MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, May 20, 1980, and Wednesday, May 21, 1980.

Place of Meeting: Senate Committee Room 24, Statehouse, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar H. Holden and Dale E. Tieden; Representative Betty J. Clark.
Not present: Representative John E. Patchett, who was excused to represent a client in court.
Also present: Joseph Royce, Staff.

Chairman Schroeder called the meeting to order at 9:00 a.m.

CREDIT UNION DEPARTMENT

Betty Minor, Director, and Jim Brody, Deputy, Credit Union Department, were present to review the following:

CREDIT UNION DEPARTMENT[295]
Branch offices, ch 6 ARC 0996 ..... E 4/16/80

ch 6

Concerned individuals recapitulated their previous comments re chapter 6 rules directing establishment of branch offices for credit unions. Tieden reminded those present the legislative posture or attitude was that credit unions should operate under the same criteria as the bankers. Holden agreed with Tieden and suggested language in 6.1(1) be modified to include "other than the primary or principal place of business" in the second line, after the word "Iowa" Minor conceded the additional language could serve to clarify the rule.

There was Committee conversation and concern for the continually rising prime interest rate.

Rules - no scheduled review

In perusing the rules for which no agency representative had been called for appearance before ARRC, Royce advised the Committee that the Civil Rights Rules were limited to procedural matters.

1.21(2)

Clark questioned use of the word "filed" in 1.21(2), third line, and wondered if there were possible exceptions to the filing. She cited a situation of a "post office snafu" and the individual was not considered to have been on time. Royce said the language "notice shall be mailed" provided no exception. However, he thought Civil Rights would be amenable to a change.

Educational Radio and TV

Tieden questioned the salaries for educational radio and TV board and whether or not they were under Merit. Royce responded they were not--Regents and IPBN were mandated

Rules - no scheduled review Cont'd

to have separate merit systems. Royce agreed to obtain answers for Tieden on the subject.

LIVESTOCK ADVISORY COUNCIL

In re 1.1 of livestock health advisory council rule, Priebe questioned the size of the appropriations and recommended cutting back on the amount for TGE (transmissable gastroenteritis research) and preferred more funds for BVD research (bovine virus diarrhea). Royce arranged for a representative from the council to appear during the afternoon session for discussion of the funds.

HEALTH - radiation

Clark pointed out the word "shall", in 39.10 -- approval not implied, was duplicated and requested removal of one "shall".

BANKING

Schroeder requested a representative from the Banking Department make an appearance for review of 21.8, interest rate.

DEPARTMENT OF ENVIORNMENTAL QUALITY

James Woll, George W. Welch, Ron Kalpa, Rod Vlieger and Darrell McAllister represented DEQ for review of the following:

ENVIRONMENTAL QUALITY[400]

Air quality, particulate matter emission offsets, 3.5	ARC 1031	F	4/30/80
Air quality, emission standards, 4.1(2), 4.3(3)"a"(4), (5), "b"	ARC 1032	F	4/30/80
Air quality, emission standards, 4.3(2)"c"(2)	ARC 1033	F	4/30/80
Waste water construction and operation permits, 19.2(9)"b"	ARC 1034	F	4/30/80
Transportation of radioactive materials, ch 42	ARC 0985	N	4/16/80
Hazardous wastes, ch 45	ARC 0986	N	4/16/80

42.1

Schroeder questioned the note, in 42.1, pertaining to the notification requirement not becoming effective until DOT adopts rules on the subject of transporting radiactive materials in Iowa. He could not see the practicality of this and Welch answered the purpose of the rule was to identify types of materials which would be subject to DEQ regulation. He emphasized if DOT does not take action, the rules would have no force, thus both agencies participated in developing them.

ch 42 & 45

Schroeder requested DEQ include dates certain when citing federal rules in chapters 42 and 45. Welch was amenable. Welch indicated there was no itemized list of radioactive materials. However, there was a packaged standard, and that is the shipper's responsibility. In answer to Clark, he said the original petition was for DEQ to adopt permit systems for individual shipments. Hearings have been held and the notice is a follow-up. The rule leaves the decision of permitting or prior notification in the hands of DOT. DOT will implement the system parallel to their existing truck permit system.

Schroeder made the point that Iowa might be moving too fast in the area of shipment of radioactive materials. Holden wanted to know where DOT would obtain authority--Welch said DOT had indicated they had the regulatory authority in their own right.

Welch announced that there was to be a public hearing on the proposed chapter Wednesday, May 21, 1980.

DEPARTMENT OF ENVIRONMENTAL QUALITY - Cont'd

Schroeder urged DEQ officials to peruse the matter carefully to avoid any problems such as federal DOT rules superseding Iowa's.

3.5(1)c

Re 3.5(1)c, Priebe thought the definitions to be a drastic change from the previous rule. Woll explained the definitions were those originally adopted by EPA sometime ago. EPA had been sued and the court required the change. The proposed rules include the federal definition which resulted from the court decision.

Priebe queried if these rules would affect a problem faced by the community of Cleghorn. Woll replied in the negative explaining these rules address nonattainment areas, of which Cleghorn would not be affected. There was general discussion of the two types of areas, with inherent problems and diffusion of monitoring for air quality. Tieden was informed that monitoring results are fed into computers and subsequently, computers are used in monitoring emissions. Computers are used to indicate "hot spots" and monitors are placed out in the state.

According to Woll, sulphur dioxide emission standards were reviewed by ARRC in 1975--those rules were submitted by EPA and never approved. Since that time, Iowa has had its own emission standards in addition to more restrictive regulations. DEQ is attempting to correct the disparity between the two sets of rules.

Tieden took the position EPA rules for other areas were far more stringent than those needed in Iowa. Woll reminded him that Iowa DEQ had provided the data for the study being made by the federal DEQ.

Priebe wondered if cleaner air had resulted since monitoring had been in existence. Woll said, in terms of most of the pollutants, the air was about the same in that Iowa never had a problem before monitoring. He pointed out the importance of rain in keeping the air clean.

Fugitive dust

In discussing fugitive dust, Woll advised ARRC members that EPA will consider revision of air quality standards by the end of 1980. DEQ has been advised by EPA that the issue of rural fugitive dust in Iowa and its inclusion or exclusion from monitoring should be addressed in that standard revision.

In response to Clark, Woll said Mason City sites have been monitored for 10 years and pollution control devices have resulted in a marked reduction of pollutant concentration.

Schroeder returned discussion to the movement of radioactive materials and Welch advised him the proposal was merely to

ENVIRONMENTAL QUALITY Cont'd

adopt the federal DOT labeling requirements. Schroeder pointed out the federal rules do not require advance notification of movements and he voiced opposition contending it would create more problems.

Welch responded that DOT had the mechanism for keeping the information confidential prior to shipment.

4.1

In answer to Schroeder re adoption by reference in 4.1, Woll said DEQ had adopted 26 of the federal standards new source for those categories. This authority was granted by legislation.

4.1 & 4.3

Holden asked if DEQ had authority for provisions set out in the explanatory paragraph concerning amendments 4.1 and 4.3 and thought "NSPS" should be defined. Holden doubted the legislature contemplated a rule change every time the federal government presented a new NSPS.

Woll said normally, when DEQ adopts new source performance standards (NSPS), they do so under Notice of Intended Action. When the state adopts by reference, rules have already been perused and set by EPA. Woll declared their legal staff advised them the language was acceptable, but he agreed to take Holden's concerns under consideration.

4.3(2)c(2)

In re 4.3(2)c(2), air quality commission, Schroeder reiterated his concern over the fugitive dust issue--in particular, application to unpaved roads. Woll commented that the rule had been changed considerably since the public hearing held one year ago. Roads are still covered by a situation where the landowner has to complain and there must be extraordinary travel on the unpaved road. The rule before the Committee did not deal with unpaved public roads. The possibility of referring the fugitive dust problem to the next general assembly was discussed.

19.9(2)b

In re 19.9(2)b, waste water construction and operation permits, McAllister informed the Committee that there were no comments at the hearing concerning sludge handling and disposal standards. No formal action taken.

Clark requested McAllister have DEQ explain opening up the Rockwell sewage plants.

Recess

Schroeder recessed the Committee for ten minutes at 10:30 a.m. Committee reconvened at 10:40 a.m.

ENERGY POLICY COUNCIL

Doug True, Deputy Director, reviewed the following rules:

Permanent assignment of petroleum products, ch 4 ARC 1041 ..... N 4/30/80
Technical assistance and conservation grants, 5.1(3)"b", 6.5(1)"a", 6.5(3)"a", 7.6(5), 7.6(4)"a", 7.6(4)"c" ARC 1042 ..... N 4/30/80
Conservation/solar house design endorsements, ch 11 ARC 1003 ..... N 4/16/80

Holden inquired as to definition of a "new end-user" and

ENERGY POLICY COUNCIL Cont'd ch 4

wondered if it would pertain to an individual who did not have a supplier. True noted the most typical example would be someone who quits the business of supplying petroleum, of which there have been several this year. It has been the responsibility of the Department of Energy to assign new end-users and, in the past, that was done whether or not the states made recommendations. Now, the DOE will not upward certify--or reassign that product once the state has made an active recommendation. The state is being forced to have rules so that if someone goes out of business the state can provide recommendation for alternate supplies through other wholesalers.

In answer to Priebe as to how farmers will obtain fuel when suppliers go out of business, DOE indicated they would order another prime supplier to pick up the slack, or they would allow an existing supplier additional product. EPC will use the regular set-aside petroleum to make up the difference.

Priebe and Schroeder contended there were danger signs in the rule. Holden could see all kinds of problems and cited much variation in the consumption of products, particularly in agriculture. He argued that placing the 20,000-gallon amount in a rule was like "spitting into the wind". True reminded the Committee that variation was for the regular set-aside--only 5 percent of the product. This rule addresses a permanent problem. According to True, EPC must accept the federal regulation.

Without the federal rules, no one can be "upward certified" unless the state makes a positive recommendation. True explained that EPC had pointed out to the federal government the problems faced by Iowans. Holden asked if competition in the market place had been completely eliminated and was that the reason for the continually rising prices. True stressed the fact that distillate is regulated by the federal government and this will continue. Tieden opined the "free enterprise system" was dead.

Priebe made the point that people in cities could buy diesel fuel and gas cheaper than the farmer could get it delivered to the farm. True, in response to Schroeder, said regulation of gasoline distribution and diesel oil was quite different. General discussion of the price of gas and diesel fuel, both in the city and the country.

4.7(2) Clark requested changing "its" to "the council" in 4.7(2). True was amenable.

6.5(1) True stated the EPC was attempting to broaden the scope of 6.5(1), based on comments from the ARRC. Holden suggested addition of "as
5.1(3) associate" in 5.1(3), line 7, after "certification".

Schroeder requested explanation of 7.6(4)a(2) and True explained it was an attempt to provide eligibility for "hardship money". He indicated the funds would be available to hospitals and school systems

ENERGY POLICY COUNCIL Cont'd

and many requests have been made for the $15,000,000 of federal funds. Discussion of chapter 11. Schroeder recommended amendment to 11.3--energy efficient house design--by addition of a date certain for the 1979 Building Code Thermal Performance Standards.

ch 11

11.5

In re 11.4(3), Schroeder thought the basis for standards should be included in the rule. Use of solar energy can be very innovative, according to True, and the information was derived from several publications. Priebe spoke in opposition to the apparent endorsement by Energy Policy Council of an energy-efficient home. After general discussion, True agreed to change the rule to address Committee concern.

PROFESSIONAL AND OCCUPATIONAL COMM.

Dick Woods, Assistant Director, Office of Planning and Programming and Management Liaison to the Commission on Professional and Occupational Regulation was present for review of the following:

PROFESSIONAL AND OCCUPATIONAL REGULATION COMMISSION[637]
Definitions, ch 1; organization and administration, ch 2; requests for evaluation, ch 3; public hearings, ch 4; evaluation of professions and occupations, ch 5 ARC 1043 ..... F 4/30/80

Woods called attention to an inadvertent omission of barbers from the list of licensed professions--5.2(1) and indicated an amendment had been filed to include them.

In answer to Royce, Woods advised the Committee they had placed professions in different groupings--indirect health and public safety being first. Action to include shorthand reporters in the list was deferred. No Committee action.

Recess Lunch

Schroeder recessed the Committee at 12:10 p.m. for lunch to reconvene at 1:30 p.m.

Chairman Schroeder reconvened the meeting at 1:35 p.m.

AGRICULTURE

Filed Agriculture rule 10.6, IAB 4/16/80, was acceptable as published.

Pesticides, registration, 10.6 ARC 0999 ..... F 4/16/80

special review

The matter of special review of grain probes was before the Committee. Present for the discussion were Robert Lounsberry, Secretary of Agriculture; his legal counsel, Bette Duncan; Dr. M. H. Lang, State Veterinarian; Julius D. Hook, Director of Chemical Lab, Department of Agriculture; Dan Montgomery and Jerry Downin, Farm Bureau, Cheryl Marsh, AGRI Industries.

grain probes

Duncan commented there were no rules in the area of grain probes. Priebe was of the opinion some should be adopted. Duncan introduced Lounsberry, who distributed a letter. He discussed the history of grain probes, field testing and determinations as well as legislation enacted by the 68th GA, ch 12, §3. The Department had contacted the attorney general's office for a legal assessment as to whether or not they had authority to advise people they could not use the vacumm airprobe. The attorney general's office opined the Agriculture Dept. had that authority.

AGRI-CULTURE Cont'd

The 22 agriculture product inspectors in the state were requested to determine if any illegal probes were currently being used. [159.5, The Code]. Lounsberry pointed out that the letter had addressed the topic of moisture as well as foreign material. As a result of the ARRC request for review of the grain probe matter, Lounsberry said the Department sent out another letter to the 22 inspectors informing them of the attorney general's opinion-- which said the probe could be used for grain moisture probes only. The inspectors were instructed to take no action against that type of probe unless it was determined the operator was using it to sample foreign material. By reference, letters by Lounsberry and Assistant Attorney General Willits become part of these minutes. [available in office of the Code Editor].

Priebe questioned Lounsberry as to his opinion on legislation to eliminate the probes. Lounsberry thought the statute could be clarified. Discussion of types of modules used to test grain and moisture meters. Priebe recommended and the Committee concurred that a letter be sent to the legislative Agriculture Committees requesting study of the matter.

Letter to GA

LIVESTOCK HEALTH ADVISORY COUNCIL

Committee resumed review of the Livestock Health Advisory Council rules. Dr. Lang was present for consideration of the appropriation recommendation, 565--1.1, IAB 4/30/80. Priebe commented the question was whether the amounts were allocated in the most equitable manner. Also, respiratory disease research should be included. Priebe favored reallocation of funds from one disease to another.

Lang noted that the Council had appropriated $45,000 to TGE in order to "wind-up" their research since a new vaccine, far superior to that presently on the market, had been created. Lang thought as much as $20,000 could become available for other diseases. He commented the Iowa State Research Foundation had obtained the patent rights and he said federal funds are being used in the microbacterial field--TB and Johne's disease.

In answer to Schroeder, Lang anticipated the state would purchase the vaccine and make it available at cost to the producer. He recommended the Committee members read minutes of the Health Council where he had suggested allocation for Johne's disease research.

recess

Chairman Schroeder recessed the Committee for ten minutes.

REVENUE DEPT.

Carl Castelda, Deputy Director, was present for review of chapter 19, sales and use tax on construction activities, filed, IAB 4/16/80. In response to Schroeder, Castelda reviewed the history of the revised chapter. Revenue created a Committee which included department, attorney general and construction industry representatives.

19.5
19.6

At the public hearing, opposition was voiced concerning 19.5 and 19.6, pertaining to manufacturers engaged in construction contracts and

REVENUE cont'd ch 19

prefab structures respectively, and the Department withdrew the rule pending litigation. In answer to Tieden, Castelda thought the issue would go all the way to the Supreme Court.

Castelda concluded that the two rules which were withdrawn were repetitious of the statute.

There was brief discussion with respect to sales tax on construction--new and otherwise.

19.11 Responding to Priebe, Castelda said the Harvestore v. Wisconsion case referred to in 19.11 was based on case load found in research. The Department could not find a similar situation in Iowa.

Discussion of taxes for grain bins. Tieden wanted to know if there were a rule or law in the last two years regarding taxing of grain bins. Castelda knew of none. Priebe thought the bins were readily moveable and should be exempt from tax. Holden interjected this concept could also be applicable to farm buildings, e. g. barns, houses, sheds.

Castelda commented that, generally speaking, Revenue is deeming that grain bins would be real property in that they remain stable and are taxed. He admitted, however, that some are portable.

Priebe made the point that when legislature started exempting personal property from taxation, grain bins were considered to be personal property. Priebe took issue with Revenues apparent change, "in the middle of the stream", of the taxable status of grain bins. He questioned the authority for this.

In re sales and use tax, Castelda was unsure of a change. He conceded a change could have been made for property tax purposes, but since he had not been associated with property tax issues, he could not address it.

Schroeder noted that electrical installation was taxed and he wondered why the Department had never recommended revision to strike that provision from $422.43. Castelda reasoned that legislative intent was for a different application for electrical contractors.

No formal action taken by the Committee.

PROFESSIONAL TEACHING PRACTICES

Donald Bennett, Counsel, appeared in behalf of the Professional Teaching Practices Commission for review of the following:

Contractual obligations, 3.1(1)"b"; contract nonperformance, ch 5; Student discipline, ch 6 ARC 1039..... 4/30/80

Bennett presented a summary of the proposed rules and recited history of the Commission which was created by the legislature--Chapter 272A, The Code. Essentially, Commission members are required to hold a teaching certificate from DPI--a member from the teacher preparation institution, a superintendent, school principal and personnel director. Bennett outlined functions of the Commission.

Bennett spoke concerning the legal principle of corporal punishment in the schools.

Tieden questioned use of the term "corporal punishment" and made the point that in other areas of law, it meant authority to take life. Bennett answered that it was derived from Latin, corporel--the body--to punish the body.
Bennett continued it was the position of the Commission that use of physical force and violence in a school setting outside of the rule of law, which would be the privilege to corporally punis --spoken of in this brief--is of course, criminal, assault and battery. It is a civil wrong and the Commission contends it is within their jurisdiction to lay down professional propositions in the area.

Schroeder and Tieden viewed the rules as being too restrictive.

Bennett interpreted the law as being very clear on the expansive and restrictive extent of the privilege to exercise force--sometimes violent and painful--against a student under the guise of corporal punishment.
Schroeder thought there were proper safeguards for cases of child abuse.
Bennett pointed out the position taken by the Register and Tribun labeled the rules shameful because corporal punishment should be abolished. However, the Commission thought the legislature would be disturbed if they tried, by rule, to undo what courts have permitted within limits. On the other side of the issue, there are those who insist that teachers be permitted to use physical force, Bennett said.

Schroeder recalled laws passed in the past two years do allow corporal punishment in certain instances and he wondered if the court wouldn't have to look at that.

Bennett reasoned if the legislature addresses the issue, the Commission would have no need to set guidelines.

PROFESSIONAL TEACHING PRACTICES Cont'd

Tieden thought the rule usurped the power of school boards to establish policy. Bennett was aware this had been argued by many school districts.

Bennett indicated that public hearing was scheduled for June 2 and so far, very little interest has been shown in the corporal punishment rules.

Tieden expressed the opinion that teachers have certain standards to abide by, but they still must stay within policies established by the school district within laws of the state.

Bennett countered that if the state agency created by legislation is charged with governing the ethical conduct of the teaching profession and the agency adopts rules in accordance with law, these rules have the force and effect of law and control, local school boards notwithstanding.

Royce spoke in support of Bennett. He said that school boards could adopt policies on corporal punishment and he interpreted the Commission rules as simply stating those circumstances under which they will impose licensing discipline for abuse of corporal punishment.

General discussion of the problem with Clark pointing to $272A.6 re ethical practice of educators.
Clark thought 6.4--persons privileged to punish--was somewhat nebulous.

Tieden wondered if the rules would supersede action of school boards and would the districts then be liable for action taken by a parent. Bennett said the district was liable now.

In answer to Priebe, Bennett said private school teachers would be subject to the rules but Amish people are outside the jurisdiction of DPI.

Bennett recognized that the subject of corporal punishment was a very emotional one but he emphasized that under Chapter 272A of the Code, the Commission has authority to adopt the rules.

Schroeder called attention to 6.7(2)b and asked for explanation of an "open or closed fist". Bennett stated the Commission planned to reword the provision.
No formal action taken.

Minutes

Holden moved to adopt the minutes of the April meeting. Carried

Barry sought guidance as to Editor's responsibility concerning Chapter 8 of rules of the Aging Commission. The rules were filed emergency in anticipation of enactment of HF 2527 and were published in the IAC. However, the bill was not enacted. The matter was deferred for conference with the agency officials.

Reconvened: Chairman Schroeder reconvened the recessed meeting at 9:10 a.m., Wednesday, May 21, 1980, Senate Committee Room 24, Statehouse, Des Moines, Iowa. All members were present except Representative John Patchett who asked to be excused to represent a client in court. Joseph Royce, Committee Staff, was also present.

NURSING BD. 1.2(3) Lynne Illes, Executive Secretary, Board of Nursing Examiners, appeared for review of the following:

License revocation or suspension, 1.2(3), ARC 0756 terminated ARC 0994 ..... 4/16/80
License, revocation or suspension, 1.2(3) ARC 0995 ..... 4/16/80

Illes explained the background of the somewhat controversial subrule.

Priebe questioned the meaning of subparagraph b(3) and Illes replied that the proposal sets out what would be acceptable at a minimum practice level. Tieden interpreted (4) as doing basically the same thing. There was general agreement that removal of b(3) would clarify the language.

EMT Nurses to Review Schroeder directed Illes' attention to a proposal of the Health Department--132.3(6) pertaining to emergency medical technicians. He requested that the Board offer input on the subrule.

EMPLOYMENT SECURITY Agency representatives for Job Service included Jim Hunsaker III, Administration, Walter Maley, Joe Bervid and Edmund Schlak. The following rules were reviewed:

EMPLOYMENT SECURITY[370]
Administration, ch 1 ARC 1020 ..... 4/30/80
Employer's contribution and charges, 3.4, 3.31(6), 3.31(7)"b", 3.47(3) ARC 1021 ..... 4/30/80
Claims and benefits, 4.1(39), 4.2(1)"h", 4.12, 4.22(1)"r"(3), 4.23(15), 4.23(16), 4.23(18), 4.23(32), 4.24(8), 4.24(15), 4.52-4.55 ARC 1035 ..... 4/30/80
Fraud control special investigation unit, ch 5 ARC 1022 ..... 4/30/80
Appeals procedure, 6.1(1"b", 6.2(1)"a", 6.2(2)"d", 6.2(3)"b", "c", 6.2(4)"b"(3), 6.2(5)"g"(4), 6.2(6)"d", "f", "g", "h", 6.3(3)"b"(1), 6.4(1)"c", "m", "p", 6.4(2)"c", 6.4(3)"g", 6.4(5)"d", 6.4(7)"g"(2), (3) ARC 1023 ..... 4/30/80
Employment services, 7.1(22) to 7.1(24), 7.2(22), 7.2(23), 7.3(18), 7.4(16), 7.5(2) and 7.5(5), 7.9, 7.14 ARC 1024 ..... 4/30/80

Ch 1 Holden questioned department officials relative to the function and significance of the Advisory Council in relation to the rule-making process--1.1(4).

Bervid responded that the Council serves in various capacities It is represented by labor, the general public and employers and the Department has utilized the Council as a "kind of funnel" with proposals and legislative requests.

Re 1.3(5), Clark was curious as to how the Department conducts a continuous postaudit. Bervid said the computer system utilizes information for comparisons quarterly. Crosschecks are completed with border states. There was general discussion of the process.

Holden found it interesting that 1.3(4) contained such extreme detail concerning the equal employment opportunity officer--address, etc. Bervid indicated this was done as a general service. Other areas are covered elsewhere in the rules, i.e., the fraud unit will be covered by an entire chapter of rules.

EMPLOYMENT SECURITY Cont'd

Discussion of 3.47(3) with respect to the computation date by the Department for employers who have not paid wages during the eight consecutive calendar quarters immediately preceding the date. Bervid said determination of when an account terminated is covered in other rules. An employer requests to have their account terminated. If they have not reported paying any wages for one year, Job Service places the account in the pending file. It stays in the computer for a designated period. Committee members were especially concerned for those employers "getting back" into the system and being allowed to maintain the same "rank" in effect prior to closing a business due to loss by fire, storms or other extenuating circumstances.

Bervid was willing to refer the matter to Paul Moran in an attempt to work out an equitable solution.

Ch 4

Members learned that amendments to Chapter 4 were basically "clean-up" in nature.
Re 4.22(1)r, Bervid could not advise Schroeder who had initiated the practice of "on-call workers" filing for unemployment benefits. General discussion followed.

In a matter not officially before the Committee, Schroeder commented he had seen an ad for summer employment along with the disclaimer that termination of the position would not provide eligibility for unemployment benefits at the end of the 4-month period. Bervid declared that would be an illegal practice and he pressed for the source of the information. Schroeder, however, was not at liberty to reveal this.
Discussion of CETA Program and regulations.
Bervid opined it was advisable for contracts to be used for summer employment in this area.

Ch 5

Chapter 5 pertaining to fraud control was updated to reflect current activities of the unit. According to Hunsaker, public hearing was held on May 20.
Bervid recalled that drafting definitions was particularly difficult since they were faced with the criminal concept, in many instances.
Discussion centered around 5.6(4)--subpoena powers. It seemed to Schroeder the unit had been given "the key to the city" in power. He added the provisions covered more than job-related information and could be construed to be all-encompassing.
Bervid was advised by the head of the fraud unit that a subpoena had never been issued. Employers are always willing to co-operate by allowing use of their payroll records.
He continued that administrative subpoena has little significance--only the court can legally enforce a subpoena. The provision was included in the rule to provide "public awareness." In view of the fifth amendment rights, Royce was

EMPLOYMENT SECURITY Cont'd

concerned with technical details and he favored reflecting the fact that business records could be subpoenaed but not personal records.
Bervid commented that fifth amendment rights are "rampant" throughout the rules.
Schroeder recommended that language be added to provide "the director or first deputy shall authorize action to be taken with respect to investigation of fraud."

Clark expressed interest in use of "laymen language" in the rulemaking process and she referred to "subpoena duces tecum" in 5.6(4), last paragraph. Bervid agreed to spell out for clarity to all.

Holden in the Chair.

Ch 6

In re appeals procedure, Clark referred to 6.2(3)b and recalled an experience of a constituent whose notice had not reached Job Service within the statutory time frame because of post office error.
Maley reminded the group that time limitations were statutory and courts have held that if the time limit caused due process problems, the case should be heard on its merits.
In 1979, there were two cases wherein it was ruled that "15 days meant 15 days"--there were no alternatives.
Maley suggested extension of the appeal period by statute.
Clark could not see that this would solve the problem. She favored allowing common sense to prevail.

No action taken by the Committee.

Schroeder resumed the Chair.

SOCIAL SERVICES

The following rules of Social Services were before the Committee for consideration:

Penitentiary visits, 17.2(2)"e" to "m" ARC 0987	N		4/16/80
Men's reformatory, visits, 18.2(1)"i" to "p" ARC 0988	N		4/16/80
Women's reformatory, visits, 19.2(1)"e" to "j" ARC 0989	N		4/16/80
Security medical facility, visits, 20.2(3)"a", "g" to "m" ARC 0990	N		4/16/80
Riverview release center, visits, 21.2(3)"e" to "j" ARC 0991	N		4/16/80
Mt. Pleasant medium security facility visits, 22.2(1)"h" to "o" ARC 0992	N		4/30/80
Food stamp program, administration, 65.3 ARC 1044	N		4/30/80
Medical assistance, psychologists, 77.22, ARC 0715 terminated, ARC 1015			4/30/80
Medical services, psychologists, 78.21, ARC 0716 terminated, ARC 1016	N		4/16/80
Intermediate care facilities, 81.6(16)"c" ARC 0993			4/30/80
ADC, trusts, 41.6(8) ARC 1005	F	F	4/30/80
Transportation to receive medical care, 78.13 ARC 1006	F	F	4/30/80
Intermediate care facilities, 81.6(11)"j", 81.6(12) ARC 1007			4/30/80
Intermediate care facilities for the mentally retarded, 82.5(11)"e", (4) to (6), 82.5(12), 82.14(4)"d", "f", 82.14(5), 82.17 ARC 1008	F	F	4/30/80
Work incentive program, appeals, 91.5(2) ARC 1009	F	F	4/30/80
Iowa state juvenile home, visits, 101.2(4), (8), (9) ARC 1010	F	F	4/30/80
Mitchellville training school, visits, 102.2(1), (4), (8), (9) ARC 1011	F	F	4/30/80
Eldora training school, visits, 103.2(1), (8), (9) ARC 1012	F	F	4/30/80
Resources, 130.3(1), 130.5 to 130.9 ARC 1013	F	F	4/30/80
Chore service, 149.1(2) to 149.1(7), 149.2(2), 149.3, 149.4(6), 149.6 ARC 1014	F	F	4/30/80

Representing the Department were: Judith Welp, Policy, Analysis and Research, Bob Miller, Audits, Broxanne Keigley, Adult Corrections and Margaret Corhery, Title XX Unit. Also present was Marcia Hellum, Attorney in behalf of the Iowa

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Hearing Aid Dealers Association and Bob Klopp, President of Iowa Hearing Aid Society.

17.2 to 22.2

Re 17.2(2)c which sets out who can be included on an inmates visiting list, Keigley indicated modifications would be made before final adoption of the paragraph.

Clark recommended substitution of "the" for "each" before the word "institution". Welp was amenable.
Priebe suggested deletion of "apparent" before "odor" in 17.2(2)k(2), 18.2(1)n(2), 19.2(1)h(2), 20.2(3)k(2), 21.2(3)h(2) and 22.2(1)m(2).

Schroeder expressed opposition to excluding from visiting privileges individuals under indictment or those on probation, work release or parole--17.2(2)q(3) and (4). Keigley promised to check the rationale for the provision which appeared in the six rules dealing with visiting privileges.

Clark pointed out inconsistencies in 20.2(3) q and k. Welp was amenable to clarification and grammatical correction.

65.3

Rule 65.3 was revised to show current dates. Welp noted there were federal regulations which would be adopted under emergency provisions for Iowa to suspend or reduce the food stamp program in the event funds were not appropriated by the federal government. Responding to question by Tieden, Welp said the Department has a plan to reduce the food stamp program but it has not been approved in rule form.

81.6

Amendments to 81.6(16) were initiated at the request of the Health Care Facilities Association--a minimum and maximum incentive factor was added.

Acceptable as Published

Amendments to 41.6(8) and 78.13 were acceptable as published.
Amendments to 101.2(4) (8) and (9) were made at ARRC request.
No recommendations were offered to 130.3(1), 130.5 or 130.9.

Recess

Chairman Schroeder recessed the meeting at 10:45 and reconvened it at 10:55.

Discussion of 149.1(5) defining "yard work" as it relates to chore services for recipients of supplementary assistance.
Priebe took the position that limiting plowing of a garden to "the lot where the client lives" was too restrictive. He argued they should be allowed to have garden on an adjoining lot or one "readily accessible" to them.
Welp said this was an attempt to limit service and eventually all services would be perused keeping in mind essentials needed to keep clients in their own homes.

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Discussion of "community" gardens with Tieden recommending that 149.1(5) be amended by placing a period after "lot" and striking "where the client lives".

Objection

Welp agreed to apprise the Council of Committee concern. Priebe moved the following objection: (Drafted by Royce)

> The committee objects to the provisions of ARC 1014, 149.1(5); appearing in II IAB 22 (4-30-80), on the grounds those provisions are unreasonable. That subrule in pertinent part provides that the department will provide chore service for "the initial plowing of a garden...on the lot where the client lives." It is the opinion of the committee that gardening is a worthwhile task for needy Iowan s which allows them to supplement their diet with fresh vegetables at an affordable price. Often these gardens are located on vacant, adjoining lots and the availabilityof the service should not be dictated by the geographic location of the garden, as long as that location is readily accessible to the client.

The motion was adopted viva voce. Patchett absent and not voting.

Schroeder wondered if the limitation to handicapped or persons sixty-five years of age or older could be considered discriminatory. Welp saw no problem.

Medical Rules HF 2580

In a matter not appearing on the agenda, the Committee reviewed drafts of emergency amendments to medical assistance rules--Chapters 75, 78 and 79--intended to implement legislative intent in 68GA, H.F. 2580 which was not effective.

Discussion centered on the change in reimbursement for hearing aids. Welp said they reviewed plans of other states and private insurance companies as to fees. Iowa pays 80% of retail cost for hearing aids.
Priebe thought $100 was excessive.
Committee members had received calls from constituents regarding the matter.
Holden also spoke in opposition to the amount.
Hellum addressed the Committee on the issue saying they learned by accident of the proposed change in reimbursement for hearing aids. Hellum talked with Kathy Kellum, Medical Services Division, and was advised the change had been published in the Des Moines Register and would be effective July 8, 1980. Hellum had followed the legislation and contended there was no indication the reimbursement fee would be set at $100. She recalled that the $100 dispensing fee had existed in Iowa prior to 1971 and was not workable at that time.

Klopp had no objection to the acquisition cost plus fee for service. He was interested in preserving the distribution system now functioning in Iowa. Eighty percent of the calls made to Title XIX clients are made in homes, hospitals or care centers. Using the proposed program, he would be unable to participate because of overhead costs of operating a business.

It was noted that the Advisory Committee, of which Tieden is a member, was not included in the decision making. According to

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Hellum, the Social Services Council had no input in the issue. Welp pointed out the Council would consider the rules at their June meeting.

There was discussion of alternatives available to the Committee. Royce suggested inclusion of an expiration date in the emergency rules and that a Notice of Intended Action be submitted simultaneously.
Royce cautioned against the "appalling precedent" of adopting rules prior to the effective date of the Act it is intended to implement. He further took a dim view of bypassing public participation in the rulemaking process.
The point was made that the Department will have authority for emergency adoption when H.F. 2580 is signed by the Governor.

It was consensus of members that objection would be filed in the event Royce's suggestions were not heeded.
No formal action taken today.

REVENUE

Carl Castelda, Deputy Director of Revenue, represented the Dept. for rules published in the IAB and special review concerning taxation of hauling contracts and leasing:

REVENUE DEPARTMENT[730]
Forms, 8.1(6)"a" ARC 1036 ..... 4/30/80
Tax, sales or service rendered by county or city, 18.39 ARC 1000 ..... 4/16/80

No recommendations were offered for 8.1(6) and 18.39.

Other interested persons present for the special review were: Ramona Davis, Davis Truck Line, Charles Ingersoll, Iowa Motor Truck Association and Ruth L. Mosher, Deputy Citizens' Aide.

Holden gave brief explanation of the reason for the special review. During the legislative session, the Citizens' Aide office made arrangements for Mrs. Davis to meet with Senators Holden and Kraft to discuss a problem which they considered to be unfair.
Holden referred to legislation which was enacted a few years ago which basically benefited the Ruan Company. An exemption to use tax would be allowed when trucks were, at the time of purchase, subject to lease in interstate commerce, sold in interstate commerce. The lease had to exist at the time the vehicle was purchased and it was already determined it would be used only for that purpose.

Holden continued that since then, some independent truckers feel they should realize the same exemption. The Legislature was well along into the session when Holden and Kraft had attempted to include in the statute the words "after lease or contractural hauling". The matter was not taken up by the Legislature and Holden wondered if there was a way for the Revenue Department to interpret the statute differently.

Castelda stated that when the Department first discovered there was an instrument other than the lease that independent truckers

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used, they sought assistance from the Attorney General for an analysis of that legal instrument and of the lease. The Departmer tax policy division attorneys also reviewed the matter and both groups concluded they were not the same under contract law. Becau exemption statutes are strictly construed, the burden is on the person who wants the exemption to show that the exemption exists and that they are entitled to it. The Department cannot treat a c tract the same as a lease. A contract carrier is operating under contract and it was Castelda's understanding that certain responsil ities for unemployment compensation, withholding taxes, etc. could be avoided.
Hearing officers will be considering the issues in June. The Department is holding the protests in abeyance to prevent others in the same situation of having expense of legal fees.

Castelda pointed out the Department must follow the statutory language which they believe, in Chapter 423, does provide an exemption to a particular taxpayer situation and does cause some inequity for persons in the same industry.

Schroeder was interested in knowing the cost of extending the exemption. Holden and Castelda indicated this was a difficult question. An attempt had been made to determine this but there are no figures on the number of independent truckers or how many vehicles they own or how many operate solely in interstate commerce. Priebe favored equal application.

Davis explained her situation and noted she had obtained a book from DOT which had two definitions of contract and lease. She thought this should be clarified. She declared that either they were not paying correct license fees or were not paying correct sales tax.

General agreement that corrective legislation would be needed .

Motion Refer to GA

Holden moved that the matter be referred to the Ways and Means Committees of the Legislature of the next General Assembly. Motinn carried viva voce.

BEEF INDUSTRY

Mark Truesdale, Attorney, appeared in behalf of the Iowa Beef Industry Council for review of the following:

BEEF INDUSTRY COUNCIL, IOWA[145]
Organization and operation, ch 1; rules of practice, ch 2; excise tax on beef sales, ch 3 ARC 1038.....

The Committee recommended that 1.5 be amended to provide that 6 members constitutes a quorum. This would make the rules consistent with those of other agencies.
Truesdale was amenable.

HEALTH — The following rules of the Health Department were before the Committee:

Advanced emergency medical technicians, 132.3(6) ARC 0984 ..... 4/16/80
Financial reporting, 204.1, 204.2 ARC 0965 ..... 4/2/80

Those in attendance were: Jim Krusor, Board of Medical Examiners, Leona Ringgenberg, Skip Deskin and Gay L. Sevils, Health Department.

Schroeder took issue with the substance of 132.3(6) in that registered nurses would be required to have advanced emergency medical technician and paramedic testing to be acceptable.

Krusor explained this training would be required since field operation may be totally different from hospital duty. No opposition had been voiced and three RN's had aided in development of the rule, according to Krusor. Schroeder reasoned someone was trying to set up paramedicas as a "speciality all of its own."
Holden opined that medics, doctors, interns, etc. could make the same argument about those professions.

Holden suggested nurses could use this training for part of their continuing education.

Royce pointed out that the Nursing Board is empowered to endorse licenses for specific activities and could set up a program for a nurse to be endorsed as an EMT.

Committee concurred that Department of Health officials should meet with Royce and the Nursing Board Executive Secretary, Lynne Illes, for perusal of the proposal before it is adopted.

Ch 204 — Chapter 204 amendments were acceptable as published.

NCSL Meeting — There was discussion of authorizing Royce to attend the July Administrative Rules Seminar of the National Conference of State Legislatures to be held in New York City. Royce indicated the cost would be approximately $700. Priebe recommended that a Committee member also be in attendance. Schroeder thought it advisable to limit attendance to two.
There was unanimous consent that Royce and Priebe be authorized to represent the ARRC at the NCSL activities.

June Meeting — Members agreed to schedule the statutory date of June 10 and June 11 in the event a second day was necessary.

July Meeting — Priebe moved that the July meeting date be changed to 15 and 16. Motion was deferred to the June meeting.

Chairman Schroeder adjourned the meeting at 12:23 p.m. to be reconvened at the next regular meeting June 10, 1980.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Vivian Haag, Assistant

APPROVED

Lawrence Schroeder
Chairman.