

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, June 14 and 15, 1983.

Place of Meeting: Senate Committee Room 22, State Capitol, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Vice Chairman, Senator Donald V. Doyle; Representatives Ned Chiodo and James O'Kane. Senator Berl Priebe, Chairman, and Senator Dale Tieden--not present, having reported they would be on vacation.

Also present: Joseph Royce, Committee Counsel; Kathryn Graf, Governor's Administrative Coordinator; Phyllis Barry, Deputy Code Editor and Vivian Haag, Administrative Assistant.

Convened Vice Chairman Schroeder convened the meeting in Room 24, 10:05 a.m. New Committee members Senator Donald V. Doyle and Representative James D. O'Kane were welcomed.

SOCIAL SERVICES DEPARTMENT Social Services Department agenda before the Committee was:

SOCIAL SERVICES DEPARTMENT[770]

Interstate compact parolees and probationers, 27.4(2), 27.4(4)	ARC 3735	F	5/11/83
ADC, granting assistance, eligibility, 41.1(5)"a"	ARC 3726	F	5/11/83
ADC, granting assistance, unemployed parent, 41.4(1)"g", 42.1(1)"c"	ARC 3734	F	5/11/83
ADC, unemployed parent, 42.4(4)	ARC 3736	F	5/11/83
Food stamps, joint processing, 65.13	ARC 3732	F	5/11/83
Resources, application, 130.2(5)	ARC 3737	F	5/11/83
Resources, adverse service actions, 130.5(4), 130.5(5)	ARC 3738	F	5/11/83
Medical assistance, hospitals participating in swing bed program, 78.3(16)	ARC 3774	N	5/25/83
County and multicounty juvenile detention homes and juvenile shelter care homes, 105.1(4), 105.1(8), 105.1(9), 105.2(8)"b"(2), 105.2(12)"f", 105.3(3), 105.10(1), 105.12, 105.13, 105.16(1), 105.16(5), 105.19, 105.19(1), 105.19(2)"c", 105.19(4), 105.19(5)"d", 105.20--105.22	ARC 3775	N	5/25/83
Children in need of assistance or children found to have committed a delinquent act, 141.5, 141.5(3)"a"(8), 141.6, also ARC 3599 terminated	ARC 3776	N	5/25/83

Judy Welp, Mary Louise Filk, James E. Krogman, Ellen Hansen, Lorena Griffith and Will Miller appeared for the Department. Welp presented brief comments with respect to amendments to 27.4 and 41.1(5). No questions were raised.

In reviewing rules pertaining to assistance program for self-employed, Schroeder was advised that in the unemployed parent program, a person must work less than 100 hours a month to be considered unemployed. Schroeder could envision problems but Welp said this seemed to be the best approach.

No recommendations were offered for 42.4(4), 65.13, 130.2(5) and 130.5. It was noted that rural hospitals with 50 beds or less will benefit greatly from the new swing bed program in 78.3(16).

In response to Schroeder's question re 105.2(8), Krogman said the rule addressed two different types of machines with different temperature maximums. Filk added that the provision meets health department standards.

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SOCIAL
SERVICES
DEPARTMENT
Continued

Krogman said the rule was directed at short-term temporary care of children. In re 105.21(1), Schroeder recommended use of strait jackets rather than hand cuffs. No questions were posed re amendments in chapter 141.

REVENUE
DEPARTMENT

Carl Castelda, Deputy Director, Gene Eich, Deputy, Property Tax Division, and Charles Haack were present for review of:

REVENUE DEPARTMENT[730]

Sales and use tax, 14.1 to 14.3, 15.19(3), 16.1, 18.31(2), 19.2, 26.1, 34.5(8) ARC 3758 F 5/11/83 1402
Determination of tax for freight-line and equipment car companies, ch 75 ARC 3757 F 5/11/83 1407
Homestead tax credits, assessment of computers and machinery, 80.1(1)"g", 80.7(4), 80.7(5) ARC 3770 M 5/25/83 1434

Also present: Richard Malm, Attorney, and Jack Etzkorn, Manager, State and Local Taxes, Trailer Train Company.

No questions were raised on the sales and use tax amendments.

ch 75

Eich explained that chapter 75 was identical to the Noticed rules. Discussion centered on the definition of loaded miles/loaded mileage in 75.3--the actual distance via the route of car movement and the distance between stations as reported by the companies. Eich described loaded car as one that is not empty, which would include railroad car carrying an empty highway trailer or an empty container. Companies ship tractor trailers from coast to coast. The Department maintains that a loaded mile includes any load whether or not revenue producing. Eich reviewed the history of the rules and pointed out the concept has not changed. In 1978, a one and one-quarter cent charge per mile was imposed on the movement of any loaded car. It was the Department's position the law was clear, but questions had been raised and the rules were implemented for further clarification.

Recess -
Move to
Room 22

Chairman Schroeder called for a recess so the Committee could move to Room 22.
Reconvened at 10:38 a.m.

Chiodo was informed that revenue is derived from transporting the trailer. Eich explained the different methods of generating revenue.

Doyle in the chair. Eich recalled that Trailer Train was the only company in attendance at the public hearing. He had also visited with the Interstate Commerce Commission re the matter.

Richard Malm spoke in opposition to the rules as being grossly discriminatory and urged Committee objection. He disagreed with Code Chapter 435, which purports to define "loaded mile." Malm referenced written materials setting forth the basis for their opposition. He reviewed the purpose of Trailer Train Company was to provide trailers on flatcars and he stressed that the object is to transport cargo--not the trailer. Malm urged that "loaded" must mean "with cargo" and he was sure the legislature never intended to tax movement of empty cars. Commenting on the procedural aspect, Malm said Trailer Train has been assessed a tax under this law every year since 1978 and they have been vigorously contesting it every year since.

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REVENUE
DEPARTMENT
Continued

He discussed the fundamental issue of the contested case before the Department--the meaning of "loaded mile." Trailer Train was fearful the result would be to eliminate their opportunity to have a case-by-case determination of the applicability of this law. Malm insisted the rules were aimed directly at one taxpayer--Trailer Train. He added that 200 to 300 entities are assessed tax under this law but, collectively, those taxpayers pay less than the \$1 million a year assessed to Trailer Train. In Malm's judgment, the rules compound the problem. Malm informed Chiodo that Trailer Train was challenging the Department's calculation of mileage incurred by the company.

Etzkorn discussed the fact that the fee was similar to a Hertz rental situation.

Schroeder assumed the chair.

Chiodo asked if John Deere paid Trailer Train to return an empty car. Response was that Deere pays the railroad for transportation of commodity and has nothing to do with the return of the car. General discussion. Eich reasoned that TT has a greater tax liability because they travel more miles. The load factor was well recognized at the time the legislation was passed. Eich added that Trailer Train, at that time, estimated their load factor as 75 or 80 percent vs 50 percent for other companies.

Eich gave a brief history of the equipment car tax. In 1977, the Revenue Department submitted a proposed change which generated a large tax increase and the ARRC objected. The legislature then looked at the methods of valuation or taxation of these cars. The original proposal was 1 cent per loaded or empty mile and, in 1978, it was modified to 1¼ cents per loaded mile.

Point of
Order

It was noted that pending litigation had precluded collection of the 1978 assessment. A point of order was raised by Doyle as to whether it was appropriate to be discussing matters in litigation.

Responding to question by Schroeder, Malm said that no other states have the "loaded mile" tax.

ch 75
Motion to
Delay

Graf reminded ARRC that chapter 75 would become effective June 15. Chiodo moved to delay chapter 75 for 70 days to allow time for further study of the equipment car rules. Motion was carried with 4 ayes. [Delayed 70 days from effective date of 6/15/83]

Schroeder asked that pertinent information be sent to Royce during the delay period.

Eich stated that, at ARRC request, the definition of "occupancy" was added to chapter 80 of their rules for purposes of receiving homestead tax credit. Eich said that being temporarily absent from homestead premises would constitute "constructive occupancy." He referenced a 1952 AG opinion pertaining to con-

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REVENUE
DEPARTMENT
Continued

structive occupancy. Eich thought it unlikely that a summer home would qualify for the exemption. Two homesteads maintained in separate names could be eligible for credit. No other comments.

OCCUPA-
TIONAL
SAFETY &
HEALTH
REVIEW
COMMISSION

Charles Strutt and Mary Olson appeared for review of:

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION[610]

Procedure for hearings, 1.1(14), 1.7(4), 1.7(15), 1.7(16), 1.30(2), 1.31(4), 1.31(8)"b", 1.38, 1.55(2), 1.62(1), 1.65(2), 1.100(4),

1.101, 1.102 ARC 3742

5/11/83

Committee questioned amendment to 1.55(2) in that the "in writing" requirement would be too formal. Department officials responded that the intent was to afford the other party opportunity to present his or her side. Doyle envisioned a problem if the subpoena were served at 9:00 a.m. for a hearing scheduled at 10:00 a.m. Strutt said the Rules of Civil Procedure apply. The Committee asked the Department to ensure an orderly process for subpoenas. Strutt explained the purpose of 1.102 was to inform those who might be unfamiliar with the District Court rule.

PLANNING &
PROGRAMMING

David Patton and Larry Tuel appeared for review of the following agenda:

PLANNING AND PROGRAMMING[630]

Intergovernmental review system, ch 11 ARC 3754

5/11/83

Community services block grant program, 22.2(1), 22.3 to 22.6, 22.7(2), 22.7(3), 22.10, 22.13, 22.14 ARC 3755

5/11/83

Job Training Partnership Act, complaint and interim complaint procedures, 19.10, 19.20, filed emergency ARC 3779

5/25/83

ch 11

Tuel referenced Presidential Executive Order 12372 which rescinded the old intergovernmental review system. New federalism allows more control by the states and provides a greater degree of flexibility in the review of federal projects which will impact the state. In his opinion, the approach was positive. According to Tuel, the 30-day lead time in 11.6(7A) could allow coordination between two communities involved in similar projects. He explained use of the map referenced in 11.6(7A), paragraph 2. No other questions.

ch 22
19.10
19.20

No questions re community service block grant programs. Rules 19.10 and 19.20 establish an interim procedure for resolving complaints arising under the Job Training Partnership Act prior to October 1. Schroeder thought "may" should be substituted for "shall" in 19.20(5), line 2 and that the words "or his designee" should follow the word "governor." According to Patton, the language was federal. Graf asked the Department to work with her office on the matter.

RAILWAY
FINANCE
AUTHORITY

The following officials were present for Railway Finance Authority: Les Holland, Dan Franklin, Beverly Allen and Stephen W. Roberts. Holland gave a brief overview of the rulemaking on chapters 1 to 4--organization, general applicability, financial assistance and projects, IAB 5/25/83, ARC 3766. In re 1.4(3), the requested deletion was made.

Following the last appearance before ARRC, 12 to 14 proposed changes were submitted by Chicago and Northwestern Transportation Company and the Authority incorporated about half of them into these rules. Holland has also received a letter

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RAILWAY
FINANCE
AUTHORITY
Continued
4.3(3)a

from the Iowa Railroad Association with similar results. Barr referenced his letter wherein he opposed the "nonquantifiable benefits" provisions of 4.3(3)a and he asked ARRC to object to that provision.

Holland noted that the point had been carefully considered by Staff and the Board. He offered illustrations of nonquantifiable benefits: Value the railroad right of way contributes to preservation of habitat; value of human life; preventing accidents and derailments by upgrading location; value rail service would add to property by increasing the potential for future development.

Chiodo wasn't sure that "saving habitat" was pertinent when "we are trying to finance railroads." General discussion. Holland and Allen took the position it would be difficult to list all nonquantifiable benefits. Addition of "including but not limited to" was suggested as an improvement.

1.5(4)

In re 1.5(4), Schroeder posed question re "30-minute public forum." He thought the word "equal" should be included in last line before "opportunity." Holland preferred some flexibility for the Board; also, time can be allocated under requests in 1.5(1) and 1.5(4) for someone who might drop in.

Chiodo opposed the vagueness of 4.3(3)a and considered moving an objection. Schroeder suggested a 70-day delay so the matter could be considered at a later time. Chiodo agreed. He preferred inclusion of other criteria in the rule for specificity.

Delay of
4.3(3)a
July agenda

Chiodo moved that a 70-day delay be placed on 4.3(3)a for further study. Motion carried with 4 ayes. The rule will be rescheduled on the July agenda. Robert's request for division of the rule for delay was denied. He emphasized that IRFA was a "lender of last resort" with the purpose of preserving rail lines. No further comments.

HEALTH
DEPARTMENT

John A. Eure, Kenneth Choquette and Peter Fox appeared on behalf of the Health Department for review of the following:

HEALTH DEPARTMENT[470]
Licensing of mobile home parks, ch 71 ARC 3741 F 5/11/83
Physical and occupational therapists, continuing education and disciplinary procedures, 138.112(5),
138.112(10), 138.206(4), 138.209(2), 138.209(3)a", 138.212(5), 138.212(11) ARC 3728 F 5/11/83
Intermediate care facilities and skilled nursing facilities, 58.11(2)"g", 59.13(2)"g" and "h", notices ARC 2961 and 2962
terminated ARC 3761 N 5/25/83
Physical and occupational therapists, license reinstatement, 137.2(7), 138.11, 138.201(5) ARC 3729 N 5/11/83
Psychology, re-examination, 140.8(8) ARC 3730 N 5/11/83
Barber shop license, penalty fee, 160.6(9) ARC 3731 N 5/11/83

Discussion of 71.16 on refuse disposal. Schroeder could envision problems. Choquette responded that in most parks garbage is deposited in dumpsters and the park owner is responsible for emptying them.

Schroeder favored inclusion of orange burrow pipe in 71.22(1) but was informed that type of pipe was no longer included in the plumbing code. There was discussion of water pipe size in 71.22(2).

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HEALTH
DEPARTMENT
Continued

According to Fox, rules for continuing education will be less stringent when amendments to chapter 138 are effective.

137.2(7)

In response to question by O'Kane, Fox said the purpose of 137.2(7) is to ensure that an individual coming into the state without a license cannot practice physical therapy without supervision--the licensed physical therapist shall be named on the application form. This merely sets out by rule the past policy of the Department.

140.8

In re 140.8(8), Fox indicated the rule would limit to three the number of times persons may apply for re-examination. O'Kane was advised the passing test score was decreased five points two years ago--from 70 to 65. General discussion. Doyle took the position that exception should be provided for extenuating circumstances. He suggested "Under extraordinary circumstances, the Board may grant an applicant one additional test, but not within six months of the last test." Fox was amenable to presenting that to the Board. He stressed that objective standards were needed. The \$10 penalty set out in 160.6(9) was intended as an inducement to pay renewal fees on a timely basis.

O'Kane was informed there are 4000 to 5000 barbers in Iowa and more cosmetologists. Fox was unsure whether cosmetologists have the same criterion as barbers but would pursue the matter. No further questions.

July
Meeting

The Committee agreed on 10:00 a.m. as the starting time for the July 12 meeting.

Recess -
Reconvened

Committee was in recess at 12:35 p.m. for lunch. Reconvened at 1:45 p.m.

SOIL CONSER-
VATION DEPT

Ch 5

Ken Tow, Assistant Director, and Jim Gulliford, Director, were present for review of amendments to chapter 5 re Iowa financial incentives program for soil erosion control. Tow digressed by mentioning two emergency items that have been filed without notice. They will be published in the June 22 IAB. Tow continued that reorganization of the Department of Environmental Quality and Natural Resources Council resulted in the transfer of chapter 84 of NRC rules to Soil Conservation with one minor change. The second filing dealt with \$99,000 available for county land use inventory. General discussion of the volunteer program.

Gulliford said feedback was being received on implementation of Iowa Soil 2000 program. No recommendations were offered.

PUBLIC SAFETY
DEPARTMENT

Vehicle
Impoundment

Rules 6.1 to 6.5--vehicle impoundment, ARC 3743, filed, IAB 5/11/83 were before the Committee. Loren Dikeman, Highway Patrol, appeared for the Department. He noted a further explanation on inventory of contents of an impounded vehicle was added 6.4.

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PUBLIC
SAFETY
Continued

Schroeder reiterated his previous question re 6.2(2)c, and Dikeman reviewed the practice followed by the patrol in removal of vehicles situated on a public highway.

With respect to stricken language in 6.3(1), Doyle was informed that if an individual is taken into custody, in 99 percent of the cases, the car will be towed. Doyle made the point that the deletion left little option. He pointed out that some cities ask for a signed waiver to remove the burden from the police department. Schroeder thought an additional paragraph could be added to allow for a waiver of the tow upon the signature of the person in charge of the vehicle.

Schroeder recommended that the Department consider a waiver clause. No further questions.

PHARMACY
BOARD

Norman Johnson, Executive Secretary, reviewed examination, reciprocity and registration fees, 1.2, 5.6, 8.3, 8.3(2), ARC 3753, Notice, IAB 5/11/83. Chiodo was informed that the exam fee is a one-time fee as is reciprocity--others are paid annually. No formal action.

Recess

The Committee was ahead of schedule so a recess was called at 2:05 p.m. and reconvened at 2:35 p.m.

INSURANCE
DEPARTMENT

Insurance Department agenda was as follows:

INSURANCE DEPARTMENT[510]
Nonprofit health service corporations, ch 34 ARC 3773 5/25/83
Nonprofit health service corporations, participating hospital contracts, 34.6 ARC 3744 5/11/83

Denise Horner was in attendance for the Department. Also present: Gene McCracken, HPCI, Brice Oakley, Blue Cross of Iowa and Richard Berglund, Iowa Hospital Association.

ch 34

Horner noted that chapter 34, intended to implement Iowa Code Chapter 514, would become effective June 29. Basically, the rules contain definition, annual report requirements, procedures for arbitration and filing requirements for hospital service corporations. Horner added that negative feedback had been received re 34.5 and the Department intends to rescind it under emergency provisions of chapter 17A.

Oakley reviewed the question that Blue Cross had raised dealing with the annual report.

34.3

The Committee requested inclusion of a date certain in 34.3 re the National Association of Insurance Commissioners' form.

34.6

Doyle in chair. Horner called attention to Noticed rule 34.6 which had been omitted from the filed version and renoticed in 5/11/83 IAB. Adverse reaction at the public hearing prompted that decision. A drafting error in the rules will be corrected to substitute "hospital" service for "health" service corporations.

Subrule 34.6(2) makes reference to "general contract format" of a participating hospital contract. The Department plans to reword the phrase to make it clear they will review the general contract for both format and content. Subrule 34.6(3)
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INSURANCE
DEPARTMENT
Continued

contains review of the payment mechanism within a hospital contract. Royce inquired as to what provisions would be for economic trends [34.6(3)d]. Horner replied it would take into account the fact that costs will increase because of inflation.

Oakley distributed written comments with respect to prospective hospital payment rules. He specifically addressed the change in the cost plus factor and described the Medicare prospective payment system. Blue Cross anticipated that the Commissioner would order them to include certain provisions in their contract and Oakley inquired as to the Department's plan to implement the rules.

Horner was hopeful that rule 34.6 could be implemented emergency after Notice next week. Because of notice requirements contained within existing Blue Cross contracts with hospitals, it is important that Blue Cross give notice of termination before July 1. The Department preferred to review proposed contracts under the new rule.

Oakley made a statement and overview of the history of the rule from the standpoint of Blue Cross. He supported the emergency filing.

Berglund said his Association thought the Insurance Commissioner had exceeded his authority under the intent of the law and was attempting to regulate hospital costs. Further, the proposed health policy goes far beyond the Commissioner's approval authority for contracts to insure the solvency of Blue Cross. He declared that an emergency rulemaking at this point would subvert the right of the ARRC to listen to all arguments.

He submitted a copy of the statement made to the Commissioner by the Iowa Hospital Association. Berglund spoke of the vagueness and deficiency of 34.6. Horner assured Berglund that the form and content in the contracts are to be identical.

Horner reiterated for Chiodo the reason for filing emergency--there are two Blue Cross contracts in western Iowa. The Western Iowa group has a 12-month termination--July 1 to June 30. In order for any actual change to be made in a contract with Western Iowa Hospitals group, a decision to change must be made before July 1. The Department believes the complete set of rules is needed before they approve any contract forms.

General discussion of proper procedure to follow for equitable resolution of the problem. Chiodo expressed concern about the time frame and whether there had been adequate public participation with this rulemaking. He reasoned the chance for any change would be minimal after the rules become effective. Berglund viewed an emergency adoption as a benefit to Blue Cross. Horner reminded the group that rulemaking was commenced in March.

Berglund referenced the fact that his Association had requested a concise statement from the Department but had not received a response. Horner defended the Department and indicated the re-

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INSURANCE
DEPARTMENT
Continued

quest had been referred to counsel. She reminded Berglund that 17A did not in any way make a concise statement a condition. Berglund said it was needed to determine whether or not they were for or against these rules. Mention was made of the western Iowa dividing line for the two types of contracts. Oakley interjected that Blue Cross has decreed that by 1986 there should be one contract per state. Exceptions would have to be approved. General discussion. Horner said letters would be sent to interested parties with information about the filed emergency rules.

Schroeder reminded that petitions for rulemaking could be submitted to the Department.

FAMILY FARM DEVELOPMENT AUTHORITY William H. Greiner, Executive Administrator, appeared for review of:

IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]
Beginning farmer loan program, issuance of bond, 2.12, filed emergency after notice ARC 3763 *FEAN*..... 5/25/83

Greiner stated that under new IRS regulations, they could now publish hearing notices in a paper of statewide circulation, thus eliminating many problems. Schroeder was unconvinced that this practice would be preferable. No action taken.

HOUSING
FINANCE
AUTHORITY

George Cosson, General Counsel for the Iowa Housing Finance Authority, was present to review public hearing and approval, 4.5, ARC 3759, Filed, IAB 5/11/83. The rule had been adopted emergency and under Notice last December. The Noticed version has been adopted and will supersede the emergency filing. No questions were posed.

COMMERCE
COMMISSION

Representing the Commerce Commission was Dave Conn who introduced Bill Haas and announced that Haas would be in the Commission's general counsel office after July 1. The following agenda was before the Committee:

COMMERCE COMMISSION[250]
Gas and electric utilities, pilot projects, 19.9(4), 20.10(9) ARC 3727 *F*..... 5/11/83
Purchased gas adjustment refunds, interest rate, 19.10(3)"d" ARC 3746 *N*..... 5/11/83
Telephone utilities, intrastate toll access, 22.14 ARC 3778 *N*..... 5/25/83

According to Conn, rules on pilot projects implement 1982 legislation. He noted that after the rules were adopted, Iowa Electric Light and Power filed an application for rehearing with the Commission. Although the Commission found no statutory basis for a rehearing, they treated it as an application for rulemaking to consider changing mandatory participation.

Another proceeding that relates to these rules has been commenced. Responding to Doyle, Conn said that Code §476.6 states that before a utility can implement any new or changed rate or charge, they must give affected customers 30 days' notice.

No recommendations for 19.10(3).

22.14

Conn explained that rule 22.14 was necessitated by the pending AT&T consent to create the antitrust case and the FCC action. The existing process which allows local telephone companies to

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COMMERCE
COMMISSION
Continued

recover part of their cost from toll rates will terminate next year. FCC has replaced that with its own system of charges for interstate calls. Additional mechanism is needed to allow local companies to recover the costs of providing access to the intrastate long distance network and this rule will allow that. Conn said, that, theoretically, the dollar impact would not change--only the methods of recovery. Deregulation and cost of telephone service was discussed. Doyle had been contacted by rural residents who fear there will be long distance charges for areas that are now toll free. No other comments.

REVENUE
DEPARTMENT

O'Kane raised question re taxation of implement dealers--whether or not rebates are subject to sales tax. It was decided to ask Revenue officials to appear before the Committee to present the Department's views on the matter.

Recess

Vice Chairman Schroeder recessed the Committee at 4:00 p.m.

June 15, 1983

Reconvened

Committee was reconvened Wednesday, June 15, 1983, 9:08 a.m. in Committee Room 22. Members present: Vice Chairman Schroeder, Senator Doyle and Representatives Chiodo and O'Kane. Also present: Royce, Graf, Barry and Haag.

CONSERVA-
TION
COMMISSION

Appearing for Conservation Commission was Bob Barratt and Stanley Kuhn to review:

CONSERVATION COMMISSION[290]

Local entities, procedures to obtain federal assistance for outdoor recreation projects, 72.4 ARC 3767 .F..... 5/25/83
Wild turkey fall hunting, 112.1, 112.2, 112.4 ARC 3768F..... 5/25/83

72.4

Kuhn said that 72.4(107) allows the director to make exceptions to the ceiling limitations for projects that deserve such consideration. Chiodo reasoned that although not ideal, the rule was acceptable.

ch 112

Barratt explained the minor differences from the prior rules and displayed a map with zones. He called attention to the hunter safety law to be effective 7-1-83[Code §110.27].

Schroeder suggested to Graf that the Governor might want to pursue possible repeal of the minimum age of 12 for hunting and safety certificates. There was brief discussion of the expiration date for licenses and overlapping seasons. No formal action.

ENGINEERING
EXAMINERS

Tom Hanson and Bruce Hopkins appeared on behalf of Board of Engineering Examiners. The following agenda was reviewed:

ENGINEERING EXAMINERS, BOARD OF[390]

Requirements for examination and references, 1.2, 1.2(3)"d", 1.2(4), 1.2(5)"a" ARC 3764 .N..... 5/25/83
Minimum standards for property surveys, 2.1(2), 2.3, 2.5 ARC 3765....N..... 5/25/83

Hopkins reviewed the two examinations referenced in 1.2(114). Schroeder could envision problems in paragraph 4 for an individual who might work for just one employer. Board members assured him it would not be applicable in that situation. Hopkins admitted there could be a problem for those who worked in foreign countries because of possible fraudulent application.

ENGINEERING
EXAMINERS
Continued

Re 1.2(3), Schroeder inquired if an assistant professor could be a graduate student and he received a negative response. Hopkins said the subrule would be amended by substituting "industry" for "product engineering" in the last paragraph. Schroeder suggested addition of language to allow the Board to contact references to substantiate information. Hanson thought that was included on the application form. Graf recommended the following: "The Board reserves the right to contact all past employers for information."

In response to Chiodo, Hopkins said that amendments to Chapter 2 were suggested by a constituent of Senator Holden. Hanson gave brief explanation of property survey for mortgage survey and a "full-blown" legal survey. Liability was discussed.

O'Kane called attention to use of "predictable" in the first sentence of 2.5 and Hanson said the word should be "practicable". With respect to the rule, Schroeder reiterated his continuing dissatisfaction with the filing of plats. No action taken.

REAL ESTATE
COMMISSION

ch 4

Gene Johnson, Director, Mildred Elliott, Chairman of the Commission, Frank Thomas, Assistant A.G. and Kenneth Smith, appeared for the Commission to review discipline and hearing procedure, being Chapter 4, ARC 3769, filed, IAB 5/25/83. Dwight Johnston, a former licensee, was also in attendance.

The Commission Director indicated there were some technical changes in the rules which have come under a great deal of scrutiny. Schroeder was assured that there was no attempt to take away someone's right for a hearing in 4.25.

4.2

Doyle wondered why the requirement of a physical or mental examination was included as a method of discipline in 4.2. Thomas said the Commission is involved with a number of complaints, some of which could involve a licensee with mental or physical problems. He cited Code §258A.6 as the authority.

4.4

Thomas told Doyle that it was not their intent to exclude the Court in 4.4. They were relying on §258A.6(4). Thomas agreed to mention the matter to the AG.

4.29

Doyle questioned reason for last sentence in 4.29(1). According to Thomas, certain members of the legal profession have challenged the fact that the APA gives licensing boards or agencies excessive authority in looking at evidence. They believe that anyone coming before an agency is not being properly served because an agency under the law can peruse whatever evidence is in the record and make its decision. Thomas continued that the Iowa Association Legislative Committee and attorneys had been consulted. This language was an attempt to codify, if you will, what the Real Estate Commission does.

Thomas spoke of the broad authority in 17A for agencies so they will not be unduly hampered in obtaining information upon which to base findings.

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REAL ESTATE Elliott interjected that Thomas has to provide all the facts
COMMISSION for the Commission.

Schroeder asked if 4.29(6) would cause problems. Thomas declared that the Commission was required to heed Supreme Court decisions.

Doyle called attention to 4.30(1) as not being consistent with ARRC rule of 2/3 majority.

The Chair recognized Johnston, who had personal knowledge of the rules. His broker's license had been revoked 5 years ago and he recalled some of his experiences since that time. He spoke of his appeal to the District Court, which appeal was dropped after two years. Under Code §117.15, he reapplied for his license after successfully completing the test. The Commission denied the license and he requested a hearing under §117.19. Johnston quoted from comments at the hearing where the Commission failed to give reason for the license denial.

He had also contacted the State Ombudsman about the issue. In conclusion, Johnston said that on April 12, Marion County District Court reinstated his license but the Real Estate Commission has done nothing to date.

Thomas contended Johnston was not stating the record correctly and fully. He quoted from §117.15 saying there is a difference of opinion as to the meaning of "revocation."

Point of
Order

Doyle raised a point of order that a pending case should not be discussed and review today should be confined to 4.39(117). Chair ruled the point well taken.

Thomas emphasized that the Commission is not required to issue a license when the past history of a licensee shows flagrant disregard for people with whom they are dealing, especially in monetary matters.

Doyle was interested in knowing if the Commission were required to report a known criminal activity. Thomas replied they have a cooperative posture with county attorneys and law enforcement agencies. The county attorney wants the aggrieved party to bring the complaint. Thomas said that, in effect, the Commission could impose a permanent revocation. Chair interceded in the discussion.

Johnston's situation was reviewed--Elliott concluded that if a Community is not willing to sponsor an individual, the license would not be issued. No formal action taken.

The Board of Medical Examiners was represented by James Krusor for review of:

Medical examiners, licensure, continuing education, 135.3(6)"i", 135.103(1), 135.103(6), 135.107, 135.108, 135.108(2), 135.108(3), 135.501(10), 135.502(1), 135.502(2), 135.506, filed emergency after notice ARC 3762 FAAN 5/25/83

HEALTH
DEPARTMENT
Board of
Medical
Examiners

According to Krusor, the amendments were filed emergency after Notice in order to ensure that there were no loose ends and

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BOARD OF MEDICAL EXAMINERS to send out renewal applications in a timely manner. The license by endorsement fee was increased from \$150 to \$200. Discussion of license renewal dates and fees for same. Up to 20 hours of continuing education may be banked for those earned subsequent to January 1, 1983. Doyle called attention to the fact that some banked hours were being "cut off." Krusor agreed. No other questions.

Recess Committee was in recess for five minutes and reconvened at 11:00 a.m.

BOARD OF NURSING Ann Mowery and Lurae Fischer were present on behalf of Board of Nursing. Certified school nurse practitioner, 7.1(10), 7.2(10e, Notice, IAB 5/11/83 was reviewed. Schroeder referenced the numerous specialty fields. Mowery had thought of generalizing the whole area--other states have. It would be called Advanced Registered Nurse Practitioner and general criteria would be set. Schroeder suggested that Mowery present this matter to the Board.

O'Kane pointed out a typo in 7.1(10), "the" should be "and". Mowery was aware of it. O'Kane also questioned the meaning of "psychosocial". Mowery's response was that had been coined by nurses and it was a "combination of looking at the person from what is going on inside and that health" and what is going on outside in relationship to the family. O'Kane asked if nurses were trained as psychologists and Mowery replied that they were trained in counseling skills. She pointed out there is a specialty level in the area of psychiatric and mental health nurses.

O'Kane could foresee an eventual scope of practice problem as different professions and occupations are divided. Mowery reasoned that new avenues are there--"we are not creating them!"

ENERGY
POLICY
COUNCIL

Ben Guise appeared for Energy Policy Council to review:

ENERGY POLICY COUNCIL(380)

Energy measures and audit grant programs, technical assistance and conservation - schools, hospitals and institutions, 7.3(1)"f", 8.2(2)"b"(6), 8.4(2)"a", 8.4(2)"b"(7), 8.5(5), 8.6(4)"a"(2), 8.7(1) ARC 3777 F..... 5/25/83

Guise reported that under federal law, schools will receive at least 70 percent of the \$935,000 grant for energy conservation measures. No recommendations were offered.

MERIT
EMPLOY-
MENT
DEPT
ch 11

Clint Davis, Merit Employment, reviewed separations, disciplinary actions and reduction in force, chapter 11, ARC 3739, Notice, IAB 5/11/83.

Davis stated that chapter 11 was revised to focus on orderly separation of employees and disciplinary actions and the method for effecting agency reduction in force. The experience of several agencies has been incorporated into the chapter. Representatives from Department of Transportation, Department of Social Services, Woodward State Hospital School and Ed Moses attended the hearing held Thursday, June 9.

According to Davis, opportunity would be provided for an employee's comments to become a part of the record. Doyle was advised that "conduct unbecoming a public employee..." in 11.2 was statutory.

11.2

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MERIT
EMPLOYMENT
DEPARTMENT
continued

Royce recalled the expression had been removed from rules of licensing boards and to some extent in the statute. Doyle asked about AFSCME comments and Davis replied that they are not covered by these rules.

No formal action taken.

BOARD OF
REGENTS

University of Northern Iowa, parietal rule, 2.36(5), ARC 3756, Notice, IAB 5/11/83 was reviewed by Thomas W. Hansmeier, University of Northern Iowa, and Elizabeth Stanley, Board of Regents.

Schroeder expressed his preference for rescission of the parietal rule if it is not needed rather than extending the suspension. Stanley contended there were good reasons for maintaining the suspension.

Hansmeier added that UNI wants the parietal rule--especially for freshmen. Residence hall living during the freshmen year helps students make the transition from high school to college, and there is student support of the rule. Recently, overcrowding has necessitated suspension of the parietal rule but UNI plans to reinstate it in 1985.

Schroeder suspected an obligation to bondholders. Hansmeier admitted it was not completely unconnected but pointed out they were aware that students cannot be required to "live in" strictly for financial reasons. The Residence Educational Environment Committee had influenced the Board's decision.

Schroeder took the position that the universities should submit their rules simultaneously. Graf saw the real question as being, "is the parietal rule a good rule?" She saw an advantage in having population projections available.

Responding to Doyle, Hansmeier emphasized there were a number of common sense exceptions to the parietal rule. Hansmeier presented a copy of the 10-year enrollment projections. Graf was interested in written recommendations or reports from student groups.

The Committee, generally, questioned the suspensions without the normal rulemaking process.

Recess
Reconvened

Committee was recessed for lunch at 11:55 a.m.
Reconvened at 1:20 p.m.

REVENUE

Further discussion of Revenue Department rebate subject to sales tax was deferred until the July meeting.

COMMISSION
FOR THE
BLIND

Nancy Norman, Director, Tony Cobb, Assistant Director, Travis Robinson and D. Weinman were present on behalf of the Commission for the Blind. The following was before the Committee:

BLIND, COMMISSION FOR[160]

Services, vocational training for rehabilitation clients, 2.5(4) ARC 3745 ..X..... 5/11/83
Vending facilities, termination of licenses, 4.4 ARC 3760.....X..... 5/11/83

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COMMISSION
FOR THE
BLIND
Continued

Others in attendance included: JoAnn Trucano, Bill Pearce, Sue Monath, Doris Colby, Fred Moore, Howard Craig, Charles Erickson, Bill and Nila Fuller, Dave Meyers, Doris Colby, Jacci Runyan; Iowa Association of the Blind representatives--JoAnn Slayton, President, Sylvester Nemmers, Second Vice President and Mike Barber, Secretary; Joe Van Lent, Chairman and Jim Gashall, Director, National Federation of the Blind; Donald Ruthenberg, Iowa Association of Universities and Independent Colleges; private citizens and vendors.

2.5(4)

Norman referred to 2.5(4) which would establish policy on tuition for Commission clients enrolled in secondary education as part of their vocational training. The Commission will work with clients and counselors. She added that the proposal was drafted at a time when funding was uncertain. Circumstances could vary but it was not the intent of the Commission to discourage attendance at institutions with higher tuition. Norman summarized findings from the oral presentations. There was concern that the program would become counselor centered and the Commission was aware of the fact that the proposal was open to misunderstanding, but that was not the intent.

Slayton took the position that there was insufficient research on 2.5(4) and that confusion prevailed. She expressed concern about increased expenses and who would be affected. Slayton favored a study which would encompass all students. She recalled that Commission staff had repeatedly assured the Association that the rule was not needed at this time, but was being Noticed for adoption when economic circumstances dictate. In that event, the Association believed the Commission should turn to the gift and bequest fund. Slayton could foresee Iowa's needy blind being forced to leave their communities to attend a Regents Institution while those very institutions are required to restrict enrollment. In conclusion, Slayton expressed frustration of the Association in being excluded from input in the proposal.

Schroeder pointed out that the rule would provide additional money above other grants and would be equal to tuition at universities--ensuring that each blind student could obtain a certain amount of money. If a need were demonstrated, additional money would be available. He did not view the rules as a detriment.

Dodd, a Drake student, did not consider the program to be equitable for all students, disagreed with the policy of encouraging public school attendance over private schools, and stressed the importance of integrating the blind and sighted within the schools.

Ruthenberg's concern was one of perception and understanding. He recalled two years ago when funds were thought to be unavailable and colleges saw a decrease in students. He predicted a similar "tragedy" was developing. Of the 27 institutions which he represents, 24 have met all of the 504 federal standards for handicapped students. There are 44 unsighted students on the private campuses and 36 believe they will be forced to transfer

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COMMISSION
FOR THE
BLIND
Continued

to different institutions. Ruthenberg wanted assurance that Iowa would always allow students a choice of schools.

Van Lent saw no reason for 2.5(4) which would tend to "custodialize the blind." He admitted that was probably not the intent but doubt exists in the mind of the person affected. He continued that the blind want to become tax-paying citizens. Van Lent had praise for the state universities but emphasized that students should have a choice. Schroeder thought there would be insufficient funds to meet all tuition requirements of sighted and nonsighted persons. The rule was developed so that, in the event of shortage, each student would receive the state-sponsored institution allowance.

Norman emphasized that it was the Commission's intent to review questions raised by the ARRC and to incorporate ideas presented today.

Doyle wondered how the proposal differed from present practice. Norman replied that under their program individuals are encouraged to use available resources--private, grants or loans. The Commission then reimburses for the balance of the tuition. Doyle was advised that the exception language was intended to allow the student attending private college to continue to do so.

Fuller spoke of the help he had received from the Commission thirty years ago. Colby labeled the proposal as "vague and rather generalized."

Barber reasoned the Commission had been lax in keeping the blind informed. Schroeder voiced support of the Commission's "open door policy." Norman reiterated that the Commission does not plan to change its present policy.

4.4(2)

Discussion moved to subrule 4.4(2) relative to termination or suspension of vending facility operations for certain violations. Norman stated that the proposal was developed in cooperation with vendors throughout the state.

Gashall spoke in opposition to the rule as formulated. He was not against dealing with emergency situations, however. He saw a procedural issue as to how rights are protected. He viewed the rule as tantamount to suspending the license prior to a full hearing. Gashall's alternate plan with respect to violations was for the Commission to provide a specific written notice. After the inspection, a vendor would have 7 days for compliance.

Chiodo asked the Commission's reaction to the federal requirements. Norman commented they had sent the proposed rules to the Kansas City regional office and to Washington, D. C.

Nemmers spoke in support of the rule since protection was needed for vendors. Schroeder offered a recommendation that in the rule, where "vending facilities" are referenced, "food service" should be included.

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FOR THE
BLIND

Van Lent recalled a personal experience at the Polk County Courthouse. He continued that initially, the proposal seemed acceptable to vendors but reservations have surfaced. Van Lent referenced the petition to "disapprove" the rules.

A citizen, on behalf of her mother, spoke in opposition to the change. It was her feeling that the cafeteria committee for the Job Service Building was reluctant to employ a blind vendor.

General discussion. Schroeder opined it was regrettable when the Commission chose the "vending machine route." Lost was the opportunity for students to observe the proficiency of a sighted person to readily count change.

Erickson, operator of the grill at Commission for the Blind, saw no need for the rule. If the Commission is to be an advocate for the blind, they should work with them and ensure good training facilities.

Doyle noticed the contract did not contain an expiration date, or term or conditions upon which either may terminate. He recommended that it be reviewed and that the evidentiary hearing procedure be updated.

Royce suggested Real Estate Commission rules as a model. Norman was amenable to correcting deficiencies in the vending rule.

Recess

Committee was recessed for 15 minutes. Reconvened at 3:20 p.m.

BUREAU OF
LABOR

Al Meier, Commissioner, John Patramanis, Waldo W. Larsen, Miki McGovern and Gregory Leopold were present for review of:

LABOR, BUREAU OF[530]

Occupational safety and health rules, general industry, 10.20	ARC 3747	.....F.....	5/11/83
Occupational safety and health rules for agriculture, 28.1	ARC 3748	.....F.....	5/11/83
Boiler safety and inspection, chs 41 to 49	ARC 3771	.....F.....	5/25/83
Inspections under the Occupational Safety and Health Act, 3.2(2), 3.2(3), 3.5(2), 3.6(3), 3.6(4), 3.7, 3.9, 3.11(4), 3.13(2) to 3.13(4)	ARC 3749	.....N.....	5/11/83
Reporting and recordkeeping occupational injuries and illnesses, 4.18(8), 4.19	ARC 3750	.....N.....	5/11/83
Wage collection payment, ch 35	ARC 3751	.....N.....	5/11/83

No questions were posed on 10.20 or 28.1. Meier was not aware of controversy with respect to chapters 41 to 49.

Leopold explained amendments to chapter 3 re inspections under OSHA. An objection had been raised by Iowa Manufacturers Association and there is a case pending. A Supreme Court decision was referenced by Doyle.

Method of handling complaints was reviewed by Meier. Patramanis said that 4.18(8) and 4.19 parallel federal rules and an additional paragraph would be included in the filed version.

McGovern gave a brief statement on chapter 35 intended to clarify intent of Iowa Code Chapter 91A.

Schroeder inquired as to cost for a deposition and was told

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BUREAU OF LABOR Continued it was \$200-\$300 which includes service of a court reporter and printing expense. Mention was made of possible use of court reporters by the state. General discussion. No formal action on Labor rules.

PUBLIC SAFETY Royce referenced a letter from public safety wherein they re-affirm their request to retain the names of approved preliminary breath testing devices rather than merely setting standards for them. Chiodo and Schroeder opposed that approach.

No Representatives Called No representatives were requested to appear for the following:

FAIR BOARD[430]
Interim events, penalty on late payment of rental agreements, 7.2(1)"d" ARC 3740...F..... 5/11/83

July Meeting The next meeting will be July 12 and 13, 1983, beginning at 10:00 a.m. the first day.

Adjourned Vice Chairman Schroeder adjourned the meeting at 4:00 p.m.

Respectfully submitted,

Phyllis Barry
Phyllis Barry
Assisted by Vivian Haag

APPROVED:

Balf Priebe

CHAIRMAN