

MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of
Meeting

The special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, March 11, 1991, Senate Committee Room 22, State Capitol, Des Moines, Iowa. This meeting was held in lieu of the statutory date of March 12.

Members
Present

Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; and Representative David Schrader and Ruhl Maulsby. Also present: Paula Dierenfeld, Governor's Administrative Rules Coordinator.

Staff Present: Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; and Alice Gossett, Administrative Assistant.

Convened

Chairman Priebe convened the meeting at 8 a.m. and called up the following:

ATTORNEY GENERAL[61]

Noncredit property insurance, ch 20, Small Business Regulatory Flexibility Analysis	2/20/91
Consumer credit code notification and fees, ch 22, Small Business Regulatory Flexibility Analysis	2/6/91

ATTORNEY
GENERAL

Chs. 20, 21

Peter Kochenburger, Deputy Administrator, Consumer Credit Code, reviewed small business flexibility analyses on Chapters 20 and 22. He reported that the Attorney General does not believe that any small business in Iowa sells noncredit property insurance. No one attended the hearing on Chapter 20 which states how noncredit property insurance can be sold.

Doyle wondered who would buy the insurance. Kochenburger cited an example of a small loan company asking for collateral such as personal property to secure the loan. If the borrower has no insurance, the lender will offer to sell the consumer credit property insurance which is perfectly legal. However, the lender cannot require that the insurance be purchased through them. Kochenburger spoke of the confusion among consumers about what property insurance is required and the extremely high premiums. The rules are intended to separate the sale of noncredit and credit property insurance so that consumers understand it is a voluntary purchase.

Doyle asked about the role of the Insurance Commissioner and Kochenburger stated that Iowa Code Chapter 537 grants the Consumer Credit Code Division broad authority to make rules in different areas. Insurance is regulated by statute within the Consumer Credit Code, not as to price but as to the terms under which it is sold; when it can be acquired; optional; what disclosures are necessary. Chapter 20 addresses disclosure requirements. No ARRC recommendations.

ATTORNEY
GENERAL
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With respect to Chapter 22, Kochenburger said that the statute itself affects a broad number of businesses in Iowa and provides very little discretion to the Attorney General. The rules merely mirror the statute in providing for a \$10 annual fee for creditors and debt collectors. In addition, creditors must pay a volume fee of \$10 for each \$100,000, or part thereof exceeding \$10,000 of the average unpaid balances of obligations from consumer unpaid accounts. Banks and other lending institutions are exempt. Intent of the statute and rules is to have creditors who are subject to the credit code but currently unexamined to contribute toward enforcement costs. Examples of those who would be regulated include gas companies--Mobile, Exxon, etc; retailers and motor vehicle dealers.

Priebe questioned whether the \$10 statutory filing fee was adequate to cover costs of administering the notification files. He suggested referral of the issue to the Legislature.

Pavich pointed out that the bank charges \$15 for over-drawn checks. Kochenburger added that the \$10 fee was adopted by statute in 1974 [§537.6203] and it goes to the Consumer Credit Administration Fund--the fund is depleted at this time.

Motion

Pavich moved to refer the filing fee without recommendation to the Speaker of the House and President of the Senate for their consideration. Motion carried.

HUMAN
SERVICES
DEPARTMENT
Ch 162

Mary Ann Walker, Policy Section, and Jim Overland, Bureau Chief, Bureau of Gamblers Assistance, appeared to review proposed Chapter 162 relating to the Gamblers Assistance Program.

The rules were published under Notice in the 2/20/91 IAB as ARC 1726A. There was discussion of the recent newspaper article which was critical of administration costs of the program. Overland saw the matter as being interpretation of "administration." The audit used information from some specific reports that the Department gathers from providers for monitoring purposes. Providers set out only three specific activities: Time specifically spent face-to-face with a client on casework or counseling; time spent face-to-face with a person doing an assessment; or time spent face-to-face with as many people as possible in outreach, e.g., a PTA meeting or Alliance Club. Other expenses are lumped into an administration expense which includes all travel, case notes, documentation and training.

Overland continued that, based upon the information used by the Auditor, it was an accurate calculation but not an accurate reflection of the program. He added that all

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DEPARTMENT
Contd.

of their contract costs were contractual arrangements to provide three types of services, basically-- Individual and group counseling and outreach and prevention. Overland stated that administrative costs were part of every contract but not 60 percent as indicated in the newspaper. Without contracts, administrative costs would amount to 20 percent which would still include service. Overland mentioned a telephone hotline with Broadlawns Hospital which shows up as administrative costs.

In response to Priebe, Overland said that 350 plus clients were treated last year at a cost of \$793,000. In 1989, 297 were treated.

Tieden noted that Iowa exceeds other states combined in having more gamblers assistance programs. He wondered if consolidation would result in more efficiency. Overland responded that the Department was attempting to move toward paying for services delivered rather than paying for availability. Parameters have been modified to require contractors to spend more time in face-to-face activities.

Overland spoke of their concern that nonurban centers lack the population base to support an independent provider. He suspected that riverboat gambling would create some problems. Overland reasoned that compulsive gambling was a progressive illness and as more people have access to it, the problems will grow. The Department wants an available viable service network to meet this challenge.

Pavich asked if non-Iowans were served since many from out of state would be gambling on the Riverboats. Overland pointed out that only citizens of Iowa receive the service.

Overland informed Schrader that the 350 count included only those who have out-patient counseling. A separate count is made for those calling the hotline. Schrader recalled that the audit also touched on advertising dollars that were spent to attract the clients to be served. He cited 800 telephone numbers on race track programs. Overland indicated that this was donated at the Dubuque and Waterloo tracks. Lottery has also started including information at the bottom of their program brochures and on the back of their instant tickets. The Department is considering posters for all ticket booths on the Riverboats that will include an 800 number. With respect to service to clients, Overland reiterated that they contract, specify the types of individuals who may be served and provide training.

Overland explained to Maulsby that the contractor cost was the Department's service cost. Overland and a

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staff of three charge 100 percent of their time to administration. They make public appearances at conferences and that type of work but do not serve clients.

There was discussion of the fact that illegal barriers against gambling in Iowa have been broken and it is considered a legal activity and promoted heavily. As a result, there will be potential for more problems.

Overland told Schrader that ten of their contractors were substance abuse providers of some type contracted through the Substance Abuse of Public Health or hospital-based substance abuse units. Approximately one half are governmental providers and the others are private providers. Overland pointed out that national figures reveal that 50 to 60 percent of gamblers have another addiction and 15 to 20 percent with various addictions also have a gambling problem.

There was no formal action by the Committee.

NATURAL
RESOURCE
COMMISSION

Appearing for the Department of Natural Resources were: Marion Conover, Mike Murphy, Steve Dermand, Randy Clark, Wayne Reed, Jack Riessen, Ralph Turkle, Keith Bridson, David L. Wormson and Diana Hansen. The following agenda was considered:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"

Contracts for public improvements and professional services, 8.1, Notice ARC 1720A	2/20/91
General license regulations—violations information, 15.6(2)"b," 15.6(5), Filed Emergency ARC 1689A	2/6/91
Speed restrictions on the Mississippi River, Jackson County, at the city of Sabula, 40.34, Filed ARC 1688A	2/6/91
Commercial fishing, 82.2(1), 82.2(7), Filed ARC 1686A	2/6/91
Mussel regulations, 87.1, 87.1(2), Notice ARC 1687A	2/6/91

NATURAL RESOURCES DEPARTMENT[561]

Contracts for public improvements and professional services—interest on retained funds,	
8.7, Notice ARC 1727A	2/20/91

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"

Contracts for public improvements and professional services, 8.1, Notice ARC 1728A	2/20/91
Water quality standards and use designations, 61.2(5), 61.3(5)"e," Notice ARC 1729A	2/20/91
Commercial septic tank cleaners, ch 68, 69.1(2), Notice ARC 1711A, also Filed Emergency ARC 1712A	2/20/91
Flood plain development, 70.1, 70.3, 70.4, 70.5(1), 70.5(3), 70.5(4), 71.1(1), 71.3(1), 71.3(5), 71.8, 72.3(1)"a," 73.1(1), 73.1(2)"a"(1), 73.2(1), 73.2(1)(1), 73.2(1)(1)"d," 73.2(1)(2)"e"(3), 73.22, ch 74, 75.1(1), Filed ARC 1717A	2/20/91
Technical standards and corrective action requirements for owners and operators of underground storage tanks, 135.3(1)"c"(1)"2," 135.5(1)"e," 135.7(9), Filed ARC 1718A	2/20/91
Financial responsibility for underground storage tanks, 136.2(3), 136.2(4), 136.3, 136.8(2), 136.14(1)"b," Filed ARC 1713A	2/20/91

Three rules relative to contracts for public improvements were reviewed first. Murphy explained that the text was set out in 561--8.7 and was adopted by reference by the Environmental Protection Commission in 567--8.1 and by the Natural Resource Commission in 571--8.1. No questions.

8.7
8.1
8.1

Ch 15

According to Dermand, amendments to rule 571--15.6 were emergency adopted as recommended by the ARRC.

40.34

Dermand described new rule 571--40.34 as following through with requests from the city of Sabula to restrict speed on the Mississippi River at the city for safety reasons. Priebe was advised that the restricted area would be well marked by buoys and there would be sufficient area for skiers to maneuver.

NATURAL
RESOURCE
COMMISSION
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82.2

Conover provided background on amendments to 571--82.2 which will prohibit taking of catfish from the Missouri River by commercial fishermen. An Economic Impact Statement was published in 12/12/90 IAB. The proposed implementation date is January 1, 1992. Conover continued that Kansas, Missouri, Iowa, Nebraska and South Dakota, based on good research over the last 8 to 10 years, believe that commercial fishery and habitat degradation are responsible for a large reduction in the channel catfish population. These states plan to adopt rules similar to those in Iowa.

Conover continued that the recorded harvest was a little over 9000 pounds from the Missouri River which is very low. Commercial fishermen are being paid \$1 per pound for channel catfish which is two and one-half times the amount paid for those taken out of the Mississippi River. The fact that Mississippi River fishermen do not move their operation to the Missouri River reflects the small supply there. Conover took the position that it was unrealistic to believe that the Missouri River could be restored to its condition of earlier years. However, he indicated that the Department was interested in any kind of backwater restoration.

Chairman Priebe announced that the Committee would listen to any opponents of the amendments when they arrive.

87.1

Conover said that amendment to 571--87.1 was clarification to effect a length limit or size limit restriction on the mussel shell buyer as well as the sheller. Tieden expressed his frustration that a person can buy an Iowa drivers license and be authorized to possess and sell mussels--\$109B.10. Conover thought the Department would support legislation to protect the mussel beds. He recalled that when both resident and nonresident licenses were available in 1989, approximately 250 sheller licenses were sold. Last year when sale was limited to residents, 450 were sold.

Ch 68
69.14

Clark stated that Chapter 68 and amendment to 69.14(2) were designed to implement 1990 Acts, chapter 1243. No ARRC recommendations.

There were no questions on amendments to 70.1 et al.

Ch 135

Bridsell and Murphy reviewed revisions in Chapter 135 which address certification of an underground storage tank site after remedial action has been taken and federal changes re overfill protection requirements for large tanks. Previously, an alarm or a shutoff was required at either 90 or 95 percent full. Now a larger tank can be 98 or 99 percent full if the time limitation is met when the alarm is activated.

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Priebe interpreted 135.3(1)"c"(1)"2" as restricting the flow 30 minutes. Murphy stated that with most systems, it still provides more time and allows you to fill a large tank fuller. He stressed that an automatic shutoff can be activated as an alternative one minute before the warning--either way is acceptable. No formal action.

Ch 136

Murphy told the Committee that amendments to Chapter 136 simply update rules on financial responsibilities to incorporate federal changes.

61.2
61.3

At the request of Tieden, there was further discussion of water quality standards and use designations in 61.2 and 61.3. He had received a letter from Farmersburg questioning whether Howard Creek in Clayton County had been redesignated. Turkle indicated that it was not. It was his understanding that a permit was being amended for the Farmersburg Treatment Facility. A notice that the permit for that discharge from that facility was being circulated for comments. Turkle added that there were use designations downstream on the Turkey River--Howards Creek flows into Roberts Creek which then flows into the Turkey River. The Turkey River in that area is Class "A" water, whole body contact recreation. No field work has been done to designate or recommend designation for Howards Creek. Turkle expected to see the Farmersburg individual at a hearing tomorrow.

Priebe asked why secondary sludge would be allowed to go into that creek and Turkle clarified that it was not secondary sludge. It is treated to a secondary level and there will be discharging only during high flow conditions. Treatment more stringent than secondary would be needed for Howards Creek if they want to discharge during low flow conditions.

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Chairman Priebe recognized the following commercial fishermen who had arrived to challenge the ban on commercial fishing of channel and flathead catfish in the Missouri River: Darrell and Betty L. Ranney and Nancy and Richard West. The group had also appeared at the November meeting of the ARRC when amendment to 571--82.2(1) was a proposal. An Economic Impact Statement was requested by the Committee at that time and it was published in the 12/20/90 IAB.

West reiterated concerns of the 13 Missouri River commercial fishermen which he had expressed at the November meeting. Conover defended the Department's position in attempting to preserve the species. Five states have concurred with them.

Motion
to Refer

After further discussion, Doyle moved to refer 571 sub-rule 82.2(1) to the Speaker of the House and President of the Senate for any action they consider to be appropriate. Motion carried by voice vote. Schrader asked to be recorded as voting "no."

COMMUNITY
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DIVISION

Appearing for the Division were James Smith and Sue Downey. Also in attendance were: Paul Stanfield, Iowa Catholic Conference; J. D. Pellersels, Comm. Opp., Carroll, Iowa; Mary Brown, Midwest Gas; Eloise Lietzow, Department of Human Rights; Representatives Dorothy Carpenter and Jane Teafor; Senator Florence Buhr; Carlos Jayne, United Methodist Church; Judy Deerefield, ICAA, and Jack Clark, Iowa Utility Association. The following rules were considered:

COMMUNITY ACTION AGENCIES DIVISION[427]

HUMAN RIGHTS DEPARTMENT[421] "umbrella"

Affordable heating program, ch 11. Filed Emergency ARC 1741A..... 2/20/91

Ch 11

Smith explained the emergency adoption was necessary to implement the program during this heating season. The rules were effective March 1, 1991. The rules had been held up while the Division sought interpretation of a letter from the federal government regarding Iowa's statute.

Tieden recalled a pilot project two years ago which was prohibitively expensive to administer. Smith commented on the program in Cedar Rapids which the Division funded and admitted that it was expensive. In addition, they administered four other pilot projects around the state.

Discussion focused on a memorandum prepared by Royce in response to Division request. He summarized intent of Iowa legislation and whether or not the rules met federal requirements.

Schrader considered the key issue to be the difference between 100 and 110 percent of the poverty guidelines as the eligibility criteria--federal law sets a 110 percent level.

Royce concurred but believed the matter could be resolved by rule to change 100 to 110 since Iowa statute allows the Division to raise or lower that level based on budgetary restrictions. Smith interjected that federal law precluded them from going lower than 110 percent. Royce pointed out that the federal law requires the most benefit to those with the lowest income level and the highest energy cost taking into account the family size. Iowa statute reduces income using nine factors which represent fixed living costs such as child support. Smith was concerned that federal authorities might determine later that the Division misspent funds.

In response to Maulsby, Smith said there was nothing in the legislation to encourage energy conservation by recipients.

Smith advised Doyle that the total federal money to the lighting program was \$26.3 million this year. Doyle asked if there were provisions for the utilities to ask for contributions and Smith commented that this was a different program. In most cases, this goes toward weatherization activities. Priebe took the position

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Motion

that success of the weatherization program was more visible.

Schrader was supportive of the heating program and moved that the ARRC adopt the logic presented in Royce's memorandum in that these changes could be made by administrative rule and be within the scope of the Iowa statute and also comply with the federal requirements. He favored allowing discretion to the Division for any statutory clarification. Vote on the Schrader motion was deferred to allow other interested persons time to speak.

Chairman Priebe recognized Stanfield who endorsed Royce's statement and distributed written comments on the rules. He had spoken with the federal staff person who had questioned whether Iowa statute met federal requirements. It was Stanfield's understanding that the point on the 110 percent was the only real concern. He thought it was regrettable that implementation of the affordable heating program has been delayed even a week since utility companies and community action people were prepared to make it operational. Stanfield urged that the program be allowed to go into effect before the April 1 moratorium.

Chairman Priebe also recognized Senator Buhr, and Representatives Carpenter and Teaforde who addressed the Committee briefly in support of the program.

Buhr spoke as Co-Chair on behalf of the Health and Human Rights Committee. She recalled that the program was to become operational by March 1 with, basically, unanimous support of the legislature.

Carpenter had helped with the bill at the end of the last session and was supportive of the program. They were aware of high administrative costs for the pilot program but an issue which they had discussed was that assessment of need be made by the utilities to cut costs. If the Division had perceived the law as written to be unworkable, she was extremely disappointed that they had not sought corrective legislation early in the Session.

Teaforde concurred with Buhr's assessment and was willing to support action to implement the program.

Priebe pointed out that salaries are set out in the law so they cannot be changed by rule. He disagreed with Royce that the 100 percent of federal poverty income guidelines could be changed by rule to 110 percent.

Stanfield interjected that Iowa LIHEA goes up to 150 percent. Priebe cited budgetary problems and contended that 100 percent should be implemented before 150 percent would be considered.

Carpenter commented that the legislature was not aware of the 110 percent requirement when the bill was passed.

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She interpreted the letter from the federal government as being concerned that Iowa was not serving all people under 110 percent. Carpenter continued that the adjustments to the income level required by this program, will in fact clearly cause money to be sent to the lower income people. She favored the change to 110 percent by the appropriate avenue.

Priebe reiterated his concern about changing the amount by rule.

Tieden concurred with Priebe but would not oppose such action.

It was Schrader's opinion that Royce's assessment was not concerned with validity or merits of the program but whether it was appropriate according to the authority of the Division. He reasoned that failure to support the rules would result in all the money being spent through the LIEHA program which would go to higher wage earners.

Clark voiced support of the emergency rules. He contended that interpretation of the federal law must be made by the state. Clark discussed an area of concern to them. The concept in the legislation was that the affordable heating payment would buy down the budget billing agreement to the point where the individual would maintain a minimum monthly payment. This was addressed in the procedures but not in the rules but Clark was confident that the matter could be resolved. Clark also discussed voluntary contribution plans which Doyle had asked about. He indicated that these plans are often used for weatherization. They are set up by a voluntary board that directs how the funds are to be allocated. The Board works very closely with the agencies throughout the state and funds are matched with federal or private dollars. He concluded that the two programs work well together but they do not supplement each other.

Priebe reiterated his preference for statutory clarification and he suggested referral to the General Assembly.

Schrader repeated his motion to adopt as Committee consensus the memorandum prepared by Royce. He asked to expand his motion to refer as an information item without prejudice the memorandum to the Speaker of the House and President of the Senate so that this document can be shared with the appropriate committee Chairs. Motion carried. Priebe asked to be recorded as voting "no."

Motion
carried

RACING
AND
GAMING

Michael Lura was present to review adopted amendments to 20.10(5)i and 20.21 relating to the application process for excursion gambling boats. The amendments were published in IAB 2/6/91 as ARC 1692A. Lura stated

RACING
AND
GAMING
Contd.

that the original rules of the Commission did not define embarking and disembarking time. There could be potential cruises docking at midnight and then allowing gambling until 2 a.m. while passengers are leaving the boat. The Commission suspected this would violate intent of law so amendment to 20.10(5) sets out a time frame for embarking and disembarking.

Priebe interpreted the language to allow one and one-half hours at each point. Dierenfeld suggested clarification by setting the total amount of time for embarking and disembarking. No formal action.

SOIL
CONSERVATION
DIVISION

Appearing for the Commission were Kenneth Tow and James Gillespie who presented the following rules:

SOIL CONSERVATION DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Iowa financial incentive program for soil erosion control, 10.31(2)"c." Filed ARC 1735A 2/20/91
Soil and water resource conservation plans, ch 22, Filed ARC 1681A 2/6/91

10.31

Tow said that amendment to 10.31(2) would allow federal emergency conservation program funds to be used to repair terraces in Iowa that were built with state cost-share funds. This practice will be consistent with other states. Tow advised Priebe that state dollars were not involved.

Ch 22

Tow described new Chapter 22 as plans to be developed by the soil district for the resources in that particular county rather than plan for individual landowners. Ultimately, there will be a statewide plan. No Committee action.

INSURANCE
DIVISION

The following agenda was reviewed by Deb West and Roger Straus of the Insurance Division:

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Medicare supplement insurance minimum standards—mammography screening.

37.6(2)"h." Filed Emergency ARC 1679A 2/6/91
Corrections to adopted NAIC model Act, 37.11(1)"a," 37.12(3), Appendix A, Notice ARC 1680A 2/6/91

37.6(2)

West told the Committee that amendment to 37.6(2) provides an explicit standard for companies offering Medicare supplement insurance for mammography screening. The amendment responds to the federal mandate for the screening every 23 months of those covered by Medicare. No Committee recommendations.

Ch 37

There were no questions regarding amendments to Chapter 37.

BLIND,
DEPARTMENT
FOR THE

Appearing for the Department of the Blind were Kristine Nelson and Diann Weinman who presented the following:

BLIND, DEPARTMENT FOR THE[111]

Administrative organization and procedures, rescind chs 1, 2, 12; adopt new ch 1; amend 13.13(2) to

13.13(4). Filed ARC 1691A 2/6/91

Nelson stated that amendments to Chapters 1 et al. were intended to update their public records listing;

BLIND,
DEPARTMENT
FOR THE
Contd.

consolidate and clarify existing rules and make substantive modification in the administrative organization and procedures.

Priebe questioned Nelson regarding quorum of the Commission and noted that the statute requires two of the three members to take official action.

Royce was aware of some concerns over the change in meeting dates. The revision abolishes specific meeting dates and provides for six meetings to be held each year at the discretion of the Commission. Nelson indicated that the Commission usually meets every other month and she anticipated no problem.

PUBLIC
SAFETY

Appearing for the Department were: Mike Coveyou, Chris T. Odell, Attorney General's Office; Roy Marshall, State Fire Marshal; Steve Boggess and John Guzman of the Fire Marshal's office. The following agenda was considered:

PUBLIC SAFETY DEPARTMENT[661]
Fire marshal, 5.301(9), 5.314, Notice ARC 1526A Terminated, also Notice ARC 1693A..... 2/6/91
Vehicle impoundment—required inventories, opening closed containers, 2/20/91
6.4(2)"d," Filed Emergency ARC 1745A 2/20/91
Vehicle impoundment, 6.4(2)"d," 6.6, Filed ARC 1744A..... 2/20/91

5.301,
5.314

There were no recommendations regarding amendments to 5.301 and 5.314.

5.305

Chairman Priebe called up special review of 661--5.305 regulating aboveground tank motor fuel dispensing.

Royce noted that the rule essentially provides that when fuel is dispensed from an aboveground tank into a motor vehicle, it must be "x" distance from any structure. The question presented was about instances when a can is filled from the aboveground tank and then a motor vehicle is filled from the can. Would that be an exemption from this rule or would it fall under the prohibition?

Marshall responded that it would not be prohibited by this rule since the dispensing would not be from the tank directly into the motor vehicle.

Priebe pointed out that one of his constituents was cited for filling his Bobcat and snow removal tractor from a can. This was done 40 to 60 feet from the building. Marshall had been advised not to discuss this particular case since it was being contested. He agreed to provide results of the hearing scheduled for this afternoon.

Tieden questioned Marshall as to his opinion of above-ground storage tanks at service stations. Marshall stated that his office had wanted rules consistent with reasonable safety features for these tanks. The national association never approved of them.

PUBLIC .
SAFETY

6.4(2)

Coveyou introduced Chris Odell, Legal Counsel for the Department who succeeded Gary Hayward, who joined the U.S. Attorney's office. Coveyou discussed the amendment to 6.4(2) which was emergency adopted as well as adopted under normal rule making.

He called attention to a slight change from the noticed version of 6.4(2)d. In particular, the paragraph provided in part that each container shall be opened unless the officer conducting the inventory is confident that the contents of a particular container are evident from the exterior. The words, "unless the officer conducting the inventory is confident" were stricken since the Department was not searching for things idiosyncratic to a particular officer.

Doyle questioned Odell as to their authority for the rule when Code chapter 808 [Search and Seizure] is considered. Odell cited the U.S. Supreme Court case, Florida vs. Wells, which held that a written policy should be in place regarding opening of closed containers found during inventories of impounded vehicles. Doyle recalled the Wells Case required the policy before containers could be opened. He asked Odell if the Department determined that the policy should be by rule. Odell interpreted the case to require some kind of policy whether there is a search at all or whether a search is conducted under certain circumstances.

Doyle stated that based on Code chapter 808, officers have not opened trunks and containers without probable cause and search warrants. Particularly, in the case of an impounded vehicle, there is plenty of time to obtain search warrant if probable cause exists. Doyle contended that 6.4(2)d went beyond protecting the owner's personal property and he expressed grave concern. He was also opposed to the emergency adoption. Odell interjected that the rule would not prevent an officer from obtaining a search warrant. Doyle cited a recent case in Sioux City where defendants were arrested for stealing cigarettes from a Quik Trip and the officer confiscated the cartons from the trunk of the vehicle. However, the judge threw out all of that evidence for an increased penalty for theft because there was no search warrant.

Coveyou was not familiar with the Sioux City case but pointed out the rule in question applies only to Public Safety officers. Consistent legal advice has been that the rule should not be used in lieu of obtaining a search warrant if a criminal investigation will be conducted. Inventories are searches that are conducted to secure the vehicle; to safeguard the safety of the officer and anybody else around the vehicle; and to catalog belongings if they are to be reclaimed.

According to officers who conduct the bulk of inventory searches in the Des Moines post where they conduct 1500 each year, less than two or three percent ever result

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in finding contraband. That is not the purpose of the search but the question is what do they do with contraband when it is found. Doyle could see no logic in breaking locks on items in the impounded vehicles. He thought these items should be labeled as to whom they belong, sealed with tape of some kind and initialed by the officer.

Odel presumed that the U.S. Supreme Court had that argument presented to them when Florida vs. Wells was debated and they have approved the procedure followed by the Department. Doyle reasoned that Florida law may have exceptions to searches that Iowa law does not contain. He pointed out that Code chapter 808 has always been interpreted by Iowa authorities that if a vehicle is impounded, everything visible can be taken, but they "don't take a crowbar to the trunk." Coveyou disagreed and contended that opening the trunk was absolutely critical if a vehicle will be impounded for any length of time.

Schrader concurred with Doyle and opined that the legislature should make the decision. Pavich suggested referral to the Judiciary Committees.

Coveyou called attention to the fact that the amendment having to do with closed containers was a single sentence in a paragraph of a rule that has existed essentially unchanged for six years. There has been no policy change--only clarification.

Motion	Doyle moved that the filed rules be delayed 70 days for further study--6.4(2) <u>d</u> and 6.6 published in IAB 2/20/91
Carried	as ARC 1744A. Motion carried.
Motion	Doyle moved to object to the emergency adoption of 6.4(2) <u>d</u> on the grounds it was unreasonable and an improper use of
Carried	Code chapter 17A. Motion carried.
Minutes	Pavich moved to approve minutes of the February meeting as submitted. Carried.
COLLEGE AID	Laurie Wolf and Stu Voss represented the College Student Aid Commission for the following: <div style="margin-left: 40px;">COLLEGE STUDENT AID COMMISSION[283] Iowa work for college program, ch 31. <u>Filed</u> ARC 1696A 2/20/91</div>
	Also present was Roger Fiegen, Iowa Cosmetology School.
Ch 31	Wolf summarized new chapter 31 which would implement 1989 Acts, Chapter 300, section 22 [Code §261.88]. Discussion focused on the definition of "accredited private institution" in 283--31.2(261). Chairman Priebe recognized Fiegen who voiced opposition to the definition which stated that "Accredited private

COLLEGE
AID
Contd.

institution" means an institution of higher education which is accredited by the North Central Association of Colleges and Secondary Schools.

Fiegen asked that the provision be delayed since it in effect would eliminate cosmetology schools from the work program.

Wolf pointed out that the definition was copied from the statute. Voss noted that tuition grant eligibility was limited to Regents institutions and area schools.

Motion

After further discussion, Maulsby moved to refer the definition of "accredited private institution" to the President of the Senate and the Speaker of the House for referral to the appropriate committees to determine whether cosmetology schools should be allowed to participate in the program. Motion carried, with Schrader voting "no."

EDUCATION
DEPARTMENT

Appearing for the Department were: Phyllis Herriage, Roger Foelske, George Lawry, Margaret Ellibee, James Fliehler, Thomas Grimm, and Alan L. O'Neal. Also present were: Susan Sharp; Bonnie Fagan, United Property Tax-payers of Iowa; and Harlan Geise, Executive Director of State Council on Vocational Education.

The following agenda was considered:

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General accreditation standards, area vocational schools and area community colleges, vocational education programs, 12.5(4), 12.5(4)"i" to "k," 12.5(5)"i," 21.4(2), 21.4(6), 46.6, 46.7. Notice ARC 1682A

2/6/91

12.5(4) et al. Herriage summarized the proposal to expand vocational education in public schools. Three new topics will be added at the Middle School Level which will include family, consumer education; career education; and technology education. At the high school levels, all schools must offer three units in four of six service areas: agricultural, business and office, health occupation, home economics, industrial, and marketing education. The Department will develop minimum competencies necessary for vocational programs. The competencies will serve to identify needed skills.

Department officials indicated that the proposed rule making had generated much interest--both pro and con--and changes will be made in the final rules.

There was discussion of the three handouts distributed by the Department setting out competencies and related academics skills with instructional links. Ellibee clarified courses as opposed to program service areas. There may be many courses in the six service areas. Tieden was concerned about the costs to districts and suggested an Economic Impact Statement. Herriage responded that cost sharing will provide flexibility

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and federal funds can be utilized. Foelske stated that many districts have sufficient numbers to implement the program. He agreed that restructuring would be necessary and he anticipated the greatest expense would be in modification of programs.

Foelske told Tieden that specific courses were not required at Junior High level.

Chairman Priebe recognized Sharp who addressed the Committee as a citizen taxpayer. She read from a prepared statement and urged a moderate approach.

Chairman Priebe recognized Geise who spoke in favor of the Act, S.F. 449, and the direction taken by the Department. He apprised the Committee of testimony offered by the Council on Vocational Education during the formation of the legislation. Sixty-two percent of Iowa's high school students neither graduate from a four-year degree nor a full secondary vocational technical program. During the last decade, all industries have undergone great technological advances. Without vocational education in the secondary schools, based on modern concepts which is basis for the competencies which are in the process of being developed, graduates will be technologically ignorant. Geise concluded that technological competence would boost Iowa's rural economic development and economic diversification.

Tieden concurred with the concept but reiterated his concern about funding.

Fagan recalled that initially \$30 million dollars was to be allotted, then it was reduced to \$10.5 million. There is no funding this year.

Motion

Tieden moved to request an Economic Impact Statement as to the fiscal impact of the rules on school districts. Discussion followed. Schrader asked if the Department could have the statement for the next meeting of the ARRC. He thought other legislators would be interested as well. Herriage was amenable.

Carried

The Tieden motion carried.

No Rep.

No agency representatives were requested to appear for the following:

CIVIL RIGHTS COMMISSION[161]
Employment policies relating to pregnancy and childbirth, 8.55. Notice ARC 1719A 2/20/91
COLLEGE STUDENT AID COMMISSION[283]
EDUCATION DEPARTMENT[281] "umbrella"
Organization and operation—name change, 1.1. Filed ARC 1699A 2/20/91
Iowa heritage corps, 18.14. Filed ARC 1698A 2/20/91
Physician loan payments program, ch 23. Filed ARC 1700A 2/20/91
Graduate student financial assistance program, ch 33. Notice ARC 1697A 2/20/91
CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428]
HUMAN RIGHTS DEPARTMENT[421] "umbrella"
Functions, public records and fair information practices, chs 1. 2 Notice ARC 1678A 2/6/91
CULTURAL AFFAIRS DEPARTMENT[221]
Museum property, ch 7. Notice ARC 1715A 2/20/91

No Rep.

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"

Applications—examination for licensure to practice dentistry and dental hygiene, 11.1, 11.4, Filed ARC 1732A 2/20/91
 Continuing education, 25.2(2), 25.3(4), 25.9(3), Notice ARC 1733A 2/20/91
 Principles of professional ethics—date of treatment, 27.7(5), Filed ARC 1731A 2/20/91
 Mediation of disputes, ch 32, Filed ARC 1730A 2/20/91

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]Iowa export trade assistance program, 61.2, 61.4(1), 61.6, 61.7, Filed ARC 1690A 2/6/91**EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281] "umbrella"

Licensure; amend, renumber and transfer 281—chs 73 to 75 and 79 to 82 to 282—chs 14 to 20, Filed ARC 1695A 2/20/91**EDUCATION DEPARTMENT[281]**Community colleges, ch 21 title, 21.1, 21.35 to 21.39, 21.45(2), Notice ARC 1660A 2/6/91**ELDER AFFAIRS DEPARTMENT[321]**Eldercare contracts and activities, 1.7, 6.14(1), 6.14(3)"b," "e" and "f," 6.14(4) to 6.14(6), Filed ARC 1724A 2/20/91Introduction, department of elder affairs established, commission established, department planning responsibilities, 1.7, 2.7(6)"a," 3.1"2," 4.1(3), 4.1(4), 4.21(2), Filed ARC 1723A 2/20/91**HISTORICAL DIVISION[223]**

CULTURAL AFFAIRS DEPARTMENT[221] "umbrella"

Public records and fair information practices, ch 3, Notice ARC 1716A 2/20/91Historical resources development program, 49.2, 49.4(1), 49.4(3), 49.4(7), 49.4(8), 49.5(4)"b," 49.7(1)"a"(3) and (4), 49.7(1)"b," Notice ARC 1714A 2/20/91**HUMAN SERVICES DEPARTMENT[441]**Transitional child care assistance program—income, 49.6, Notice ARC 1669A 2/6/91Transitional child care assistance program—payment, 49.10, Notice ARC 1721A 2/20/91Burial benefits, 56.1(2), 56.1(3), Filed ARC 1674A 2/6/91Electronic benefit transfer—food stamps, 65.4, 65.36, Notice ARC 1670A 2/6/91Conditions of eligibility; application and investigation, 75.1(23), 75.1(30), 76.6(5), Notice ARC 1725A 2/20/91Model waiver, elderly waiver, hospice programs, 77.30(5)"c," 77.33(6)"b," 78.3, 78.3(8), 78.3(13), 78.3(14), 78.3(16), 78.11(4), 78.36(2)"c," 78.36(3), 78.36(3)"c," 78.36(4)"b," 79.1(2), 79.1(5)"i," 79.1(14)"b," 83.1, 83.2(1)"d," 83.2(1)"e"(2), 83.2(1)"f," 83.2(2)"b," 83.3(4)"d," 83.8(2)"c," 83.21, 83.22(1)"d," 83.22(2)"a" and "b," 83.23(4)"c," 83.26, 83.28(2)"c," Filed ARC 1673A 2/6/91Federally qualified health centers, 77.35, 78.39, 79.1(2), 80.2(2)"a," Notice ARC 1671A 2/6/91also Filed Emergency ARC 1672A 2/6/91Determination of inpatient admission, 79.1(5)"p," Filed Emergency After Notice ARC 1677A 2/6/91Certification of adoption investigators, 107.1, 107.2, 107.3(1), 107.3(2), 107.3(2)"c," 107.4(1), 107.4(2)"a" to "c," 107.4(3)"a," 107.4(5), 107.5(2)"a" to "c," 107.6(1), 107.6(2), 107.6(3)"b," 107.7(2), 107.7(3), 107.8(1) to 107.8(5), 107.9, 107.10, Notice ARC 1722A 2/20/91Clinical care services, 173.1, Filed ARC 1675A 2/6/91Subsitized adoptions, 201.1, 201.2, 201.5(1), 201.6(1), Filed ARC 1676A 2/6/91**INDUSTRIAL SERVICES DIVISION[343]**

EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"

Dispute resolution of contested cases, 4.40, Filed ARC 1661A 2/6/91**INSPECTIONS AND APPEALS DEPARTMENT[481]**Psychiatric medical institutions for children, 41.2"1" and "6," Notice ARC 1456A Terminated ARC 1742A 2/20/91Psychiatric medical institutions for children—certification of need for services, 41.9, Filed ARC 1743A 2/20/91Health care facilities administration, 50.3(3), Filed ARC 1662A 2/6/91Minimum physical standards for residential care facilities, intermediate care facilities for the mentally retarded, 60.12(1)"d," 64.3(1)"f," 64.61, Filed ARC 1663A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Lottery, 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 100.3(2), 102.1(1), 102.2(4) to 102.2(6), 103.4(4), 103.4(4)"c," 103.7(4), 103.9, 103.13(1)"e," 103.13(2)"b"(1) and (3), 103.13(2)"c"(1) and (3), Notice ARC 1664A 2/6/91Social gambling and bingo, 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No Reps.

STATUS OF WOMEN DIVISION[435]

HUMAN RIGHTS DEPARTMENT[421]"umbrella"

Description, displaced homemakers, 1.1, 1.2, ch 5. Notice ARC 1734A 2/20/91

TRANSPORTATION DEPARTMENT[761]

Interest on retained funds, ch 27. Filed ARC 1655A 2/6/91Signing for named routes, 131.10. Notice ARC 1694A 2/20/91RISE program, 163.1, 163.4(2)"a" and "g," 163.7(2)"a" and "i," 163.8(2)"i," 163.8(6)"d"(1), 163.9(2)"h," 163.9(6),
163.11(2)"a" and "d," Filed ARC 1654A 2/6/91Commercial driver licensing—hazardous material, 607.17(1). Filed Emergency ARC 1656A 2/6/91

TREASURER OF STATE[781]

Accepting credit card payments, ch 8. Notice ARC 1665A 2/6/91

UTILITIES DIVISION[199]

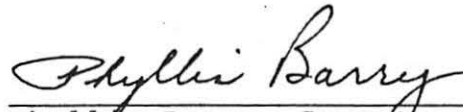
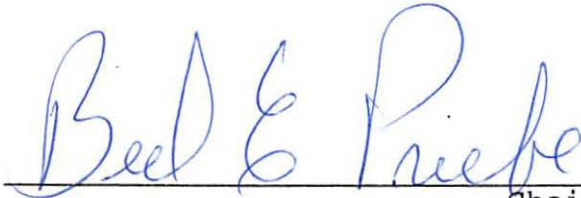
COMMERCE DEPARTMENT[181]"umbrella"

Service copies, 7.4(6)"e"(23). Filed ARC 1683A 2/6/91Telephone utility service standards, 22.3(3)"b," 22.3(5), 22.4(3)"b," 22.5, 22.6. Filed ARC 1685A 2/6/91Electric plant siting, 24.2(9), 24.2(19)"b," 24.11(2)"f" to "h," 24.16. Notice ARC 1684A 2/6/91April
MeetingThe next meeting was scheduled for April 8, 1991, at
8 a.m. in Room 22.

Adjourn

Chairman Priebe adjourned the meeting at 10:55 a.m.

Respectfully submitted,

Phyllis Barry, Secretary
Assistance, Alice Gossett
Bonnie King

Chairman

Date