

MINUTES OF THE SPECIAL MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, October 7 and 8, 1980, in lieu of regular meeting date.

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

Members Present: Representative Laverne W. Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar H. Holden and Dale Tieden; Representative John E. Patchett. Excused: Representative Betty J. Clark, due to illness. Also present: Joseph Royce, Committee Staff. Brice Oakley, Rules Coordinator.

CONSERVATION

Chairman Schroeder convened the meeting at 9:00 a.m. The following Conservation officials were present: Allen L. Farris, Marion Conover, Bill Farris, John Tibben and David L. Moeller. Discussion centered around the following rules:

CONSERVATION COMMISSION[290]	
Harvest and sale of American ginseng, ch 21	ARC 1360 .X..... 9/17/80
Manufacturer's certificate of origin, ch 39	ARC 1300 .X..... 9/3/80
Timber buyers, ch 49	ARC 1361 .X..... 9/17/80
Waterfowl and coot hunting seasons, ch 107, filed emergency after notice	ARC 1364 9/17/80
Fishing regulations, 108.2(1), 108.2(5)	ARC 1301 .X..... 9/3/80
Wild turkey hunting, 111.1, 111.2, 111.4	ARC 1362 .X..... 9/17/80
CONSERVATION COMMISSION[290]	
Vessels, passenger capacity, ch 29	ARC 1398 .F..... 10/1/80
Snowmobile operation, 50.2	ARC 1399 .F..... 10/1/80
Pheasant, quail and partridge hunting seasons, ch 103	ARC 1363 .F..... 9/17/80

108.2(1)(5)

Conover explained 108.2(1) and 108.2(5) regarding changes in fishing regulations for trout and routine change of date for fishing on natural lakes. Tieden commented that, in his opinion, the language in 108.2(5) was reversed.

ch 21

In discussion of ch 21, harvest and sale of American ginseng, Tieden thought opening date of August 15 to be too early and he preferred September 1. He had received comments from "ginseng hunters." In response to Priebe, Farris said the harvest remained stable.

Oakley requested use of language comparable to that of The Code, i. e., "registered dealers" to replace "certification of dealers" in 21.3. Farris was amenable. Oakley also referenced lack of dates for application and opined there should be an annual registration and requested Farris to check into the matter. Oakley said he would be happy to submit his comments in writing. Farris agreed to consider concerns of the Committee.

ch 39

Downing, in response to Tieden, said no one appeared at the public hearing, and there were no written comments. Conservation had requested comments from the industry.

ch 49

In answer to Priebe's question, B. Farris commented there are 60 sawmills in Iowa generating between \$7 and \$10 million

CONSERVATION annually. The Notice of Intended Action is to require bonding
COMMISSION of all individuals who will buy timber in the state, and will
enable the timber seller to enforce contracts certifying payment.
He discussed surety bonds used in the buying and selling of timber.
Tieden wasn't sure the use of forms would be necessary.

There was discussion re the individual who buys timber for his
own use, not for resale. Farris commented if the individual was
in a business and sold the wood product, he would have to be
bonded.

Priebe was concerned and wanted assurance that people who buy
wood for their own use not be required to be bonded. Farris
agreed to check the matter for Priebe.

49.2(1)b Holden requested rewording of the subrule. Farris was agreeable.
49.2(2)a(4) Holden pointed out the word "may" should read "shall." Farris was
amenable. Holden questioned the use of "certificates of deposit"
in 49.2(3)b. Schroeder questioned the language in the subrule
and Farris indicated that had been added at the request of the
attorney general's office.

ch 111 Dr. Farris commented the rule was similar to that of 1980 with
expansion of the proposed hunting areas within the state.
Public comment session is scheduled for October 23.

ch 107 Dr. Farris declared the rule was filed emergency after Notice
because the notice from Fish and Wildlife Service arrives too
late to allow 30 days between that time and the opening date.
In response to anti-hunting groups, the Fish and Wildlife Service
has gone into a program of five years of stabilized regulations,
unless something really drastic occurs.

ch 103 According to Farris, the rule establishes season dates, etc. for
pheasant, quail and gray partridge. He announced that the August
survey showed the pheasant population to be as plentiful as it
has been since 1963.

Priebe did not support lengthening the partridge season. Farris
said there are as many as 80 to 90 birds in a 30-mile route,
and the Commission considers that very tolerable. General dis-
cussion.

29 Conover pointed out that 70 percent of the boats manufactured
in the U.S. are monohulls under 20 feet. On the 30 percent under
20 feet, the county recorder can use the federal capacity to
alleviate figuring the capacity of each vessel.

50.2 The snowmobile rule has been extended to prohibit all-terrain
balloon vehicles from operating on public lands unless there is
measurable snow cover.

CONSERVATION
COMMISSION
Cont'd

Priebe wanted to know where Conservation had the authority and thought they were eliminating a certain group of people. Conover responded they did not interpret the intent of the legislature to consider the summer vehicle as a snowmobile. He said because some people want to run all-terrain vehicles on public lands, the definition was expanded to include them. He cited 321G.1 or 321G.2, The Code. General discussion of the definition of snowmobiles, with Schroeder requesting Conservation peruse the area with possible change considered in categories. Conover said all-terrain vehicles are very popular in the winter. He agreed to help work for legislative clarification, if needed.

BEER AND
LIQUOR
CONTROL

Rolland Gallagher, Director, and William Armstrong, Licensing Supervisor, were present for discussion of the following:

BEER AND LIQUOR CONTROL DEPARTMENT(150)
Liquor licenses—beer permits, 4.13, 4.18, 4.25 to 4.30 ARC 1323 F.....9/3/80
License and permits, 5.7, 5.8(1) ARC 1324 F.....9/3/80
Advertising, 6.1(4)Fb, "c" and "f", 6.1(5)F, 6.1(7)F and "h"(2), 6.1(8)F ARC 1325 F.....9/3/80
Representatives of distillers, 7.2(1), 7.2(2), 7.3(1)F, "d" and "f", 7.3(1)F(2) ARC 1326 F.....9/3/80
Transportation and warehouse, 8.1(3), 8.2(1) to 8.2(3), 8.2(5), 8.2(7)F, 8.2(8), 8.2(9), 8.2(12), 8.2(13) ARC 1327 F.....9/3/80
Complaint procedure, 10.1, 10.2, 10.11 ARC 1328 F.....9/3/80
Hearing board procedure, 11.1 ARC 1329 F.....9/3/80
Forms, 12.1, 12.2(7) ARC 1330 F.....9/3/80

Schroeder mentioned some problems with license renewals in his area where the local officials turn down a request for license and the Beer and Liquor Control Department grants a license. Gallagher opined if the legislature were to write new laws, the Department could address the issue. The Department, along with concurrence by the attorney general, has followed the law as written. In most instances, the Department has ruled that a city council has been in error in refusing a license since there was no valid reason.

Gallagher commented that as long as city councils obey the law in turning down a request for license, there is no problem. He pointed out there is a hearing board.

4.13

Gallagher had removed "fence" from the definition and inserted "discernible" to allow enforcement officers and licensees, etc. to comply with the rule.

5.7(1), 5.8(1) In response to Schroeder as to whether or not dramshop insurance is effective, Gallagher said they had no way of knowing since there are few court cases.

5.8(1) Oakley recommended that 5.8(1), the last sentence, be amended by inserting the word "policy" after "dramshop." Gallagher was amenable.

6.1(8)b Armstrong explained that the last sentence in 6.1(8)b was stricken to eliminate a duplication which appeared in a.

ch 7

Armstrong commented that ch 7 was revised in answer to Representative Clark. Schroeder asked if free samples were given to the Beer and Liquor Control Department for tasting purposes and Gallagher responded there were none secured except for the Wine

BEER AND
LIQUOR
Cont'd

Advisory Board. There are very strict rules for that.

In re 8.2(9), Armstrong advised Schroeder the use of "suppliers" was made because the word was more encompassing and the liquor could move from an Iowa Wholesale Licensee to the Department.

10.2 Armstrong explained a significant change was with regard to who could file a complaint--a private citizen would be required to go to a city attorney and the attorney would file the complaint. The change was made to discourage hearings.

7.3(1) Tieden apologized for being out of the meeting and asked to return to 7.3(1). He was curious as to why the merchandise listings were changed from quarterly to biannual distribution. Gallagher replied it was in keeping with the practice of other states. Tieden thought they could be controlling free trade. Gallagher said it was only for new items. Prices are changed four times a year. Tieden queried whether the Department should have that power. Gallagher thought they did.

Tieden pointed out 7.3(1)f had not been changed from quarterly and Gallagher agreed that should be changed to six months. Armstrong said there had been no comments at the hearing.

11.1 In response to Schroeder, Armstrong said the language pertained to an initial license.

12.1 No questions were submitted.

statement
Plumbing
Code

Chairman Schroeder introduced Dennis Hogan, Mechanical Contractors Association of Ia. in commercial and industrial field, and he said that in 1973, HUD "dangled a carrot" for some federal money to have a code they wanted. As a result, OPP developed a code for cities and jurisdictions. Health Department has had a plumbing code since the 1850's. The Governor's Economy Report mentioned the fact that there were two plumbing codes and there should be only one. The report suggested the plumbing code be under jurisdiction of one department. In the spring of last year, according to Hogan, plumbers met with the departments and reached an informal agreement to object to rules which will be presented at the next meeting. A ruling, which was made last week, completely disregarded all of their recommendations, plus those of the group set up to advise them. Hogan said the Ombudsman is involved and they have recommended it be one code. The group he represents opposes two pages of the OPP report re plumbing. OPP, last week, introduced a third plumbing code and proposed dropping the second plumbing code forced upon them by HUD in 1973. He continued that it was strictly "politics." There are 7 or 8 plumbing codes in the United States. Hogan said Tyson of OPP is agreeable to either

Plumbing
Code
Statement

abolish or move the code. Schroeder requested background information be written and mailed to the ARRC. Hogan was amenable and noted the governor's economy study committee will meet October 13. The group he represents prefers one plumbing code.

VOTER
REGISTRA-
TION

Dorothy Elliott, Data Processing, Comptroller's Office, was present for review of registration, 2.3(1)i, 3.1(9), 3.1(10), filed without notice, ARC 1294, IAB 9/3/80. She explained the rule deals with deleting the section pertaining to free voter registration lists. She referenced a federal court decision declaring that portion of The Code to be void. [48.5(2)"d"] The language remains in the Code but they must abide by the federal court to alleviate confusion.

3.1(9)

Schroeder contended the rule would allow a county auditor to "give" a list and thought "may" should be changed to "shall." Elliott said no free lists are given, but agreed to consider the request. She distributed copies of the federal court mandate.

No further comments.

TRANSPOR-
TATION

Jim Fischer and Bill Kendall, Motor Vehicle Division, and Candace Bakke, Office of Financial Operation Authority, DOT, were present for review of the following:

TRANSPORTATION, DEPARTMENT OF[820]

Driver licenses, (07.C) 13.2(3)"b", 13.7(8), 13.13(12), 13.15(9), 13.17 A.C 1350...F..... 9/17/80
Passenger services exempt by permit from public convenience and necessity certificate requirements, (07.F) ch 8 ARC 1409...F..... 10/1/80

Bakke pointed out a requested change had been made and date certain was included.

Recess

Chairman Schroeder recessed the Committee at 10:20 a.m. to reconvene at 10:35 a.m.

Due to misunderstanding, representative from Merit was unavailable and the Committee briefly discussed the following rules:

MERIT EMPLOYMENT DEPARTMENT[570]

Definitions, 1.1(21), 1.1(41), 1.1(54) ARC 1400...N..... 10/1/80
Confidential classified employees, 2.4 ARC 1308...N..... 9/3/80
Allocations and reallocations, 3.1(6) ARC 1309...N..... 9/3/80
Pay plan, red-circling, 4.5(1)"b", 4.5(8) ARC 1310...N..... 9/3/80
Pay for certified educational personnel, 4.5(16) ARC 1401...N..... 10/1/80
Eligible lists, 6.6(9) ARC 1403...N..... 10/1/80
Organizational certification, 7.3(2) ARC 1402...N..... 10/1/80
Appointments, provisional, 8.4 ARC 1311...N..... 9/3/80
Probationary period, 9.5, 9.8, 9.10 ARC 1404...N..... 10/1/80
Job records, 13.1 to 13.5 ARC 1405...N..... 10/1/80
Records, 17.1 to 17.4 ARC 1406...N..... 10/1/80
Examinations and interviewing, 19.1 to 19.5 ARC 1312...N..... 9/3/80

Further discussion was deferred until 3:45 p.m.

Committee
Business

Royce distributed material from the attorney general's office re Real Estate Commission's tying rules.

General discussion of pending rules to implement the 3.6 reduction in budget.

COMMISSION Present for discussion of hearing procedures rules of practice, ch 9
ON AGING ARC 1365, Notice and Filed Emergency, IAB 9/17/80 were Ron Beane,
Operations Manager, Mary Ann Olson and Lois R. Hoecker, Planners,
Commission on Aging.

According to Beane, the Commission's hearing procedures were not
filed in administrative rules. Hoecker directs the conversion of
policies and procedures to rulemaking. The Commission determined
that ch 9 was needed to expedite compliance with federal regulations

Royce commended the agency for the very concise rules.

Beane indicated no negative comments had been received.

November Discussion of the November meeting, it being noted that the statu-
Meeting tory date would be a legal holiday. It was unanimously decided
to set the time for Wednesday and Thursday, November 12 and 13,
9:00 a.m.

Barry announced that Room 24 would be unavailable in December--
general discussion re the matter.

COMMERCE Present for review of the following rules was David Conn, Commerce
COMMISSION Commission:

COMMERCE COMMISSION[250]

Service supplied by gas utilities, amendments to ch 19	ARC 1418	10/1/80
Utilities, energy conservation strategies, rate making standards, 19.9, 20.10	ARC 1416	10/1/80
" " " " " " " " " " " "	ARC 1357	9/17/80

In response to Schroeder's question re major changes, Conn said
the gas rules were a clean up of existing rules and there were
no major changes.

Tieden commented that Commerce Commission did not follow the
procedure used by most departments in providing deadlines for
written statements to coincide with public hearing dates. Conn
said the earlier deadline provided opportunity for staff to peruse
written comments before the public hearing.

19.2(5) i Holden questioned the reason for the rule. Conn thought it had
to do with customer complaints on the size of a bill and agreed
to investigate the reason. Holden thought the request in the rule
to be unnecessary. In re 19.4(9), Conn did not know the derivation
of the rule. He reminded the rules only apply to gas utilities.

In a matter not officially before the Committee, Patchett inquired
if Commerce would be adopting a rule regarding the recently an-
nounced policy of charging the prime interest rate. Conn did not
believe that would be done by rule. Patchett reminded him there
was a new law which says the Commission shall establish its own
rate. Conn agreed to take the suggestions back to the Commerce
Commission.

COMMERCE Holden was bothered by the fact that the Commission would be
COMMISSION dealing only with rate-regulated utilities. He commented, "Let's
Cont'd assume, for the sake of argument, that they determine, after
20.10 having all these hearings, that the block rate reduction system
used today doesn't make any sense. Are we going to allow the
unregulated utilities and municipals to go on doing that? Or
is the legislature going to have to deal with that?" Conn re-
sponded that it would be a legislative matter.

Holden reasoned if a policy were established, municipals should follow it, too. Conn thought the Department could exercise some authority over rate design, but not over the level. Holden felt the same design would have to be followed.

In response to Schroeder, Conn admitted ARC 1357 and 1416 did create confusion. They are two separate issues at this stage, but will be combined in one subrule in the IAC.

20.10(1) Schroeder questioned what seemed to be ambiguous provisions with
19.9(1) respect to ratemaking standards. Conn referred to HF2550 [ch 1155, 68GA] wherein municipals are not excluded and he said "Demand management can take place with municipals." He agreed that both areas should have similar language because Commerce would not have jurisdiction over the municipals. Conn continued, "For your information, that 500 million kilowatt hour figure was from Public Utility Regulatory Policies Act (PURPA). The proposed rulemaking would extend those standards to all rate-regulated utilities but would allow for an exemption to those under 500 million level."

Conn explained that amendments to chapter 11 re electric line franchising did not represent any substantive changes.

Minutes Holden moved that the minutes of the September meeting be approved as submitted. Motion adopted viva voce.

Lunch Schroeder recessed the Committee for lunch at noon to be reconvened at 1:30 p.m.

Recon- Chairman Schroeder reconvened the meeting at 1:40 p.m.
vened

EMPLOYMENT SECURITY (Job Service)

EMPLOYMENT SECURITY[370]
Employer's contribution and charges, 3.2(6)"c", 3.8, 3.17(11), 3.41(3), 3.43(4)"a", 3.43(11)"b", 3.46(2), 3.49(1)"a", 3.55, 3.63, 3.70(12), 3.82(2)"a"(1), 3.82(2)"f", 3.82(2)"g"(6) ARC 1424 10/1/80
Claims and benefits, 4.1(24), 4.1(25), 4.1(25)"b"(8), 4.1(25)"c"(3), 4.1(25)"c"(5), 4.1(26)"b", 4.1(38)"a" and "f", 4.1(61), 4.1(68), 4.1(133), 4.1(134), 4.2(1)"a", 4.2(1)"b", 4.2(1)"b"(8), 4.2(1)"d" and "e", 4.2(1)"h"(1) to (3), 4.2(1)"k", 4.2(2)"b", 4.4(1), 4.5(2), 4.5(2)"f", 4.6(2)"d", 4.7(1)"d"(1), 4.10(1), 4.11(1)"a", 4.11(2) to 4.11(10), 4.22(1)"y", 4.25(4), 4.26(8) and (9), 4.26(14), 4.37(1)"c"(1) and (2), 4.43(5), 4.50, 4.51 ARC 1425 10/1/80
IFERS, 8.5(1)"a"(31) to (33), 8.11(7), 8.12(9), 8.13(2), 8.13(6)"a" and "b", 8.13(7)"a", 8.14(2), 8.19(6) ARC 1302 9/3/80
Federal social security, 9.4(1), 9.5(2), 9.5(3), 9.7(1) to 9.7(3) ARC 1303 9/3/80
Forms, 10.4 ARC 1426 10/1/80

Representing their Department were: James Hunsaker III, Director; Paul H. Moran, Job Insurance; Joseph L. Bervid, Counsel; Ed Longnecker and Dennis L. Jacobs, IPERS Division; and Marian Campbell, citizen.

EMPLOYMENT Bervid stated he had worked with Moran to clarify and update
SECURITY their rules. Schroeder pointed out there was a 100 percent in-
Cont'd crease in amounts set out in 3.2(6)c. Bervid commented the origi-
nal subrule was written in 1975 or 1976, and the figures were
minimum. Royce noted rooms were available at the YMCA for \$25
per week.

Moran commented the figures were intended as a scale to serve
as a base. The goal was for the employer to pay a tax, in the
absence of agreement or contract, or remuneration of room and
board. Moran admitted they had not gone to the marketplace to
peruse costs for meals, but had doubled the old figures.

Tieden wondered if Job Service had any control over the maximum.
It was pointed out the figures were the minimum the employer
would pay tax on. Schroeder proposed increasing the meal al-
lowances--breakfast, \$2.00; lunch, \$2.75; dinner, \$3.75. Moran
was willing to consider more realistic figures. Oakley suggested
using the amounts allowed state employees. He requested a fiscal
impact analysis of any changes made. Oakley recommended re-
noticing the rule with figures the Department could defend and
generate input before making a decision.

ch 4 According to Bervid, the major change with regard to 4.2(1)b was
as a result of a district court case in Polk County. SF 373[68GA]
mandated that the Department take into account dependents when
paying unemployment benefits.

In answer to Schroeder, Bervid said legal guardians would be in-
cluded in the category with individual who lives in the taxpayer's
home as a member of the household for the entire year.
Schroeder opined foster parents could fall within that category
as well.

Bervid told the Committee that when the Department decided to
treat corporate officers in the same manner as any other claimants,
they rescinded 4.25(4).

4.26(8) Discussion of 4.26(8) concerning a claimant who leaves employment
to care for a member of the immediate family. Under Iowa law,
they are eligible for unemployment benefits. Holden thought the
employer should not be expected to hold a vacancy indefinitely.
Department officials indicated 15 months would be the period of
time.

Patchett opined an individual could care for parents and not
necessarily reside with them. Bervid cited common law require-
ments in terms of immediate family. The personnel manual for
the state was a source, also. Patchett said the Department
was placing an additional restriction in the rule which is not
in The Code.

EMPLOYMENT According to Longnecker, chapter 8 was amended to reflect
 SECURITY legislative changes made in 1979 and 1980, re the benefit
 Cont'd formula applicable to individuals who retire from this point on,
 Ch 8 plus those who have retired since 1976 and vested members.

Schroeder questioned the financial effect and Longnecker responded there were sufficient contributions. They will be looking at the impact, but now the contribution rate being collected will carry 47 percent.

amendments According to Longnecker, Social Security law has mandated, be-
 to ch 9 ginning July 1, 1980, they report contributions on a monthly basis. Chapter 9 amendments implement the change. Beginning January, 1981, they will be required to report wages for Social Security purposes on an annual basis rather than quarterly. States are being brought into line with private industry.

8.11(7) Campbell addressed the Committee with respect to 8.11(7) which stated "Retirement benefits to a member shall terminate with the month preceding the month of death." She has suggested to the Advisory Committee that "retirement benefits effective the first of each upcoming month shall terminate the third of the month if the member is not living on that date."

Schroeder advised Campbell that the Department would have to respond to her written request for a rule change.

8.13(2) Campbell referred to 8.13(2) and gave her opinion on when an individual attains "retirement age." Schroeder referred to two court cases--one determines the birthdate in one manner and the other, in another manner and the one Iowa chose will stand until it is undone. Longnecker commented IPERS follows a 1979 AG opinion which held that a member reached the retirement age on his or her birthday.

ENVIRON- Odell McGhee, Dale McAllister and Craig Swartzbaugh represented
 MENTAL Environmental Quality for review of the following:

QUALITY ENVIRONMENTAL QUALITY DEPARTMENT[400]
 Animal feeding operations, ch 20 ARC 1338 9/3/80
 Water quality standards, 16.3(5)re ARC 1370. F 9/17/80

ch 20

Discussion of proposed rules applicable to animal feeding operations which will meet federal requirements. Swartzbaugh advised Schroeder that the rules were more liberal than previously. Also, 18 people attended the public hearing with all interested groups being represented.

Schroeder presented a copy of a statement from the Farm Bureau directed to Department officials. Priebe was inclined to defer the rules until January 1, when the new Commission takes office. Schroeder thought this would place added burden on the new Commission which would be deluged with responsibility at that time.

ENVIRON-
MENTAL
QUALITY
Cont'd
ch 20

Priebe wanted assurance to producers that when a facility has been built, it would be acceptable for the normal life of the facility unless serious pollution problems developed. (A Farm Bureau recommendation which he wanted included in the rules.)

In response to Tieden, Swartzbaugh said DEQ uses federal standards and McGhee added the federal funds would be withheld if our legislation deviated from federal. Tieden asked if anyone had ever challenged the federal. McGhee said DEQ makes comments to the federal government on some rules and negotiates with EPA in bringing programs into the state.

Priebe in the chair.

Priebe was still inclined to wait for the new Commission. Swartzbaugh commented any Commission needs time for adjustment and he thought it to be unfair to a new group to "fling" that upon them. Priebe pointed out two members would be retained and opined the rules were being passed which a new Commission would have to defend. He thought the rules to be drastic although he admitted DEQ had altered its position from the original.

Holden considered rules to be in good form, although he understood Priebe's point. Priebe noted the Farm Bureau favored the delay.

The Committee was advised that the rules were still under Notice with an anticipated December implementation. McGhee assured Priebe DEQ would consider his recommendation.

16.3(5)e McGhee commented on changes made in terms of the very complex water quality standards -- 16.3.

In response to Patchett, McAllister explained classification of water uses: A, for primary body contact, swimming and recreation; B(W), means warm water; B(C), means cold, same use--secondary body contact--fisheries, canoeing, etc.; C, drinking water supply is unprotected. McAllister explained that water would no longer be used for drinking supply. Patchett maintained the higher standards should be retained. McAllister responded DEQ was trying to be accurate and lake water for swimming is still protected.

Chem Tech Effective January 1, according to McGhee, DEQ will no longer Rules have jurisdiction of agricultural chemicals and chapter 35 of their rules should be transferred to the Department of Agriculture. He advised disposition of the rules would be up to the discretion of the ARRC. Priebe recommended DEQ meet with Agriculture about the matter and return to the Committee in November with a plan. General discussion.

Chem Tech Royce said the Committee could give support for an emergency
Rules rule to formalize the transfer. Barry suggested following the
Cont'd process used in transferring rules from Social Services to
Family Farm Development Authority. McGhee was amenable to
working with Agriculture for a solution.

EXECUTIVE Disaster contingency fund, ch 15, ARC 1342, IAB 9/17/80, filed
COUNCIL emergency, was before the Committee. Appearing on behalf of the
Disaster Executive Council were John D. Crandall and Robert H. Stecker,
Fund Office of Disaster Services. The rule had been filed under Notice
also and there was general Committee agreement to review emergency
version.

Schroeder in the chair.

In response to Schroeder, Stecker emphasized the major revision
implements a statutory change to simplify the method to be fol-
lowed by a political jurisdiction in applying for a loan.

15.5 (2) Priebe questioned whether the Executive Council had the power
granted in the rule. He referred to language in 15.5(2)--Grants--
and took the position it was a way of "dumping" money politically
where it would do the best job.

Crandall indicated, since 1968, that 4 loans had been obtained
by Renwick, Oelwein, LeClaire and Braddyville. He was willing
to modify 15.5 if the Committee so desired. Discussion of the
enabling legislation--[68GA, ch 1019, SF 2371]. A public hear-
ing was scheduled for October 8. No requests or comments had
been received.

No formal Committee action.

INSURANCE The following rules were reviewed by Fred M. Haskins, AG assistant,
DEPARTMENT and Gordon Brantman of the Department.

INSURANCE DEPARTMENT[510]

Reporting requirements on licensees, 9.1(6), 9.2, 9.3 ARC 1344 9/17/80
Property and casualty insurance, rate filing exemption, 20.6 ARC 1345 9/17/80

Haskins explained changes on recording of claims for professional
licensees were clean-up, editorial type changes. Discussion of
establishing insurance rates for events such as the Indianola
Balloon Races and Papal visit. Haskins said casualty actuaries
would have to determine whether three occurrences were statis-
tically sufficient in number. He opined that casualty under-
writing was, very much, an art. In all events, the rate is
known to the Commissioner. Schroeder was interested in keeping
reasonable rates for communities which hold carnivals, fairs,
and similar events. Haskins emphasized that the department
was in no way relinquishing control.

ACCOUNTANCY Stan Bonta, Exec. Secretary, and Ruth Kuney, Board Member, were
BOARD present to review the following rules of Accountancy Board:

ACCOUNTANCY, BOARD OF[10]

Annual register, 2.8	ARC 1314	.....	9/3/80
Registration renewal, 6.4(2)	ARC 1315	.....	9/3/80
Permit renewal, 9.11(3)	ARC 1316	.....	9/3/80
Professional conduct, 11.4(2), 11.4(3), 11.6(3)	ARC 1317	.....	9/3/80
Disciplinary actions, 12.9(1)	ARC 1318	.....	9/3/80

Holden asked what purpose the register served and to whom it was sent. Bonta pointed out ch 116, The Code, requires the Board to provide licensees and members of the public with a roster of individuals licensed by the Board of Accountancy. Holden maintained the trade association, not the state, should provide the list.

Bonta said the roster was sent to school districts in the state to apprise them of persons qualified to do audits. Holden favored use of the "yellow pages."

Bonta reiterated the expensive publication was mandated by law. (Cost last year was approximately \$8,000, not including \$3,000 for postage.)

Motion Holden moved that the appropriate legislative committees be
Vote requested to review the need of publishing the accountancy register at state expense.[§116.3(2)] Motion carried viva voce.

6.4(2), There was brief discussion of 6.4(2) and 9.11(3) as to their
9.11(3) similarity. Priebe recommended that language in 9.11(3), after "dollars", was unnecessary and should be deleted. Bonta preferred to retain, however.

11.4(2) (3) Kuney said the Statements on Standards for Accounting and Review Services (SSARS) had been included in the rules and would be permanent. The matter of date certain not being included was discussed. Oakley said the nature of auditing accountancy is almost equivalent to common law--an evolutionary thing based upon precedent, and the rules are a compromise.

11.4(2) Tieden pointed out similar language in the two rules except that
11.4(3) "its predecessor entities" appeared in 11.4(3) but not in 11.4(2). He questioned whether the interpretation would have the same force as common law. Oakley responded, in effect, those things are admissible in evidence.

11.6(3) Holden, in re 11.6(3), solicitation, preferred definition of "overreaching" and "vexations".

12.9(1) Schroeder thought minor infractions of practitioners should be included in 12.9(1). Holden suggested placing a period after "suspended" in line 3, 2nd paragraph, 12.9(1), and striking the remaining paragraph. Bonta expected the Board to accept Holden's recommendation.

ACCOUNTANCY BOARD Cont'd Holden called for explanation of a "Positive Enforcement Program" and Bonta indicated publishing names of licensees who have been disciplined was part of the program. He continued that the PEP contained no mandate for a CPA. The Board seeks out substandard work on the part of a licensee. Bonta added that after a great deal of rationalizing, the Board decided not to publish minor infractions. Schroeder thought the public should be entitled to know when errors are made by CPA's. He requested the Board to reconsider. Schroeder thought the informal list could be published once a year. Patchett was inclined to think the state might be liable if a list were published, since the public might not differentiate between serious and minor offenses.

No formal Committee action.

4:00 p.m. Holden excused.

BOARD OF ARCHITECTURAL EXAMINERS James A. Lynch discussed fee schedule, 2.5, Notice, IAB 9/3/80. He stressed the fact that Architectural Examiners were to be self-supporting. The raise in fees was necessary because of a loss of one-fourth of the registered architects. Because of continuing education expense, the Board will not request money from other sources.

Oakley said other boards had lost funds giving rise to a growing concern about continuing education and indicated a legislative committee was going to research the matter.

2.5(118) In answer to Schroeder, Lynch said, to his knowledge, no governmental agency or official had been denied a copy of their roster. A private citizen is charged \$25. However, Lynch added the roster would not be published this year, but a copy would be available at their office.

MERIT EMPLOYMENT See also page 1316 Wallace Keating, Director, appeared on behalf of the Merit Employment Department rules enumerated on page 1316. In re 1.1(41), Schroeder asked if the rule allowed for flexible scheduling of work hours. Keating replied in the affirmative.

In response to Patchett, Keating said the rule was identical to the collective bargaining contract, has been reviewed by Department heads utilizing Merit, and is available to the public.

4.5(16) No Committee questions.

6.6(9)

7.5(2) Patchett suspected that 7.5(2) might restrict eligible employees and questioned reason for the amendment. Keating said it was a deletion of language. Discussion of open competitive lists. Royce thought the citizen should have the right to compete with someone already within the agency.

MERIT Keating contended the citizen wasn't denied. An agency may
 EMPLOYMENT request an open competitor or a promotion. The law provides,
 DEPARTMENT all things being equal, that the agency should utilize promotions--
 whenever feasible.

Patchett declared that was a basic problem of the entire merit system. You are admitting that you may have a more qualified person for a position, but one who doesn't necessarily have the highest score. Oakley said score was only one "ingredient." Patchett countered, "If we are going to live by the score, we are going to die by it, too." Priebe opined Merit has a "closed corporation." Keating disagreed and general discussion of the philosophy followed.

7.5(2) Oakley suggested that the legislature and others should study the Merit System. Priebe discussed the payroll system utilized by organizations under Merit and use of negotiation. Priebe contended that could evolve into a higher than recommended pay increase for some individuals.

Keating wanted an opportunity to respond to individuals' problems since there was so much "misinformation."

Discussion of negotiated cost-of-living increase and the step increase.

Schroeder commented that the ARRC probably would call in all of the Merit rules for special review as an educational process.

8.4 In answer to Tieden, Keating indicated 8.4 was not a change in policy, and had nothing to do with collective bargaining.

19.5(3) Amendments to 19.5(3) would help alleviate problems which arise at the institutions.

Responding to Tieden, Keating stated individuals start a position at Step 1 although there is provision for an "over-qualified" person to begin at a higher step after approval of the Commission. Keating continued any person in the Department who meets the same over-qualifications must be elevated to that same step.

Keating apologized for his absence in this morning and indicated a willingness to answer questions about the Merit System at the Committee's discretion.

Recess Schroeder recessed the Committee at 4:30 p.m. to be reconvened at 9:00 a.m. Wednesday, October 8, 1980.

Committee Reconvened Chairman Schroeder reconvened the Administrative Rules Review Committee, Wednesday, October 8, 1980, at 9:00 a.m. in Senate Committee Room 24, Statehouse, Des Moines, Iowa. All members were present with the exception of Representative Clark, who was ill.

HEALTH DEPARTMENT Appearing on behalf of the Health Department were Peter Fox, Jeanine Freeman; and Keith Rankin, Executive Secretary, Barber Examiners. Proposed rules were:

HEALTH DEPARTMENT[470]
 Immunization, 7.4(3)c and "d", 7.4(4)b to "d", filed emergency ARC 1297 9/3/80
 Psychologists, code of ethics, 140.1(6), chiropractic examiners, 141.6(1) and other amendments to ch 141, ARC 0300,
 ARC 0436, and ARC 0800 terminated. ARC 1410 to ARC 1412 10/1/80
 Chiropractors, licensee disciplinary procedures, 141.41(25), 141.41(27), 141.41(28)c, 141.41(29) to 141.41(32),
 141.41(35)a, "b" and "d" ARC 1397 10/1/80
 Barbering school instructors, 152.2(1) ARC 1320 9/3/80
 Certificate of need, 203.8(3)d(3), filed emergency ARC 1414 10/1/80
 Health care facility reports, 204.1(2), filed emergency ARC 1415 10/1/80

7.4(3)c, d
 7.4(4)b, d Fox advised the Committee that no adverse comments had been received on amendments to immunization rules which would simplify immunization requirements for students. In response to Priebe, Fox said there is little opposition to immunization.

Priebe voiced disapproval of use of "majority" in 141.4(25) and Fox was amenable to substituting "at least four members." Royce cited 17A.2(1) which establishes a quorum as 2/3 of the members eligible to vote for agency action.

152.2(1) Rankin explained 152.2(1) was revised as a result of an ARRC request. He had testified before the Commission pertaining to continuing education, but the subcommittee had not made a recommendation. Oakley announced that the Professional Licensing Regulation Commission had suggested review of continuing education in the broad sense to determine if it serves a useful function.

Defer 203.8(3)d(3) and 294.1(2) were temporarily deferred.

FAMILY FARM DEVELOPMENT Present for discussion of the following rules were George Jeck and Earl Willits, AG's office:

AUTHORITY IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]
 Organization and administration, ch 1 ARC 1384 9/17/80
 Rural rehabilitation student loan and grant program, ch 3 ARC 1386, also filed emergency ARC 1385 9/17/80

There was brief discussion of the transfer of Social Services rules, ch 146, pertaining to the rural rehabilitation program, to the Family Farm Development Authority. Peck announced that underwriters were being hired and additional rules were in process.

1.1 In re 1.1, Holden suggested amending by striking from line 3 the word "and" and inserting a period. Willits was amenable.

1.3(1)(6) Priebe requested consistency in the rule dealing with public participation in open meetings.

FAMILY FARM Discussion of procedure followed at public hearings. Willits
DEVELOPMENT commented they had permitted public comments without advance
AUTHORITY request.
Cont'd

There was brief discussion of the agency's tentative schedule for additional rules.

PHARMACY Norman Johnson, Executive Secretary, was present for review of
EXAMINERS the Pharmacy rules.

PHARMACY EXAMINERS(620)
Examination fee, 1.2 ARC 1305 *N*.....9/3/80
Licensure, 1.13(1), 1.13(3), 1.14 ARC 1306 *N*.....9/3/80
License renewal, 4.1 ARC 1307 *N*.....9/3/80
Continuing education, 6.8(2), 6.8(6), 6.8(9), 6.8(10) ARC 1304 *N*.....9/3/80
ARC 1304 (IAB 9/3/80) *terminated* ARC 1417 *NZ*.....10/1/80

1.2 Johnson explained that 1.2 allows for a two-year license after January 1, 1981, to comply with the statute.

1.13, 1.14 Discussion of 1.14--transfer of exam scores--which was intended to aid student reciprocity. Royce opined that the entire purpose of the rule was, through a state program, to fund a private organization. Johnson responded the rule was designed to allow the new graduate, at the time of taking the exam, to become licensed in more than one state. Tieden asked if they were bound by the National Association and Johnson replied in the negative. Johnson admitted they were dealing with only one segment and would need an additional rule to allow reciprocity. Schroeder viewed the proposal as being preferential to new applicants. Royce concurred.

4.1 Amendment to 4.1 would set into motion the mechanism for a two-year license to practice pharmacy.

6.8 Rule 6.8 was terminated after the Board realized revisions were necessary because of budget reductions.

General discussion of the use of generic drugs. An equivalency drug list re generic will be distributed sometime in October 1981. Johnson said pharmacies are monitored to ensure that savings are passed on to the customer.

Health Discussion returned to the deferred Health Department rules
Department 203.8(3)d(3) and 294.1(2). Jeanine Freeman represented the Department. With deletion of 204.1(2)b, care facilities would no longer be required to file a financial report prepared by a CPA. Tieden asked Freeman to check whether or not the annual report submitted to DSS would include the financial report. Freeman was amenable.

Royce distributed comments concerning the graduate teacher program. No other questions.

Recess Schroeder recessed the Committee at 10:00 a.m.

Reconvened Meeting reconvened at 10:30 a.m.

BUREAU OF
LABOR

Walter Johnson appeared for review of rules re elevator division fees, ch 75, IAB 10/8/80, ARC 1427. Johnson said the Governor's Economy Committee had suggested an increase in fees since the statute provides the division should be self-supporting. Fees have not been increased since 1975.

ch 75

The GEC had proposed two methods for fee increase--(1) legislative change and (2) fees for inspection set by statute rather than rule. Johnson explained a study bill had been drafted, but when rule-making was implemented, the bill was relegated to a lower priority. Johnson distributed copies of a chart indicating proposed and present fees. The projected \$216,000 would cover agency costs. They would be in compliance with the law and still provide service in low usage areas. A public hearing is scheduled.

In response to Tieden's question, Johnson said annual inspections are not feasible.

75.3

Tieden was interested in the follow up of the process. Johnson indicated time is provided for individuals to correct citations and annual inspections are conducted until compliance is achieved.

Tieden wanted to avoid litigation and asked if there were a weakness in the law. Holden asked if a change should be made in the statute to allow for the low-usage elevators. Johnson said a variance procedure was being considered--and whether or not it can be done by rule or statute has not been decided. He was working with Royce on the matter.

Royce commended the Department for the fiscal chart and opined it was the equivalent of an economic impact statement done in a concise and informative manner. He recommended all licensing boards adopt the practice.

No further discussion.

PUBLIC
EMPLOYMENT
RELATIONS
BOARD

John R. Loihl, Board Member, and Steven F. McDowell, staff, were present for review of the following rules of PERB:

PUBLIC EMPLOYMENT RELATIONS BOARD[660]

General provisions, 1.2 to 1.5, 1.6(2)	ARC 1387	✓	9/17/80
Practice and hearing procedures, 2.2, 2.5, 2.9, 2.11, 2.12(1), 2.12(3), 2.15(3), 2.19, 2.21	ARC 1388	✓	9/17/80
Prohibited practice complaints, 3.1, 3.4, 3.5(1), 3.5(2), 3.6, 3.10	ARC 1389	✓	9/17/80
Bargaining unit and representative determination, 4.1(3), 4.2(1) to 4.2(3), 4.2(6)"a", "c" and "d", 4.3(1), 4.3(3), 4.4(2), 4.5	ARC 1390	✓	9/17/80
Elections, 5.1(2)"a" and "b", 5.1(4), 5.1(5), 5.2(1), 5.3, 5.4(1)"c" and "e", 5.4(2), 5.6	ARC 1391	✓	9/17/80
Negotiations and negotiability disputes, 6.3(2), 6.3	ARC 1392	✓	9/17/80
Impasse procedures, 7.2, 7.3(1) to 7.3(3), 7.3(5), 7.3(7), 7.4(1), 7.4(3), 7.4(6), 7.4(9), 7.5(5) to 7.5(10), 7.7(1), 7.7(4)	ARC 1393	✓	9/17/80
Employee organizations, financial report, 8.2(2)"f"	ARC 1394	✓	9/17/80
Administrative remedies, 9.1(1), 9.2(2) to 9.2(4)	ARC 1395	✓	9/17/80
Declaratory rulings, 10.1 to 10.7	ARC 1396	✓	9/17/80

Loihl commented that PERB considered their proposed changes to be nonsubstantive.

4.2(3)

Schroeder questioned the change in 4.2(3) from certified to ordinary mail. Loihl responded the time of hearings was set by conferring with the parties rather than simply dictating.

PERB

Loihl agreed Schroeder had a valid point, but explained ex parte hearings have not been held and he could foresee no problems.

Cont'd

In re 5.6, Royce questioned the validity of time change for de-certification of elections. Loihl said it might have that effect but the problem has been lack of statutory time. Loihl admitted there was a possibility of a "fullblown campaign."

Discussion of time frame re collective bargaining.

ch 7

In response to Oakley, Loihl agreed to provide comments from the public hearing scheduled for 10/14/80. Schroeder and Tieden noted that ordinary mail had been substituted for certified mail in 7.3(2). Tieden would be interested in follow up in a year or two.

7.2

Oakley asked for statutory authority to include "teacher termination adjudicators" in 7.2. Loihl said they assumed it would be inherent in the Chairman's authority. PERB maintains the list and establishes the fee, which is currently \$250 a day.

Loihl suggested PERB could eliminate from the list arbitrators who charge more than \$250. General discussion with Patchett declaring the PERBoard did not have statutory authority to set the fee. Patchett was inclined to object and Tieden recommended improvement. Loihl said they do make some kind of judgment on whom they list.

In response to Tieden, qualifications consist of background on hearing cases and most are experienced in labor arbitrations. Arbitrators are, for the most part, from out of state, however, PERB has worked to increase the "in state" arbitrators. Discussion of possible legislation to address the problem.

8.2(2)f

Schroeder thought a CPA should prepare the financial report. According to Loihl, some employee organizations have 20 members paying \$1 a month and hiring CPA's would be prohibitive. The rule reflects practices in the private sector.

Loihl agreed to consider Committee's concerns. No formal Committee action.

LAW EN-
FORCEMENT
ACADEMY

Appearing before the Committee representing the Law Enforcement Academy were Jack Callaghan, Director; Ben Yarrington, Assistant Director; John Quinn, Legal Counsel; Gary Shanahan, BCI Director; Douglas Davis, Chief of Police, Carroll; both council members; and Greg Williams, Assistant Dean of Law, University of Iowa.

Law enforcement officers, standards and certification, chs 1 and 2, Notice, IAB 10/1/80, ARC 1413, were before the Committee.

1.1(10)

Schroeder took issue with 1.1(10). Callaghan said hearing aids were not stipulated because they were never intended to be allowed in the law enforcement profession. Standards were designed

LAW EN-
FORCEMENT
ACADEMY

as a result of contacts with the audiology department at U of I. Schroeder considered the rules to be arbitrary. Callaghan responded that law enforcement has found an individual's hearing should be above average because of radios, instructions, traffic noise, whispering, for example.

Royce, in researching this rule, had learned that school bus drivers were permitted to wear hearing aids. Callaghan emphasized that was quite different and hearing standards for officers should be higher than normal.

- 1.1(3) Re 1.1(3), Schroeder questioned the need for requiring a valid driver's license from the state. Callaghan contended few, if any, officers "walk the beat." ARRC thought the word "recruited" should be removed from 1.1(80B), line 3. Callaghan was amenable.
- 1.1(9) There was general discussion of 1.1(9), which describes normal color vision. Callaghan said most departments have more stringent requirements. Oakley was hopeful the public hearing would generate comments. He said, in re 1.1(12), there had been controversy about psychological testing, evaluation and the rules do not establish criteria. Callaghan indicated that was intentional. and said it was a selection procedure and Law Enforcement cannot dictate to psychologists or psychiatrists.
- 1.1(12)
- Oakley opined the rule should be removed.
- 1.1(5) In response to Oakley, Callaghan indicated moral turpitude had been defined. General discussion.
- 1.1(9) Patchett had a series of questions re 1.1(9) through (11). He contended 1.1(9) was unreasonable and preferred using FBI requirements. Members were still concerned re 1.1(10).
- 1.11 Schroeder thought if an individual passed the agility test, 1.1(11) would be unnecessary. Callaghan responded the areas were different--physical agility test was established by a highly paid consultant from California. Priebe wanted to know if officers already on the force were required to pass physical requirements. Callaghan conceded that was a tremendous problem. In many areas, there are weight standards, etc. applicable to new officers, but not to veterans on the force. Patchett commented that if physical requirements could be generally applied, they should be in the rules. Shanahan did not concur.
- 1.1(12) Holden recommended 1.1(12) be amended similar to 1.1(11)--"examined by a licensed psychiatrist." Callaghan said that would create problems. General Committee agreement the rule should be more definitive. Quinn added that sentiment throughout the country indicated support for the academy's position.

LAW EN-
FORCEMENT
ACADEMY
Cont'd

Patchett cited 80B.11(1) which provides for a minimum age requirement and subrule 1.1(2) which sets out a maximum age and questioned the agency's action.

Callaghan admitted the possibility had been discussed, although he could foresee no problem since he knew of no officer past the age of sixty.

Schroeder urged substantive revision of the rules. Callaghan appreciated the observations of the Committee and agreed to review the rules.

PUBLIC
INSTRUCTION

Larry Bartlett, Administrative Consultant, and John Martin, Director of Curriculum, represented Public Instruction for review of the following:

PUBLIC INSTRUCTION DEPARTMENT(670)	
Standards for graduate teacher education programs, ch 20	ARC 1321 9/3/80
Gifted and talented programs, ch 56, filed emergency	ARC 1429 10/1/80
Non-English speaking student programs, ch 57	ARC 1428 <u>E</u> 10/1/80

There was no review of chapters 20 and 56.

Bartlett explained that Department officials were attending a Board meeting in Sheldon and could not be present at this meeting. He referred to Royce's memo with respect to chapter 57. While they did not totally concur, the Department admitted Royce had raised sufficient question as to the authority for some of the rules and the Board would be requested to modify those. Bartlett suspected that 57.3(2)--program selection--would be deleted. The other questionable area--57.3(3), (4), (5) and (7) would likely be placed under the criteria of funding so that a school district would have to indicate in its application for funding that the program was available to nonpublic school students.

Bartlett had provided Royce with a draft of the current staff interpretation and offered to provide Oakley with a copy also. He emphasized the delicacy of the situation was that the state Board was probably unaware of the controversy.

There was discussion of various interpretations of how the \$200,000 "carrot" should be disbursed. [68Ga, ch 13, §7(10)] [the appropriation was to be used "exclusively for grants to public schools and nonpublic school pupils for programs for instruction in the English language, a transitional bilingual program, or other special instruction program...."]

Bartlett was questioned as to authority. He interpreted the statute to subsidize only one program. He was of the opinion the Department would drop that particular aspect of the requirement but possibly pick it up at some future time after more evidence was gathered.

PUBLIC
INSTRUCTION
Cont'd
ch 57

Bartlett indicated they were trying to maintain a compliance with federal regulations. Also, the preliminary reports from school districts, particularly Muscatine and Davenport, indicate a very successful program. However, the Department lacked "raw data" to show that unequivocally at this time.

Oakley wanted to identify DPI policy decision regardless of legalities. The rules indicate a preference for bilingual programs as opposed to English as a secondary language. According to Bartlett, it was a matter of policy.

Oakley inquired if that would be reconsidered and if DPI had already recommended allocation of funds in the bilingual area. Bartlett wasn't sure but thought the original request was for \$1 million. It was his guess there would be a request for additional funding. He concluded, in all honesty he could not say that policy of favoring the bilingual program was as firm as when the board adopted it a month or two ago. A major problem was lack of good research data.

Oakley favored "incubating" an approach to this in a school district to get the kind of information needed. Bartlett indicated data was being formulated in this matter.

Oakley questioned Bartlett as to impact of federal activity. Bartlett pointed out federal rules have come under considerable attack, both on merits and legal basis.

Martin added that federal rules are currently in states where hearings have been held and they are being revised. Those proposed rules are based on the Civil Rights Act of 1964 and also draw upon the Lau decision--a San Francisco case which held that non-English speaking students must be provided special instruction. The rules also will require bilingual instruction where there are 25 students of the same non-English language in a particular school and set out eligibility and nature of program. Martin concluded there was some question as to clear authority under the 16-year-old Civil Rights Act.

Martin thought those were the key issues--they set a standard that any student who falls below the 40 percentile on an English test would be required to be included in that program. There is some question about that, since 40 percent of English students never achieve that level.

Oakley spoke of the timeliness of the rulemaking taking into consideration the appropriation and mandate to the Department for the fiscal year and the federal rule. He pondered, "Are we in 'sync' or do we have the cart before the horse?" Martin admitted the Department was under considerable pressure to disseminate information to schools so they can apply for funds.

PUBLIC
INSTRUCTION
Cont'd
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He discussed the "reverse supplant clause" in the law--other funds must be exhausted before Iowa appropriation[\$200,000] can be requested--which creates problems.

Tieden observed that many times, legislation was initiated in the agency and he wondered if this were the case with "reverse supplant clause." Martin answered in the negative. He was, however, involved in the initial bilingual legislation. Holden was dubious about the value of data. Bartlett stated a national trend was to focus on maintaining the native language rather than concentrating on teaching English.

Schroeder opined there were sufficient grounds to object. Patchett preferred to limit an objection to 57.3(2) because it exceeded their statutory authority.

Royce explained a tentative objection which he had drafted. He had studied the DPI statutes and admitted that chapter 257 grants extremely broad authority to regulate all aspects of education. He also looked at §280.4, specifically. It was his judgment this section delegated only a certain limited amount of rulemaking authority--basically, funding of the program. He concluded the Department lacked authority to regulate the administration of the bilingual or ESL program except to the extent of funding and, of course, identification of the non-English speaking student. For that reason, he included the other subrules. Royce concurred with Patchett fully that 57.3 (3), (4), (5) and (7) were acceptable in terms of policy--they were minor housekeeping details.

Holden wanted to know if the five subrules in question could be construed to implement DPI's policy on 57.3(2). Royce disagreed.

Responding to Tieden, Bartlett said "It is our understanding now that we would prefer to take (3), (4), (5) and (7) and include as criteria for the funding application--in other words, an application would certify that they do provide staff in service." Holden expressed concern for the "carrot" appropriation reference. It was Oakley's understanding the "carrot" applied to only one program. He emphasized the Governor's office would scrutinize any decisions made. Holden mentioned possible delay of the rules. Tieden favored that approach. Bartlett urged other alternatives. Members agreed any revisions should be discussed in the November meeting.

Royce urged the Committee to give the Department direction since a 70-day delay was a neutral statement and would not necessarily prod the Department.

PUBLIC Tieden spoke of lack of communication between the legislature
INSTRUCTION and agencies. Bartlett emphasized DPI would not enforce the
Cont'd objectionable rules until the controversy was resolved.
ch 57
OBJECTION Holden moved to object to 57.3(2), (3), (4), (5) and (7). Tieden
seconded.

Question After further discussion, Schroeder called for the question.
Patchett voted aye with the understanding that the matter would
be reviewed next month. Priebe was excused and not voting.
Clark was ill. Motion carried viva voce.

The following objection was drafted by Royce:

The committee objects to subrules 670 IAC 57.3(2), (3), (4), (5) and (7) on the grounds they exceed the authority of the department of public instruction. These provisions have been adopted and appear as part of ARC 1428 in III IAB 7 (10-1-80) at page 375.

Section 280.4, the Code, as amended by 1979 session (68 GA) Ch. 13, §18 and §19 directs all Iowa schools to "provide special instruction [for non-English-speaking students], which shall include but need not be limited to either instruction in the English language or a transitional bilingual program, until the student demonstrates a functional ability to speak, read and understand the English language." Specific authority is delegated to promulgate rules identifying these students and establishing application procedures for state funding of the programs.

Subrule 57.3(2) in essence provides that schools with fewer than twenty students speaking the same language may provide either an English as a second language program (ESLP) or a transitional bilingual program (TBP). Schools with twenty or more such students must provide a TBP. It is the opinion of the committee §280.4, the Code, as amended, specifically offers each school district the option of selecting whichever of the two programs it feels most appropriate. "The plain provisions of the statute cannot be altered by administrative rule..." Iowa Dept. of Revenue v. Iowa Merit Employment Commission, 243 N.W.2d 610, 612 (Ia 1976). It follows that an option provided by law cannot be narrowed or conditioned by administrative rule.

The department has been delegated extensive authority to regulate in the area of education. Four provisions of the Code empower the board to:

"[257.9]1. Determine and adopt such policies as are authorized by law and are necessary for the more efficient operation of any phase of public education."

"[257.9]2. Adopt necessary rules and regulations for the proper enforcement and execution of the provisions of the school laws."

"[257.9]3. Adopt and prescribe any minimum standards for carrying out the provisions of the school laws."

"[257.10]12. Prescribe such minimum standards and rules and regulations as are required by law or recommended by the state superintendent of public instruction in accordance with law, as it may find desirable to aid in carrying out the provisions of the Iowa school laws."

There is no question that chapter 280, the Code, as amended is part of the school laws. If the all inclusive provisions of Chapter 257 were read in a vacuum, it would be clear the department has unfettered discretion to regulate education as it chooses.

Sections 257.9 and 10 cannot be construed alone. They must be read along any more specific provisions of the school laws. Where a general statute, standing alone, would include the same matter as a special statute and thus conflict with it, the special statute will prevail and the general statute must give way. Rath v. Rath Packing Co., 136 N.W.2d 410, 416 (Ia 1965). Section 280.4, as amended, is a special statute, relating to a specific facet of education, and containing it's own special delegation of rulemaking authority.

PUBLIC
INSTRUCTION
Cont'd
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The specificity with which rulemaking authority is delegated by §280.4, as amended, indicates that no additional rulemaking authority has been delegated in that particular area. "When a statute directs the performance of certain things in a particular manner it forbids by implication every other manner of performance." *City of Estherville v. Hanson*, 231 N.W. 428, 430 (Ia 1930), *In Re Wilson's Estate*, 202 N.W.2d 41 (Ia 1972). This conclusion is supported by §257.25, The Code. This provision requires the department to establish standards (rules) for approval of Iowa's schools. The approval standards must be based on the educational program established by §257.25. The statutory program is provided in minute detail. If the legislature intended the non-English-speaking requirements to be part of the educational program regulated by the department, those requirements would have been placed in §257.25. Their absence is further evidence the legislature did not intend §280.4 as amended be regulated.

Subrules 57.3(3), (4), (5) and (7) are basically "housekeeping" details. For the reasons detailed in the above paragraphs these too are beyond the authority of the department. Chapter 280, as amended would authorize these or similar provisions if they were applied only as criteria determining eligibility for available state funding under rule 670 IAC 57.5. The authority delegated to establish funding procedures necessarily implies the authority to establish evaluation criteria. The discretion to distribute state funds carries with it the obligation to do so equitably. Objective criteria are essential to ensure that- 1) state funds are spent efficiently and effectively, 2) applicants can reasonably predict the factors that will determine eligibility and 3) applications are evaluated impartially. The department has discretion to adopt any sort of criteria it chooses as long as they are reasonable and do not impinge upon the school's right to offer whichever non-English-speaking student program it feels most appropriate.

Recess Chairman Schroeder recessed the Committee for lunch at 12:30 p.m. to be reconvened at 1:45 p.m.

Reconvened The meeting was reconvened at 1:45 p.m.

No Agency No appearance by an agency representative was required for the Representative following:
tive

	CAMPAIGN FINANCE DISCLOSURE COMMISSION[190]	
	Statements and notices, 4.11 ARC 1359	9/17/80
N/R	COMPTROLLER, STATE[270]	
	Deferred compensation, 4.2(4), 4.3(1), 4.4(1), 4.6(3), 4.10(3) ARC 1322	9/3/80
N/R	ENERGY POLICY COUNCIL[380]	
	Permanent assignment of petroleum products, 4.6(4)"a", filed emergency ARC 1358	9/17/80
N/R	GENERAL SERVICES DEPARTMENT[450]	
	Centralized purchasing, 2.1, filed emergency ARC 1353	9/17/80
N/R	HISTORICAL DEPARTMENT[490]	
	Library hours, 5.2, filed emergency ARC 1340	9/3/80
	Manuscript collection, public use, 5.12 filed emergency ARC 1341	9/3/80
	NURSING, BOARD OF[590]	
	Revocation or suspension of license, 1.2(3) ARC 1352	9/17/80
	REGENTS, BOARD OF[720]	
	Interinstitutional committees, statements of mission, 11.1(8), 12.1(1), 13.1(1), 15.1(1), 16.1(1) ARC 1355	9/17/80
N/R	REGENTS, BOARD OF[720]	
	Purchasing, capital procedures, 8.6 ARC 1354	9/17/80
	University of Iowa, concert tickets, 12.7(10), filed emergency ARC 1369	9/17/80
	Iowa, braille and sight-saving school and school for deaf, transportation reimbursement, 15.9, 16.8, filed emergency ARC 1368	9/17/80
	Address corrections and oral presentation, amendments to chs 7, 10 to 13, 15 and 16, filed emergency ARC 1313	9/3/80
N/R	TRANSPORTATION, DEPARTMENT OF[820]	
	Functional classification of highways, review, board, (08,C) 3.15(2), filed emergency ARC 1319	9/3/80

REVENUE

The following Revenue Department rules were before the Committee:

REVENUE DEPARTMENT[730]
 Assessor education commission, 122.4, 124.3 ARC 1419 N..... 10/1/80
 REVENUE, DEPARTMENT OF[730]
 Appeals and rules of practice, 2.9, 2.20 ARC 1420 F..... 10/1/80
 Practice and procedure, 7.2, 7.11, 7.17(2)"b"(1) ARC 1421 F..... 10/1/80
 Forms, cigarette and tobacco tax section, 8.1(6)"b" ARC 1422 F..... 10/1/80

Present for review were Jenny Netcott, Secretary to the Director; Clair Cramer, Tax Policy Officer; and Mel Hickman, Assistant Director, Exise Tax.

122.4, 124.3 Netcott said Revenue had removed Assessor Education Commission jurisdiction over the content or method of testing. Commission will have jurisdiction over course content. Assessors object to 240 hours of classroom instruction which is more than required by any other group. Schroeder questioned the gain by addition of the paragraph. Cramer explained the Board of Tax Review contested case appeal procedures were clarified.

7.2, 7.11(2) In re 7.2, the language specifies the Code sections which the
 7.17(2) Department administers and includes the hotel/motel tax which was inadvertently deleted in the Notice process.

8.1(6)b Schroeder questioned the fact that a whole section had been deleted. According to Hickman, forms were combined to avoid duplication. No other Committee questions.

NATURAL RE-
 SOURCES

Mike Smith appeared to review permits to divert, store or withdraw water, 3.2(3)b, 3.5(4), 3.7, 3.8 ARC 1356, Notice, IAB 9/17/80. He announced the significant substantive change was in 3.5(4) which relaxes the existing restrictions on use of the Dakota sandstone aquifer--a major groundwater source in NW Iowa. Press releases had been sent to 14 newspapers in areas where there had been controversy; Sioux, Plymouth, O'Brien, Lyon and Woodbury counties. Also, copies had been mailed to county auditors.

In a matter not before the Committee officially, Priebe wondered about a pending law suit. Smith replied that matter had been settled before the Council in August and the decision had not been appealed.

In response to Tieden, Smith said the public hearing had been held October 6. The Farm Bureau appeared, but had not submitted comments.

3.2(3)b In re new language of 3.2(3)b, Tieden thought it to be vague. Smith responded that area size had been discussed at the council meeting and after consultation with geological experts, the determination was made not to go out beyond a radius of two miles.

Priebe expressed concern about quantity of water being pumped out of the Dakotas and wanted information re replacement of water into the so-called Dakota aquifer in NW Iowa. He'd been

NATURAL RESOURCES COUNCIL Cont'd advised water tables were down 16 inches. Priebe was concerned that sufficient supplies would be available. Smith said they have been unable to detect any decline in water levels in the Dakota aquifer in NW Iowa. General discussion of water table levels in the midwest.

Smith said Natural Resources has the same concerns for maintaining adequate water levels. The Council sees no great demand for irrigation right now. They are very cautious in that area. Energy prices are a big factor, according to Smith.

3.7 Priebe and Schroeder were interested in the economic impact of 3.7(455A)--well construction information. An administrative practice of the past 20 years was merely being adopted under 17A, according to Smith.

Discussion of sample taking at 5-foot intervals. Priebe preferred augering the hole at 10-foot intervals and Schroeder suggested adding "10 foot or unless you hit something, take a sample at that depth."

In response to Priebe, Smith said there was no backlog of permits.

Responding to Tieden, Smith stated unless the well is regulated, the Council has no jurisdiction. Tieden was concerned that individuals would be required to obtain multipermits and asked if the Council had ever considered working with the Health Department and DEQ to determine any overlapping jurisdiction or interests.

3.5(4)b There was discussion of observation wells, 3.5(4)b. Schroeder wanted to avoid individuals regulated under Health Department rules being required to construct observation wells.

Smith assured him the rules were applicable only to large capacity wells pumping a minimum of 1000 gallons per minute. Tieden was informed that the Council had not been involved in the reorganization of DEQ water standards. To alleviate all possible duplication of regulation within the Health Department and Natural Resources Council, these efforts should be consolidated. Tieden advised Smith to confer with Ken Choquette, Health Department.

Motion Priebe moved that ARRC notify the Agriculture and County Government Legislative Committees that there may be duplication of regulation within the Health Department and Natural Resources Council. Motion carried viva voce.

SOCIAL SERVICES The following rules of Social Services Department were before ARRC:

SOCIAL SERVICES DEPARTMENT[770]

Oral presentations, 3.4(5)	ARC 1376	F	9/17/80
Men's reformatory, visits, 18.2(3)rd	ARC 1377	F	9/17/80
Social security Act--Title XX, 131.1(2)	ARC 1378	F	9/17/80
Domestic abuse, 160.1(1) to 160.1(4), 160.2 to 160.9	ARC 1379	F	9/17/80
Displaced homemaker, ch 161	ARC 1380	F	9/17/80

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SOCIAL SERVICES DEPARTMENT[770]

Hearings and appeals, 7.14	ARC 1331	N	9/3/80
Mental health institutions, 28.2(3), 28.2(8) to 28.2(10), 28.3(1), 28.11, 28.12	ARC 1372	N	9/17/80
Inpatient mental health treatment, ch 31, filed emergency	ARC 1382	N	9/17/80
Supplementary assistance, application, 50.2(2), 50.2(3)	ARC 1298	N	9/3/80
Supplementary assistance, form, 51.2	ARC 1373	N	9/17/80
Food stamp program, 65.3, filed emergency	ARC 1381	N, F, F	9/17/80
Medical assistance, cost containment, 78.1(2) a, 78.2(2), 78.4(1) g(1), 78.6(13), 78.6(16), 78.7(4)	ARC 1332	N	9/3/80
Medical assistance, copayment by recipient, 79.1(4)	ARC 1333	N	9/3/80
Child support recovery, collections, 95.6	ARC 1407	N	10/1/80
Child support recovery, services available, 96.1, 96.1(1), 96.3 to 96.6	ARC 1375	N	9/17/80
Child support recovery, nonassistance, 96.7	ARC 1408	N	10/1/80
General provisions, determine eligibility, 130.6(1)	ARC 1295	N	9/3/80
Foster care services, definitions, 136.1(5), 136.1(8)	ARC 1335	N	9/3/80
Foster care, medical copayment, 137.8(4)	ARC 1336	N	9/3/80
Foster care, emergency care, 137.11	ARC 1337	N	9/3/80
Adoption services, investigator, 139.4(10) to 139.4(12)	ARC 1299	N	9/3/80

Appearing on behalf of the Department were Judith Welp, Manual and Rules Specialist; Harold Templeman, Margaret Corhery, Tom Throckmorton, Mary Rausch, Ann Morrison and Marjorie Smith.

- 131.1(2) In 131.1(2), payment to the Advisory Committee, cost reimbursement will be identical to that of state employees. Payment for lodging and meals will be reduced and there will be a combined total limit.
- ch 161 Original displaced homemaker rules were revised as a result of comments.
- Chairman Schroeder opted to deviate from the agenda and take up rules in the sequence of their appearance in the individual bulletins.
- ch 78 There was discussion of chapter 78. Royce asked if there were provision for drugs purchased in bulk. Welp knew of none.
- 79.1(4) In re 79.1(4), Welp, to her knowledge, was unsure as to the workability.
- 130.6(1) 130.6(1) creates a waiting list for Title XX eligibility. There was general discussion of the impact of a reduction of funds to the department.
- 137.8(4) Preibe and Tieden questioned whether 137.8(4) was within the statute. Royce preferred time to research the matter and Welp agreed to cooperate.
- 139.4 Discussion of role of adoption investigator--139.4. Schroeder was doubtful that DSS could "commander" the records of an independent placer. Royce agreed this would be interfering with the rights of privacy. Welp pointed out the rule was intended to protect the natural parent. Tieden could foresee possible court cases.
No formal action.
- ch 31 According to Welp, chapter 3 sets up procedures under which a county can be reimbursed for a portion of the cost of inpatient psychiatric treatment, rather than sending a person to a mental

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health institute--drafts of the rules had been sent to counties and suggestions had been incorporated. She continued the rules were filed emergency in order to implement the reimbursement. In response to Tieden, Templeman said there had been objections to the original version.

Patchett wondered if it would mesh with the reimbursement for juveniles and was informed it would have no relationship to that problem.


ch 95 There was discussion of the mechanics of the rules in ch 95 and 96.
ch 96 In answer to Tieden, Welp thought all necessary rule changes to implement the 3.6 reduction should be published in October.

No formal action taken re Social Services rules.

Meeting Schroeder reminded Committee members that they would meet
Date November 12 and 13 due to the fact the statutory date of November 11 was a legal holiday.

Adjourn- Chairman Schroeder adjourned the meeting at 3:00 p.m.
ment

Respectfully submitted,


Phyllis Barry, Secretary
Assistance of Vivian L. Haag

APPROVED


CHAIRMAN