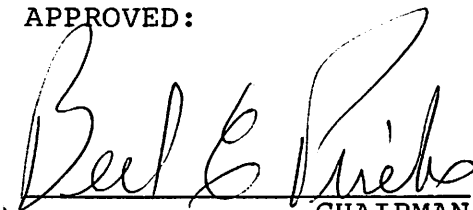
Johnson was willing to assist in drafting corrective legislation to eliminate conflict. Carr thought there was concurrence with the concept of SF 163. The ARRC wanted to avoid the area of Human Services which is impacted by federal government. No formal action.

Adjourned Committee was adjourned at 1:05 p.m. The next meeting was scheduled for September 8 and 9, 1987.

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Vivian Haag and
Bonnie King

APPROVED:


CHAIRMAN