

MINUTES OF THE SPECIAL MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, Wednesday and Thursday, May 17, 18 and 19, 1983, in lieu of statutory date.

Place of Meeting: Senate Committee Room 116, State Capitol, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Chairman, Senator Berl Priebe, Vice Chairman, Senators Dale Tieden and Edgar Holden; Representatives Ned Chiodo and Betty J. Clark.
Also present: Joseph Royce, Committee Counsel; Kathryn Graf, Governor's Administrative Coordinator; Phyllis Barry, Deputy Code Editor and Vivian Haag, Administrative Assistant.

Minutes There being no corrections or additions to the minutes of the April meeting, there was unanimous consent to approve them as submitted.

Reorganization Chairman Schroeder announced that, in keeping with past practice, the Committee should reorganize with respect to Chairman and Vice Chairman. Official appointments had not been made by the Speaker and Lt. Governor although they were aware of statutory provisions for reorganization.

Chairman Senator Holden nominated Senator Berl Priebe to be Chairman of the Committee. There being no further nominations, Tieden moved that a unanimous ballot be cast. Motion carried. Senator Priebe was selected as Chairman.

Vice Chairman Representative Chiodo moved that Representative Laverne Schroeder be nominated Vice Chairman. Priebe moved that a unanimous ballot be cast for Schroeder as Vice Chairman. Motion carried. Representative Schroeder was selected as Vice Chairman.

ARRC Meetings Meeting dates were reviewed. When scheduling agencies appearance, Royce was directed to include adopted rules for the June 14 agenda and the remainder for June 15. A two-day meeting was scheduled for July to be held on the 12th and 13th.

Barry called attention to the fact that Public Safety Department had omitted tables from rule 5.105. The tables were published in the IAC. However, the consensus was they should also appear in a Bulletin and Barry agreed to include them in the next IAB.

Recorder payment Authorized Chair entertained a motion to authorize payment for a recording machine to Myron Berry Business Machines (\$268). Tieden so moved. Motion carried.

Legal Question Tieden wanted assurance of the legality of the motions made this morning. It was noted that 17A.8(2) provides that "a member shall serve until a successor is appointed."

HEALTH DEPARTMENT Peter Fox and Mark Wheeler represented Health Department for review of:

HEALTH DEPARTMENT[470]
Hearing aid dealers, renewal of license, 145.5(4) ARC 3712...*F*..... 4/27/83
Family planning services, ch 74 ARC 3713...*N*..... 4/27/83
Out-of-wedlock birth records, 96.1(5) ARC 3685...*N*..... 4/13/83
Financial assistance to eligible end-stage renal disease patients, eligibility, 111.7(6)"b", Table 1 ARC 3714...*N*..... 4/27/83
Speech pathologists and audiologists, 155.3(3)"d", 155.4(1), 155.4(4)"b" ARC 3686...*N*..... 4/13/83

In response to Tieden, Fox was willing to check the licensing status of any curbstome hearing aid dealers if names were provided.

ch 74 According to Wheeler, chapter 74 was strictly federal regulations. Private organizations would be subject to them if they have a contract with the state. Comments had not been received on the rules.

It was Clark's opinion that the definition in 96.1(5) was an "overkill". Wheeler said the rule would be changed in response to comments that it was too "legalese".

The table in 111.7(6)*b* re federal poverty level guidelines would generally benefit rural recipients. Wheeler said he had discussed with Graf the possibility of emergency filing of the amendment since new recipients come "on line" July 1.

ch 155 Fox explained that amendments to chapter 155 were corrective in nature. Tieden raised questions re whether there was a demand for removal of "three times a year" and inquired as to cost to administer the tests. Fox responded that cost would not be affected.

Recess Committee was in recess for 5 minutes.

BOARD OF NURSING Ann S. Mowery represented the Board of Nursing for review of:

NURSING, BOARD OF[590]
Advanced registered nurse practitioners, fees, 7.1(8) ARC 3684...*N*..... 4/13/83
Advanced registered nurse practitioners, general requirements, 7.1(1), 7.2(1)"e", 7.2(5)"b"(2), 7.2(7), 7.2(11),
filed emergency ARC 3683...*F*..... 4/13/83

Mowery reminded ARRC that changes in 7.1(8) and 7.2 were in response to Committee requests. Tieden requested clarification of language in 7.1(8)*d*. Mowery was amenable. She did not believe that the fees would generate excessive funds. No formal action.

Recess Committee was in recess for 15 minutes.

DEPT OF SUBSTANCE ABUSE Randolph Ratliff and Jeanine Freeman appeared on behalf of Substance Abuse for review of:

SUBSTANCE ABUSE, DEPARTMENT OF[805]
Licensure standards for substance abuse treatment programs, 3.2, 3.5, 3.8(1), 3.8(2), 3.9 to 3.19 ARC 3679...*N*..... 4/13/83
Licensure standards for substance abuse treatment programs, 3.23(5)"d", 3.24(14) ARC 3680...*N*..... 4/13/83

Responding to Schroeder, Ratliff indicated no comments had been received re the rules. Ratliff said that the AG's of-

SUBSTANCE
ABUSE
Cont'd

fice had assisted in the rulemaking. In re 3.11(1), Clark and Schroeder questioned use of "program may have committed an act" and in 3.12, use of "Programs who" and in 3.11(4), line 8, the meaning of "conduct." Freeman said the language was drawn from 17A.18 which deals with agency action concerning licensing. Committee consensus was the rule should be clarified. Schroeder thought the new language in 3.12(2) could lend itself to an awkward situation. Freeman called attention to 3.11(4) which provides for notification by certified mail. Tieden was told the rule pertains to programs licensed by the Department pursuant to Code §125.13. Hospitals would be an exception to licensing and information and referral programs would not be licensed, but treatment programs would be. Ratliff serves as licensing manager.

3.24 Holden thought linens, etc. in 3.24(14)b should be provided "as needed." In 3.24(14)d, Holden asked that the rule state that tornado drills would be conducted during the tornado season. Schroeder inquired whether facilities would have problems maintaining these standards. Ratliff explained there has been no problem for facilities using the program. Ratliff continued that a task force had developed the rules and thirty-one programs are licensed. No further questions.

ACCOUNTANCY
BOARD

Hal Gronewold, Chairman, and Bill Schroeder, Executive Secretary, were present to review the permits to practice, 9.8(3), ARC 3702, Notice, IAB 4/27/83.

9.8(3) Gronewold stated that modification of 9.8(3) would allow employees of the State Auditor's office to apply their experience toward that required for a permit to practice. The Committee could foresee possible problems.

Priebe opposed the language "the Iowa state auditor holds a valid certificate and a current permit to practice in Iowa." Schroeder suggested revision to read "Any person in the auditor's office working under direct supervision of a CPA for two years." Gronewold contended that the rule was in the public interest and would enable the state auditor's office to upgrade the quality of employees.

Priebe asked that the matter be referred to the proper legislative committees for consideration of possible statutory revision. It was ARRC consensus that the office of Auditor of State should be recognized as adequate CPA training and supervision so long as a CPA is involved. In the event an Auditor of State was not a CPA, employees would be precluded from credit for the experience and would be required to get experience in the private sector. Gronewold wanted to maintain quality audits.

The Board was directed to work with Royce in an attempt to make the rule less restrictive. It was the position of the ARRC that the Board of Accountancy could not require the Auditor to be a CPA.

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RECESS

Committee was recessed at 12:03 p.m. to be reconvened at 1:47 p.m.

MERIT
EMPLOYMENT
DEPARTMENT

Clint Davis, Manager, Technical Services Division, was present on behalf of Merit Employment for review of emergency amendment to 12.10(3)b. It will increase from 10 to 30 days the time for the Commission to issue a written decision at the close of an appeal hearing. Holden thought 30 days was excessive. Davis indicated the Commissioners wanted to avoid being in violation of their own rules.

Priebe inquired if Merit intended to file the rule under the Notice process. Davis replied it had not occurred to them since there would be no impact on the general public. Priebe urged Merit to utilize the Notice for this rule. Davis was amenable.

The time frame and process for Commission decisions was reviewed by Davis. He explained that parties at the hearing are invited to appear at the close of deliberations. Holden favored written as opposed to vocal information to the parties. No formal action.

BOARD OF
PAROLE

Robert Tangeman represented Board of Parole for review of:

PAROLE, BOARD OF[615]
Authority to parole, 4.1 ARC 3704F..... 4/27/83
Parole revocation hearing, 7.6(2) ARC 3705 ..F..... 4/27/83

He was unsure as to the reason for the amendment to 4.1. General discussion of the prison problems. No action taken.

COMMERCE
COMMISSION

Ronald Polle and Alexis Wodtke, Commerce Counsels, appeared on behalf of Commerce Commission for review of the following:

COMMERCE COMMISSION[250]
Electric utilities, service, planned interruptions, 20.7(13) ARC 3725F..... 4/27/83
Annual meeting of electric utilities, 23.4 ARC 3724F..... 4/27/83
Continuous review of rate-regulated utility operations, 1.5(3), 1.5(6), 18.3, 23.2(8) ARC 3694M..... 4/13/83

Wodtke explained that 20.7(13) was adopted without change from the Notice.

23.4

Rule 23.4 will require utilities to report on future construction plans and their analysis of future demand. In Holden's opinion, another layer of work was being generated. Wodtke said language was modeled after Code chapter 476A. She emphasized that purchasing power was not addressed. Recent legislation was mentioned.

1.5, 18.3,
23.2

Polle gave a brief explanation of amendments re continuous review of rate-regulated operations. Holden could see no valid reason for striking "also" in 23.2(8), line 2.

Schroeder, in a matter not before the Committee, raised question re the fact that MCI may be used in one portion of the state and not in another. General discussion. No other questions.

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REAL ESTATE Gene Johnson and Ken Smith were present for review of:
COMMISSION

REAL ESTATE COMMISSION[700]
Brokers and salespersons, fees, 1.13 ARC 3668 ..F..... 4/13/83
Licensees of other jurisdictions, 2.3 ARC 3669F..... 4/13/83

According to Johnson, no changes had been made to the rules since they were under Notice.

General discussion of the fees and licenses. No formal action taken.

EMPLOYMENT Joseph Bervid, Legal Counsel, appeared on behalf of Job Ser-
SECURITY vice. The following agenda was reviewed:

EMPLOYMENT SECURITY[370]
Claims and benefits, eligibility conditions, 4.22(1)"c"(3), 4.22(1)"g", "z" and "aa" ARC 3697 ..F..... 4/13/83
Filing a claim for job insurance benefits (interstate only), form IB 3, 4.2(3), 10.4, filed emergency ARC 3698 ..F.E..... 4/27/83

ch 4 Bervid noted that amendments to chapter 4 contain federal requirements on extended benefits. In reply to Tieden, Bervid said there were 63 or 64 offices in the state. Tieden was concerned about language "contact in person."

No questions re 4.2(3) and 10.4.

NATURAL Mike Smith represented the Natural Resources Council for the
RESOURCES following:

NATURAL RESOURCES COUNCIL[580]
Flood plain program, 2.1, ch 4, 5.7, 5.30, 5.31(2), 5.54 ARC 3706 ..F..... 4/27/83

5.7 Holden was informed that the hearing was sparsely attended. Chiodo and Smith discussed the fill process on a flood plain. Smith did not envision 5.7 as an extension of their supervision -- but a "red flag" to those who plan property development.

Replying to Chiodo, Smith said that the statute provides that all individual flood plain progress can be approved by the Director, subject to the right of appeal to the council.

5.54(3)a Smith said that, although the statute was changed in 1980, the rule had not been updated. Schroeder opined 5.54(3)a was very restrictive. Smith said, by definition, floodway includes area of stream that is the channel and that portion of flood plain required to convey flood flow. There was general discussion.

RECESS Committee was recessed at 3:15 p.m. to be reconvened Wednesday, May 18, at 10:00 a.m.

Reconvened Committee was reconvened at 10:08 a.m., Wednesday, May 18, room 116, state capitol with Priebe in the chair. All members were present.

CONSERVA- The following Conservation Commission agenda was before the
TION Committee:

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CONSERVATION
COMMISSION
Continued

Camping and electricity fees, 45.4 ARC 3708 F 4/27/83
Land management agricultural lease programs, ch 74 ARC 3709 F 4/27/83
Wildlife refuges, restrictions, 3.1 ARC 3710 N 4/27/83
Keg beer regulations, ch 42 ARC 3707 N 4/27/83

Conservation officials present were Nancy Exline, Doyle Adams, Bob Barratt, Stanley C. Kuhn, Gregory Jones and John Beamer.

3.1 Rule 3.1 was considered out of order. Barratt explained that Lake Snyder in Woodbury county would be added to the list of Wildlife refuges. Barratt explained that no hunting is allowed in refuges and trespassing is prohibited between September 15 and December 15.

No questions re 45.4. Exline said that many areas will use self-registration and fees will be increased to even dollars -- possibly the first of 1984.

ch 74
land
management
lease
programs

Kuhn pointed out that when the Noticed rules were published, copies were sent to all Co-operators. One written response had been received out of 300 mailings. Kuhn commented on the substantive changes made since the rules were under Notice. Public hearing was held January 19 where 3 individuals commented -- basically, opposing the competitive bid process for co-operators and favoring crop share agreement. No changes were made in response to comments at the public hearing. The AG had advised the Commission that under chapter 107, there is authority to enter into leases--except in cases of sovereign land. The rule was amended to cover 15 parcels of that land--a small part of the entire program. Schroeder reiterated dissatisfaction with the rules. He labeled 74.5(7) as "quite dictatorial."

In his opinion, the requirement to remove hay from roadsides by October 1 creates problems for farmers--74.5(9). Schroeder opposed having to wait for approval in 74.5(11).

74.4 (6)
74.3 (6)

Schroeder and Priebe were critical of the Commission's procedure in the surplus sale which had been held recently. Kuhn was willing to provide complete explanation of the method used in advertising the sale. The Commission had followed the same practice for a number of years. Priebe and Schroeder opposed language in 74.4(6). Priebe contended the definition of "crop share" in 74.3(6) had nothing to do with dollars--it was a percentage of the crop. Kuhn tended to agree but Conservation prefers that the corn be sold. Priebe expected the definition to be changed. Kuhn added that the number of leases that are under crop share will continue to dwindle. Priebe stressed that all state lands on leases have to be negotiated--it has to be bid. Kuhn was unfamiliar with that. Priebe viewed 74.4(6) as furthering the "buddy system." Kuhn was not aware of such a system.

74.4 (6) c

74.4(6)c, re previous agreements, applies only to land the Corps of Engineers has leased and to the persons farming it--5 or 6. Priebe opposed the concept in 74.4(8) which, in his opinion, allowed opportunity for manipulation.

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CONSERVATION
COMMISSION
Continued

Beamer did not see that as a problem. Priebe preferred publication in a local paper. In re 74.5(8), Beamer said livestock on lands under lease creates a safety hazard. Priebe favored negotiation rather than absolute prohibition. It should be bid and when the lease is amended, the public should be made aware.

Kuhn emphasized that Conservation had made a substantial effort to comply with the ARRC previous requests but some of these concerns were not voiced at the previous review. He noted that the Department has agreed to review the matter in the fall rather than in the spring. Kuhn pointed out that all leases are reviewed by the Director's office. Coordination of leases is handled by a different set of supervisors as the actual field administration.

74.5(11)

Discussion of 74.5(11). Priebe and Schroeder suggested revision of limitations on harvest methods. Tieden reasoned that risk is assumed with the contract. He wondered if final approval of a lease was by Executive Council. Kuhn spoke of the time factor and indicated Conservation was hesitant, except for sovereign lands, to go before the Executive Council. Currently, there are 375 leases in force--administration in the central office is handled by less than 1 full-time person. Administration in the field is handled by the wildlife unit biologist in most cases but it is not a major part of their job. Tieden would prefer Conservation check with the AG about the somewhat vague statutory authority. Kuhn said he had contacted the AG. Discussion of the various Conservation trust funds and Code section 111.25.

Schroeder had Barry research the bid process--that recommendation for the Executive Council to lease property was in the law. In Schroeder's opinion, Conservation would be required to take leases to the Executive Council for summary reviews [111.25].

Priebe registered a complaint about 74.5(9) and stated that if the lease is amended, all other bidders should receive a copy. To his knowledge, Beamer said Conservation does not amend leases. It has been addressed on an appeal basis. No formal action.

Keg Beer
in Parks

Re keg beer regulations--chapter 42--Exline noted that Conservation had requested an AG opinion. She said the rules were written in response to what park rangers see as an increasing problem, particularly in metropolitan areas and college "towns." Several cities have totally banned kegs or are using the same regulatory process as the state. In Schroeder's opinion, the rules were discriminatory. Exline said no comments were received at the public hearing but informal comments had been favorable.

Royce saw the problem as the numbers of people--not what was being consumed. According to Exline, disruption of family activities in picnic areas was the main problem.

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CONSERVATION Lodges are not problem areas. Committee members opposed
COMMISSION the definition of "Kegger" in 42.3(5) contending it was
Continued slang--not statutory. There was indication that an object
42.3(5) would be imposed by the Committee if the rules were filed
in this form.

Exline said that one or two individuals would be responsible to the park ranger and Priebe thought this should be spelled out in an agreement. Exline had attended workshops where similar regulations had worked for county officials. She read from the AG's opinion on the issue.

Priebe envisioned undo publicity if "kegger" were used in the rules. He suggested "a gathering where keg beer is dispensed." Clark preferred removal of the definition. She, too, could foresee much publicity.

Beamer reasoned that "kegger" was common usage and he predicted it would ultimately be in the dictionary. No formal action.

LIVESTOCK Mark Truesdell was present for review of recommendations
HEALTH for expenditure of state appropriation, chapter 1, ARC 3670,
ADVISORY Notice, IAB 4/13/83, but no questions were posed.
COUNCIL

PLANNING & Phil Smith represented OPP for review of Iowa job training
PROGRAMMING partnership program, 19.3, 19.7 to 19.9, ARC 3723, Notice,
IAB 4/27/83. Clark was advised that when Congress enacted
this program, no termination date was included.

Smith explained there were 16 service areas established after the extensive public hearing process. Schroeder inquired as to whether the rules had been compared with HF 623. According to Smith, the law states that the Development Commission, in consultation with DPI and OPP, shall issue the rules. They hope to coordinate all of those activities. This program replaces CETA on October 1. No other questions or comments.

COMPTROLLER James Dysart appeared on behalf of the Comptroller for review of:

COMPTROLLER, STATE[270]

Deferred compensation program, 4.2(2), 4.2(10), 4.4(1), 4.5(2), 4.6(2), 4.6(3), 4.7(3), 4.8(3) to 4.8(6), 4.10(3), 4.11(7)

ARC 3666 4/13/83

Chiodo asked why the state was involved in something between the employee and a private provider. Dysart cited Iowa Code chapter 509A and IRS Code, chapter 457 as authority for the program. The state allows an employee to participate in this program through a life insurance company by payroll deduction.

Responding to Tieden, Dysart explained that two open enrollment periods would answer requests from employees wanting in the program as well as participating employees. About 1100 employees out of 45,000 participate in the program. Chiodo was informed that 30-40 percent of the employees are with one company, although 90 some companies are involved.

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COMPTROLLER
Continued
4.5(2)

Graf contended the last sentence of 4.5(2) was merely informational and not necessary in the rules. Dysart pointed out that language was not new. Barry noted that some agencies place information of this sort under a heading of "NOTE". Dysart said the information was contained in a booklet and Priebe asked him to include the deletion the next time the rules are changed.

4.4(2)

Under 4.4(2), Dysart asked and received permission to include an amendment to delete "disability" when the rules are prepared for adoption.

Lunch

Committee was recessed at 11:43 a.m. for lunch.

Reconvened

Chairman Priebe reconvened the Committee at 1:28 p.m. with Department of Public Safety rules as follows:

PUBLIC SAFETY DEPARTMENT[680]
Fire marshal, exits and fire escapes, 5.59 to 5.65, 5.100 to 5.153, 5.200 ARC 3711 ..F..... 4/27/83
Preliminary breath screening test, 7.6(1), 7.6(2) ARC 3676 ..X..... 4/13/83
Building code, ch 5 of OPI transferred to ch 16 of Public Safety and amended ARC 3677 ..X..... 4/13/83
PUBLIC SAFETY PEACE OFFICERS' RETIREMENT ACCIDENT AND DISABILITY
SYSTEM TRUSTEES[690]
Organization and procedure, 1.1, 1.2, 1.100 to 1.127 ARC 3675.....F..... 4/13/83

Public safety officials present were: Connie White, Peter Fallon, Jean Worthington, Michael Rehberg and Don Appell.

5.101(1)

White assured the ARRC that changes they requested had been made. The public hearing generated comments from fire department representatives who were concerned about 5.101(1) re exit ladder devices--general discussion.

Responding to Schroeder, Worthington said that barrel-type fire escapes were acceptable in existing structures but not in new construction. Schroeder requested the Department to bring up the matter at conventions. General discussion.

The Marshalltown fire marshal cited reasons for undesirability of the barrel-type escape--they are smooth, tend to rust, and people have a fear of entering them.

7.6(1)

In reviewing subrule 7.6(1), the Committee raised question as to the legality of requiring a particular trade name. Rehberg said the statutory requirement is to list specific devices approved by the commissioner and the Alco Sensor device meets their specifications. Standards were reviewed by Rehberg who stressed that repair and maintenance is also an important factor. He added that, initially, bidding was utilized through the Highway Safety Office. Committee members preferred competitive bidding process. The rule could be modified to provide that a device "meet or exceed our standards". Royce thought inclusion of some brief standards would aid in the process. Department officials were amenable to ARRC requests.

ch 16

Appell pointed out that responsibility for the state building code was transferred from Office of Planning and Programming to the Department of Public Safety by 1982 Acts, ch 1210, §6. The proposed amendment addresses this change. No questions.

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PEACE According to Connie White, amendments to chapter 1 were in-
OFFICERS tended to comply with statutory changes. No questions were
RETIREMENT posed.

TRANSPORTA- The following rules of the Department of Transportation were
TION DEPT. before the Committee:

TRANSPORTATION DEPARTMENT[520]

Federal-aid highway bridge replacement and rehabilitation program. [06.P] ch 6, [06.Q] ch 8, ch 19.

Filed emergency ARC 3700 ... FE 4/27/83

Special permits for operation and movement of vehicles and loads of excess size and weight. [07.F] 2.1(15)"a"(4).

2.1(15)"a"(5). Filed emergency ARC 3701 ... FE 4/27/83

Notice by applicant to liquid transport carrier. [07.F] 13.4(6) ARC 3703 ... N 4/27/83

Lowell Richardson, Director, Office of Local Systems and T. E. Daugherty, Transportation Regulation Authority were present.

[07F]13.4(6) Notice by applicant to liquid transport carrier was reviewed out of order. Daugherty said the old rule required that carriers be notified by certified mail, which cost \$1.55 each. Substantial savings will be realized if first class mail is used.

[06,P]ch 6 Richardson informed the Committee that emergency amendments
[06,Q]ch 8, to chapters 6, 8 and 19 will allow Iowa to receive additional
ch 19 federal funds from the new surface transportation Act for the replacement or rehabilitation of highway bridges.

[07,F]2.1 States now have authority to route any nondivisible load over the interstates. Overweight loads, except for emergencies, may not be on the interstate highways. Amendments to [07,F]2.1 remove outdated width restrictions. No questions.

SOCIAL Judy Welp, Bob Schoene, Dan Gilbert, Ellen Hansen, Will Miller,
SERVICES Don Bice, Bob Miskimen, M. E. Imlaw and Carol Fredrich appeared on behalf of the Department of Social Services for review of:

SOCIAL SERVICES DEPARTMENT[770]

Intermediate care facilities, reports — limitation of expenses. 81.6(11)"m", 82.5(11)"j" ARC 3689 ... FE 4/13/82

Foster care services, 136.2, 136.4, 136.6(4) ARC 3690 ... FE 4/13/83

Subsidized adoptions, 135.2 to 135.9 ARC 3691 ... FE 4/13/83

Purchase of service, ch 145 ARC 3692 ... FE 4/13/83

Sheltered work/work activity services, 155.1(17), 155.2(3), 155.2(4) ARC 3693 ... FE 4/13/83

ADC, application, 40.4(1), notice ARC 3696 terminated ARC 3671 ... NT 4/13/83

ANC, earned income, 41.7(2)"a"(2), filed emergency ARC 3687 ... FE 4/13/83

Food stamp program, 65.1(4) to 65.1(7), 65.2, 65.19 ARC 3719 ... N 4/27/83

Food stamp program, 65.18, filed emergency ARC 3699 ... FE 4/27/83

Medical services, eligibility, 75.1(15)"a"(3), 75.1(16), filed emergency ARC 3667 ... FE 4/13/83

Medical and remedial services, drugs, 75.1(2)"a"(3) ARC 3672 ... N 4/13/83

Medical and remedial services, dental work, 75.3(1)"a"(2) ARC 3673 ... N 4/13/83

Intermediate care facilities, payment at the new rate, 81.6(4), 82.5(4) ARC 3674 ... N 4/13/83

Intermediate care facilities, limitation of expenses, 81.6(11)"m"(1), 82.5(11)"j"(1) ARC 3720 ... N 4/27/83

Block grant, 131.3(2), filed emergency ARC 3688 ... FE 4/13/83

Payments for foster care, 137.1(6) ARC 3721 ... N 4/27/83

Family-centered services, ch 157 ARC 3722 ... N 4/27/83

Also present: Merlie Howell, Executive Director, Coalition for Family and Childrens Services.

Welp summarized the amendments before the Committee. No recommendations were offered for the first eight items on the agenda. In response to Committee questions on 81.6(11) and 82.5(11), as to method of becoming a "department approved appraiser," Miller stated there are 3 or 4 nationally recognized associations and any experience in institutional appraisal would be considered.

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6/14/83

SOCIAL
SERVICES
Continued

Amendments contained in chapter 65 pertain to options not covered by federal regulations. Rule 65.18 brings the food stamp program into compliance with the 8th Circuit Court of Appeals which held that utility assistance should not be counted as income. Priebe was advised that determination as to whether drugs are ineffective--78.1(2)a--would be based on Food and Drug Association criteria.

ch 157

Discussion of chapter 157--family-centered services. Howell commented that although the rules were a joint effort of the Department and Coalition of Family and Children Services, a small but significant change had been made in 157.3(2). She suspected it could be that children placed outside their homes might be precluded. Welp was aware of the problem. She stressed that it was not the Department's intent to exclude those children and the matter would be reviewed.

Recess

Chairman Priebe recessed the Committee at 2:50 p.m.; re-convened at 3:20 p.m.

ENVIRON-
MENTAL
QUALITY

Michael P. Murphy, Keith Bridson, Allan E. Stokes were present on behalf of the Department of Environmental Quality for review of the following agenda:

ENVIRONMENTAL QUALITY DEPARTMENT[400]

Water quality standards, 16.3(5)e ARC 3695..... 4/13/83

SPECIAL REVIEW

Operation permit fees for water works, 22.6(4)b IAC

Also present: Barton Jones, Director of Utilities, Dubuque; Linda Elliott, League of Iowa Municipalities; Bart Rule, Executive Director, Iowa Association of Municipal Utilities; Rawlins Collerain, Director of Utilities, Sioux City; Harold Schiebout, Utilities Superintendent, Sioux Center; William J. Rush, City Manager, Sheldon; Howard Hanson, Bondurant; Larry Anderson, West Des Moines Water Works; Dean W. Johnson, Des Moines Water Works; Erlen Veverka, Mayor, Prairie City; Bob Colyer, Superintendent, Utilities, Lamoni; Richard Foust, City of Urbandale; Roger Ward, Indianola, Manager of Utilities.

16.3(5)e

No questions were posed re water quality standards, 16.3(5)e.

Special
Review
22.6(4)b

Operation permit fees for water works, 22.6(4)b was before the Committee. Jones read from a prepared statement wherein he did not endorse the operation permit and questioned the validity of a fee structure based solely upon service population. He had no problem with application fees but thought they should be distributed uniformly.

Bart Rule referred to a prepared statement and agreed with the concept of annual permit fees, but opposed excessive fees. He favored utilization of the administrative rule process whenever fees are increased. He recalled a public hearing last year when no one from the DEQ commission was in attendance to hear testimony of many water operators. Two staff members had a tape recorder. Rule suggested the legislature should look closely at the fee schedule and the inspection program.

5/18/83

ENVIRONMENTAL
QUALITY
Continued

Rush feared the "Door is being opened for a multitude of fee systems." He took issue with the structure based on single-factor population. Hanson spoke of the fact that their budget was very "tight" and 20 clerks from the surrounding area shared his concern.

Anderson concurred with previous presentations and expressed his opinion that the regulatory functions of the state agency should be borne by the state. Johnson echoed previous comments; reasoned that increased costs would be passed on to the consumer and that fees should not be based on population. With respect to certification, Johnson declared the proposed \$50-increase was exorbitant.

Veverka pointed out that Prairie City officials considered their \$200 annual fee to be excessive for a small community. Also, they would have preferred advance knowledge for budgeting.

Murphy alluded to a Code provision mandating the Commission to adopt fees for water supply areas. For a number of years, the Commission had not promulgated rules. He added that an appropriations bill contained legislative intent for the Department to adopt permit fees. Discussion of the transition for DEQ to the new DAWWM. Murphy pointed out the permit fee issue had not been taken to the new Water, Air and Waste Management Commission. Existing rules of the Departments that form the new agency will remain in effect until revisions are adopted. Stokes and Murphy referenced 1983 Acts, SF 355, relative to fees and permits.

Chiodo asked if there were correlation between the amount of work involved in the application and the fee. Murphy answered in the affirmative. Stokes added that an attempt was made to equalize costs in the fairest sense possible. The operation certification program takes two days and, again, the Department is mandated to recover the full cost of administering that program. DEQ officials took the position they could do a better, more reasonable job protecting the citizens of the state.

Committee members wanted to ensure public input on the fee issue. Murphy noted that the petition before the Commission would require hearings to be held throughout the state. Stokes defended their enforcement of the water supply program. He continued that Iowa does not now have an automatic escalator clause in the fee structure. Review for construction permits was addressed by the legislature in SF 368, which was enacted this year.

Graf recommended that interested persons submit their comments to the Commission.

No formal action.

Recess

Chairman Priebe recessed the Committee at 5:00 p.m. to be reconvened Thursday, May 19, 1983.

Reconvened

The Committee was reconvened Thursday, May 19, 1983 at 9:00 a.m. with Clairman Priebe presiding. Senator Holden was excused due to illness.

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COLLEGE AID
COMMISSION

Representing College Aid Commission were Gary Nichols and Merle Fleming. The following rules were considered:

COLLEGE AID COMMISSION[245]
Scholarship program, 2.1(5)Fb (4), 2.1(8)Fb ARC 3716 N 4/27/83
Tuition grant program, 4.1(7) ARC 3717 N 4/27/83
Vocational-technical tuition grant program, 5.1(7) ARC 3718 N 4/27/83

Discussion centered on transferring grants from one school to another after commencement of the school year. Schroeder favored more flexibility for students when funds are available and he reasoned that October 15 would be an acceptable deadline. Fleming spoke of time involved in recordkeeping and she posed question as to where the obligation rests--with the agency or the student.

Priebe suggested that Schroeder work with the Commission, Royce and Graf to effect a compromise.

REVENUE
DEPARTMENT

Carl Castelda, Deputy Director, Gene Eich, Deputy Director for Property Tax, Charles Haack, Tax Policy Officer, Gary Nicholason, Superintendent, Central Assessment, and Michael Cox represented the Department of Revenue to review:

REVENUE DEPARTMENT[730]
Notice of appeal, 2.2 ARC 3681 F 4/13/83
Assessment practices and equalization, 71.1 to 71.9, 71.12 to 71.17 ARC 3682 F 4/13/83
Property tax credits and exemptions, 80.1(1)Fb, "F" 80.1(2)Fa and "K" 80.1(4)Fa, 80.2(1)Fa, 80.2(3)Fa, 80.3(6), 80.5(2), 80.5(8), 80.5(10), 80.6(5)Fd to "F" 80.6(6)Fa, 80.7(1) to 80.7(3) ARC 3715 F 4/27/83
*Determination of value of railroad companies, ch 76 ARC 3685 - Special review 3/30/83
*Determination of value of utility companies, ch 77 ARC 3618 - Special review 3/16/83

Also present: Wendell Roth and Suzan Steward, Iowa Public Service; Jack B. Clark, John M. Lewis; Patrick F. Nugent, MCI Communications; D. H. Sitz, Mark Truesdell, Steve Finch, Michigan Wisconsin Pipeline; Don Williams, Northwestern Bell Telephone; Rick Ehle, General Telephone Co.; Homer Mitchell, InterNorth; Rick Phillips; Richard Hasemeyer, Petrol Gas Pipeline Co.; Jim Steele, Chicago and Northwestern and Iowa Railway Association; B. Koerbernik, Legislative Service Bureau.

No questions were raised with respect to the first three items on the agenda.

chs 76 and
ch 77

Eich led discussion of chapters 76 and 77 and, in jest, likened himself to David without his slingshot. Eich reviewed history of utility valuation. Prior to 1968, the Department lacked sophistication in its approach to this matter. They used an original cost without any depreciation. In 1969, the income approach to value was introduced and they also began using depreciation in the cost approach. In 1978, the Department recognized the lack of stock and debt approach for utility companies.

Historically, there were questions as to its validity and certain problem areas within that approach. Rules were adopted in 1978 to implement new procedures--utilization of stock and debt for different types of utility companies. Also, stock

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and debt was weighted quite heavily--the income approach was "weighted the next best" and the "cost approach was weighted the least." Eich emphasized that these proposed rules do not change that--procedures adopted in '78 would not be radically changed, only refined.

He recalled that during the 1978 adoption of the rules, no one appeared at the public hearing. Two written comments were received and there was no resistance by utilities until after the rules were implemented.

Eich discussed the pipeline cases and noted that the state board hearing officer's decision had been appealed by three pipeline companies, the Department and the intervenors. He suspected that all possible appeals would be utilized.

The Department intends to amend the Noticed version of chapter 77 and Eich distributed copies of the changes. In 77.1(3), the Department was concerned they were defining everything as operating property whether or not it was taxed. In Iowa, motor vehicles are a prime example of operating property which is presently exempted from property tax. The proposed changes would alleviate that particular problem. The definition of "original cost" had been added in 77.1(11).

Chiodo questioned use of "not necessarily" and Eich agreed the subrule should be reworded. "Comparable sale" was clarified in 77.3. In 77.4(2), the term "asset" was changed to "property". Also, additional language sets out what can be if the market comparables are not available. Eich noted that revision of the notice resulted in some renumbering of the rules and 77.4(4)a adds an alternative if income is not available to estimate the equity value. Language was added in 77.4(4)b and g to cover construction work in progress. The formula for "Gorden Growth Model" was added in 77.4(4)h and "cost of service" was changed to "cost of capital" in 77.5(2). Also, 77.6(1) addresses other forms of depreciation -- basically obsolescence-- both economic and functional.

Language in 77.7(1) will allow the stock and debt indicator of value to be considered the prime indicator of value with the most "weight". Income will follow that and cost will get the least amount of weight.

Eich utilized charts to depict methods used by the Revenue Department to determine the value of a utility company, e.g., Chart 1 --the unit cost approach; chart 2, unit income approach; chart 3, unit stock and debt approach; chart 4, correlation of the three indicators of value;--two alternatives were indicated "Black Box" or appraiser's judgment and fixed weight; chart 5, relative to value of operating property. Many utility companies have interstate operations.

Eich explained the basic differences between current rules and the proposed version--the first issue being in the stock and debt approach--the equity value of untraded companies.

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Continued

Allocation of a part of a parent to a subsidiary company is accomplished by the use of one of three ratios -- assets to assets; income to income, or book value of subsidiary equity to the total book value of the parent equity. Eich stated that the Department proposes to institute the "Haugen method" in determining the equity value of a company--available operating income to the equity stockholders divided by a market rate of return on common equity.

In determining the value of operating and nonoperating property within the stock and debt approach, the Department currently determines the operating property ratio and applies it to gross stock and debt indicators. The proposed change was included in chart 7. Other alternatives were also described by Eich. Handling of deferred income tax and investment tax credit was included in charts 10 to 13.

In response to Chiodo, Eich said accumulated deferred taxes were a liability of the United States government. The company owes the tax which must be paid if the company is sold. Eich explained proposed changes as they pertain to deferred income tax, generally. This issue would ultimately be decided by the courts, in his opinion. Chart 11 showed accumulated amounts of tax deferrals for some utility companies--substantial amounts that are available for the purchase of assets. Chiodo was told that if the deferred tax account fluctuated, the system would be able to accommodate the fluctuation under the income approach. Eich indicated there was support for Revenue's contention that stock and debt should have more weight. They feel problems are fewer with this approach than within the income approach and the cost approach. Eich continued that other states give much more weight to cost and income but that doesn't necessarily reflect values.

In re appraisals, Eich said opinions differ depending upon the industry. In written comments, one said the deferred credits should not be included in the stock and debt approach. Another industry thought that under the stock and debt approach, it was proper to include current liabilities, other liabilities and deferred credits in determining market value of the company. Several companies criticized use of book value of allocating market value sources of capital between operating and nonoperating property. Other companies argued that the stock prices included the value of deferral. Rate base companies admit that the regulatory agencies deducted the deferral from the rate base.

Eich stressed that their job was not to attempt to keep rates as low as possible as some companies have suggested, but to define "market value". In order to dispel any accusation that the Department is stifling economic growth in Iowa, Eich cited utility values of \$2.991 billion in 1972 and in 1982, they were \$5.4 billion--an 80 percent increase. In conclusion, Eich discussed model comparisons on Handout #7.

Recess

Priebe recessed the Committee at 10:30 a.m.
Reconvened at 10:45 a.m.

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REVENUE
DEPARTMENT
Continued

Phillips addressed Eich's introductory statement from the taxpayer's perspective. In 1978, no one appeared at the hearing since it was understood that the rules were codification of practice by the Revenue Department at that time. No one was aware that such heavy weighting would be on the stock and debt approach. He was critical that there was no industry input in drafting the complex rules and took the position that implementation should be delayed. Phillips stressed that companies have responsibilities to ratepayers and stockholders.

Nugent contended that MCI would be taxed under a property valuation practice which was inappropriate--the property value of which lies neither in financial market expectation of its common stock nor on a nonexistent assured revenue base. Eich responded that when Revenue does a stock and debt approach, that is a market approach as far as the Department is concerned and they are determining value of the entire entity.

Roth spoke on behalf of the Iowa electric investor-owned utility companies. He had analyzed old rules and contended they did not speak to some exemptions--the weighting did not change. He assumed that electric and gas utilities would be weighted 80-10-10. Roth was unsure whether the complex method being used in the stock and debt approach would be beneficial or simplify the process of determining their potential liability. Re the income approach, he was not convinced that it was proper to add the accumulated deferred tax. Roth reasoned the proposals were somewhat premature, assuming that the litigation between the Department and the pipelines would be ruled upon in the future. He recommended that the Department provide clarification and direction as to the interpretation including the effective date of the rules to enable utilities to evaluate the economic impact.

Eich discussed deferred income taxes for utility companies with respect to the income approach. Assets will be lost if you do not "add back the accumulated deferred income tax."

Finch read a statement expressing concern of Michigan Wisconsin Pipeline re the proposal for determining actual value of their pipelines in Iowa. He pointed out that federal law allows gas pipeline companies to recover from their customers all of the taxes and gas consumers would be the second group harmed by the Department's policies. In response to Priebe, Finch said only states which have unit value were included in their charts. Most are based on original cost plus depreciation. Priebe asked for comparisons of taxes in various states but Finch did not have that information. He indicated their Iowa property tax liability was \$800,000 in 1982.

Luther of Michigan Wisconsin said that Wisconsin used the unit value concept, but they do not release that figure. Eich maintained the Department was unaware of the impact when the change was implemented in 1978. He reiterated the reason for the '78 changes was not to collect more taxes for the state. Taxing officials were contending values were too low and companies thought they were high. The Department wanted the best

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defensible approach in anticipation of challenge. Chiodo inquired as to how much business Michigan Wisconsin did in Alabama and Tennessee and was told there was none in Alabama. He wondered why Michigan Wisconsin selected Alabama appraisers. Finch said McSwain, who has an outstanding reputation for property tax evaluation, was from Alabama. He thought that Alabama used the unit approach. Eich commented that the Department did not espouse all of McSwain's principles. He added that McSwain's valuation in Iowa was 50 percent higher than the original cost, less depreciation. Finch pointed out that, under statute, they are mandated to use two appraisers when challenging their assessment.

Mitchell read from a detailed statment by InterNorth in opposition to the Revenue Department's actions with respect to chapter 77. This included a critique by American Appraisal Company of the proposed changes. Mitchell opined the Department should not be allowed to "usurp the taxation powers granted to the legislature."

Lunch

Break for lunch. Reconvened at 1:15 p.m.

Steele concurred with the utility representatives and opposed stock and debt as a valid indicator of fair market value. He requested posponement of the rules and was willing to work with the Department to resolve any differences in evaluation concepts.

Hasemeyer argued the rules had serious, far reaching impact and legal deficiencies. He favored referring the issue to the next General Assembly. He discussed the weighting of the stock and debt approach.

Eich pointed out that the proposed changes do not address intangibles. That area is covered in the existing rules. It is one issue which is black and white and is before the courts to be decided. Eich agreed to furnish information to the ARRC relative to intangibles.

Ehle questioned the method of arriving at the stock and debt method. He noted that telephone companies are income-producing and prefer income approach. Brief discussion of MCI and Bell telephone systems.

In conclusion, Eich explained that the public hearing process had been completed but that most of the industry comments heard today address the current rules--not the proposed changes to them. Priebe reviewed the ARRC prerogatives. Eich was hopeful the amendments could become effective before the third Monday of August.

Adjourned

The meeting was adjourned at 2:30 p.m. Next meeting was scheduled for Tuesday and Wednesday, June 14 and 15.

APPROVED:

Respectfully submitted,

Chairman

Phyllis Barry

Phyllis Barry
Assisted by Vivian Haag