

MINUTES OF THE REGULAR MEETING  
of the  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, August 15, 1978, 9:15 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman, Representative W. R. Monroe, Jr., Vice Chairman, Senator E. Kevin Kelly, Representatives Donald V. Doyle and Laverne W. Schroeder. Not present at roll call, Senator Minnette Doderer.  
Also present: Joseph Royce, Administrative Coordinator.

CONSERVATION  
COMMISSION

Mr. Kenneth Kakac, representing the Conservation Commission, appeared to discuss the following:

Raccoon, opossum, fox and coyote seasons, Ch 100	7/26/78
Rabbit and squirrel hunting seasons, Ch 102	7/26/78
Trapping regulations, Ch 104	7/26/78
Snipe, rail, woodcock and grouse hunting seasons, Ch 109	7/26/78
Private docks construction, 33.3(2), 33.3(8)	7/26/78
Recreation employment for senior citizens, 70.3(3), 70.4, 70.8, filed emergency	7/26/78
Inland commercial fishing, 110.1—110.3	7/26/78

ch 100

Conversation centered around the fox and coyote seasons and the notice of intended action as submitted by the Conservation Commission. Kakac informed the committee that the commission is recommending the fox hunting season be shortened by one week--one reason being that coyote population is increasing, thus creating a threat to the fox population. For the last two years, the fox hunting season has been reduced in length. Farris, Conservation Commission, explained that Iowa has about 2500 trappers of fox who capture two-thirds of the foxes.

Randy Reed, President, Iowa Trappers Association, spoke in opposition to shortening the fox hunting season. Doderer arrived.

Reed spoke of a plan to create commissioners in the Trappers Association, which would contribute to greater coordination between the two organizations.

Kakac noted that changes are necessary because of opening seasons on Saturdays; trapping seasons have been shortened and amendments to conservation rules have been filed. Also, chapter 109, dealing with rules for snipe, rail, woodcock and grouse have been changed to include federal regulations.

Schroeder and Monroe out of the meeting.

Kakac noted there will be a public hearing August 30

8-15-1978

CONSERVATION  
COMMISSION  
(cont'd)  
ch 100

dealing with a problem of too many rough fish at Lost Island Lake. The rough fish can only be taken by seine.

Priebe commented that he had been contacted by people concerned with the fast disappearance of the fox population in Iowa. Farris explained the commission's reason for trying to bring the fox hunting and fox trapping seasons together, that being that the trappers take more fox than hunters.

ch 102

A shorter season for jack rabbits has been established for this year and the lack of sloughs is responsible for this change.

70.3(3)(4)(8)

Judy Barr explained the rule dealing with recreation employment for senior citizens.

No further discussion on the above.

NATURAL  
RESOURCES  
COUNCIL

Gus Kerndt was present for discussion of the following:

NATURAL RESOURCES COUNCIL[580] N

Water withdrawal, 2.1(37-42), 3.1(7)"d", 3.4(1)"a", 3.4(2)"c, d",

3.4(4), 3.5(1)"a", 3.5(2)"f"

Channel changes, landowner notification, 5.16(8)

7/12/78

7/12/78

Kerndt introduced J. Wiegand, Water Commissioner's Office, and Kerndt said, as a result of the committee's comments at the last meeting, they have rewritten their rules.

2.1, 3.1,  
3.4, 3.5

John Cortesio, representing Iowa Power and Light Company, commented that Iowa Power and Light is strongly opposed to the rules which were adopted May 2 and under delay by the committee.

Schroeder and Monroe returned.

The alternate set of rules being presented by the council does not fully satisfy all of the concerns of the power company.

Priebe inquired if problems being confronted in rural water districts were being attended to as were those of municipal water districts. General comments by the committee and no serious problems were envisioned. Kerndt reminded the committee that the Natural Resources Council had repealed rules 3.4 and 3.5 by filing emergency rules, under 17A, after having consulted with representatives of the utility companies in working out a compromise.

Although the matter was not officially before the committee, there was considerable discussion of the rural water district for Wall Lake and Lake View.

Mr. Colin McCulloch, Sac City Attorney representing residents of the communities of Wall Lake and Lake View rural water district, and approximately 20 farmers living in the area immediately adjacent to the West Central Rural Water Association, discussed water withdrawal from a well located approximately 1 mile south of Lake View and 1 mile east of Wall Lake. McCulloch explained

## NATURAL RESOURCES

COUNCIL  
(cont'd)

2.1, 3.1,4,5

that the Conservation Commission filed written and oral objection to water withdrawal from the well, located 100 yards from a state-owned marsh and 100 yards from a feeder creek. However, the Natural Resources Council overruled the Conservation Commission. McCulloch did contact the commission to see if they would join in an appeal process, but the commission did not desire to enter into an inter-governmental agency disagreement. McCulloch distributed copies of the commission's comments to the committee. McCulloch expressed interest in meeting with representatives of both agencies. He noted that because Rural Water Districts are relatively new, the impact of water withdrawal is unknown. The main concern is if water withdrawal will lower the water table levels of the wells in the surrounding areas.

Mr. Charles Regland and Mr. Joseph Schwarzkopf discussed their problems with wells going dry after the water district had withdrawn water. Both gentlemen live near the district. Mr. Regland filed a law suit as a result of a gravel company sinking three pumps in 1970 which resulted in the collapse of Regland's well.

McCulloch made the point that the burden of proof should not be with the cities or the farmers, but that it is their inherent right to have water on their land. He advised that the conservation commission had asked for a study, which was approved by the legislature. The Natural Resources Council has implemented studies of the Dakota sandstone and aquifer. McCulloch noted there is a law suit pending before the Iowa Supreme Court on the matter.

Repr. Monroe reminded that the senate had passed S.F. 2216 which addressed the merger of the water resource agencies and redistribution of water. He noted that the house did not act upon the bill. Monroe advised McCulloch to keep in contact with the interim study committee, chaired by Representative Griffiee. He also suggested that the two agencies are separate and suggested apprising the governor's office of the problem.

Kerndt commented that chapter 455A does not address the burden of proof concept. The committee reminded McCulloch that there was little they could do to assist with the problem being faced by these people and communities. McCulloch thanked the committee for their attention to the matter.

In the discussion as to what course the committee might pursue, Kelly reminded that a statutory change would be necessary. He noted that the Natural Resources Council could adopt rules.

8-15-1978

NATURAL  
RESOURCES  
COUNCIL  
(cont'd)  
5.16(8)

Priebe again mentioned the interim study committee and suggested McCulloch monitor the action of that committee.

Priebe inquired if the council has the authority to require the information being requested of landowners and Kerndt replied in the affirmative. He told the committee this rule had been changed after comments by the committee at the last meeting. Priebe stated he still has problems with the rule as written.

Schroeder took issue with the language in the rule, specifically the word "occupant(s)" in line 2. He suggested the word "lessee" would improve the language. Royce opined a person's right to use the water could be affected. Kerndt replied there are public hearings whenever a channel change is pending.

Monroe assumed the chair.

No further discussion on water withdrawal and channel change.

SUBSTANCE  
ABUSE  
1, 2, 4  
Filed

Gary Reidman of Substance Abuse discussed organization, chapter 1, funding, chapter 2 and procedures, chapter 4. Chapters 1 and 4 had been filed under emergency rules, and are now under notice of intended action. Chapter 2 has been refiled emergency as a result of passage of H.F. 2440.

Doyle questioned why, when chapter 74 of the 67th GA Session Laws struck "alcoholic", the words "intoxicated persons" were appearing throughout these rules. Reidman responded that the two do not have the same meaning. He was not sure that this was an inconsistency.

Doyle inquired as to the meaning of "special population groups" in 1.4(10)"c". Reidman stated it could mean a number of things such as youth, minorities, women, elderly. Doderer thought the language was vague. Monroe suggested including the definition and indicating it is as written by the National Institute on Drug Abuse. Tom Ferris of the Governor's Citizens Advisory Council asked if there would be ample opportunity for comment by the public. Monroe noted there had been a public hearing on August 1. Ferris expressed concern for some residents of Forest City who have interest in this matter and were unable to attend the Rules meeting. Reidman stated he was to meet with those people that very evening in Forest City.

Doderer objected to the State Advisory Council being responsible to the Director of Substance Abuse and she suggested striking 1.4(2). Reidman agreed.

Schroeder out of the meeting.

8-15-1978

SUBSTANCE  
ABUSE  
(cont'd)  
2.1(1)

In 2.1(1), Doyle asked if the form mentioned was available and wanted to know if the committee had a rule addressing this area. Barry responded that there is not a set rule and the form, when mentioned in a rule, may or may not be available. Discussion as to whether or not the form should be printed in the rules and general agreement that this could add a great deal to the printing expenses. Doyle recommended the words "available for mailing".

Doyle questioned the department's practice of filing rules under the emergency provisions of 17A. Reidman replied the process was implemented in order to meet the line item budget recommendations. Royce's comment was that a number of agencies, after a law is enacted, adopt rules by the emergency procedure in order to implement the law immediately.

Reidman commented there is a 180-day expiration date on this rule. General discussion of the process of filing emergency rules.

Doyle pointed out a possible error in 805-4.5(17A) in that the time of the communication in contested cases is listed as three days and Reidman responded that it should be thirty days.

Schroeder returned.

3.22(6)  
DEFERRED

In the matter of 3.22(6), which was objected to and deferred at the July meeting, Royce pointed to the Session Laws of the 67th GA, chapter 74, section 26(3) which, in part, mandates that substance abusers seeking treatment shall be "examined and evaluated by a licensed physician".

At the request of Monroe, unanimous consent was given to defer this matter until afternoon. Royce stated the objection filed in July should be removed.

HEALTH

Peter Fox appeared on behalf of the Health Department for consideration of the following:

HEALTH[470]

Psychology, professional employment experience, 140.6(1, 3, 5, 9) N  
Psychology continuing education, 140.100—140.109  
Chiropractors, license renewal fee, 141.10(1)  
Chiropractors, disciplinary action, 141.11 F  
Chiropractors, code of ethics and peer review committee, 141.50, 141.51  
Cosmetology, continuing education, Ch 151  
Pathology and audiology, continuing education, Ch 156

7/12/78  
7/26/78  
7/26/78  
7/26/78  
7/26/78  
7/12/78  
7/12/78

140.6(9)

Regarding language in 140.6(9), Royce asked Fox why the requirement is for review of the psychological practice by a supervisor. Royce does not see the necessity of this. Fox explained that the department is communicating what is expected of a supervisor.

8-15-1978

HEALTH  
(cont'd)

Also in 140.6(9), Schroeder did not feel the word "supervisee" was good use and objected to some of the rigid requirements for length of meeting, etc. Doderer suggested dropping the "ed" in the word reviewed and changing the word "supervisee" to applicant. Fox agreed to make the corrections.

140.100-  
140.109

General discussion of continuing education and self-study. Dr. John Menne, Chairman, Board of Psychology Examiners, was present.

Royce explained that the law does provide for self-study, but is silent as to how the self-study should be accomplished. Menne agreed to review the matter.

Doyle wanted to know if any territories of the United States had licensing and Menne replied that they did not have licensing for psychology examiners. Monroe reminded that not all states have licensing. Dr. Menne agreed to check this for Doyle.

141.10(1)  
Chiropractors

Fox indicated he was not prepared to speak for the chiropractors since he was not present when the rules for chiropractic were considered. Royce advised that Dr. Masters, because of a conflict, was unable to be present. Dr. Masters had informed Royce that problems existed in the peer review committee provisions and they were open to suggestions for solutions to the problem. Royce commented that the license renewal fee had increased from \$20 to \$50 and informed that Dr. Charles Miller, State Senator, asked the committee to request an economic impact statement.

ECONOMIC  
IMPACT  
REQUEST

Priebe returned. To meet the requirement for requesting an economic impact statement, Schroeder and Priebe so requested. Doderer stated a delay should be considered. Monroe noted that the impact statement would have the same effect as a delay.

Kelly out of the meeting.

141.50, 51

General discussion of the code of ethics and peer review committee.

Priebe out of the meeting. Kelly returned.

The committee expressed dissatisfaction with the language in 141.50 and 141.51.

DELAY  
141.51(1) to  
141.51 (6)

Monroe reminded that the rules are filed and since there is dissatisfaction on the part of the committee, he asked what action should be taken. Schroeder moved a 70-day delay on 141.51(1) through (6). Motion carried.

151

Fox discussed the rules for cosmetology continuing education and advised the committee that originally, the board required twenty hours of continuing education. However,

HEALTH  
(cont'd)  
151

the department realized twenty hours could create a hardship, so the time requirement was decreased to eight hours. In response to Doyle's questioning if the law requires continuing education, Royce replied that the law is clear.

The committee discussed the compliance date for continuing education in 151.2(2). Fox agreed to change the date from November 1 to November 30.

MOTION

Doyle questioned the area of self-study in 151.3. Royce again stated the statute is clear in permitting self-study. Doyle moved the following motion:

OBJECTION  
151.3

The Committee objects to rule 151.3, appearing as a filed rule in the 7-12-78 IAB and relating to standards for continuing education for cosmetologists, on the grounds that it is beyond the authority of the board, since it does not allow credit for self study courses. Chapter 95, 67th GA 2nd session §1.2 specifically provides that: "...education may be obtained through...self-study...and by other means as authorized by the board.". The board may not deny by rule that which is specifically allowed by statute.

VOTE

The motion was adopted unanimously. It was indicated by Doyle that most of the rules of the Health Department provide for carry-over to the next year, but these do not. He suggested that feature be included in these rules. Fox agreed to take the suggestion to the board. Doyle asked Fox to check as to whether or not territories of the United States license cosmetologists. Fox agreed.

156

Fox introduced Neil Ver Hoef, chairman of the Board of Pathology and Audiology, for discussion of rules on continuing education. He commented that since the board was relatively new, they have had concern about due process not only of licensees, but of the rule-making process. Ver Hoef informed the committee that taped public hearings have been held. The tapes were studied by board members, after which the rules were revised. In anticipating questions, he informed the committee that licensing is not required in U.S. territories and they have provisions to allow an individual to apply for self-study. Two kinds of tapes are available for self-study, one, a subscription cassette tape, the other, cassette video tape. One offers a testing program at the end of the study, which is sent to the board for review.

Ver Hoef discussed the board's concern about budgeting and whether or not their fees would meet requirements of budgeting.

Doyle asked if people have dual licenses and he was told 8 or 10 persons have them.

8-15-1978

RECESS AND  
LUNCH

Vice Chairman Monroe recessed the committee at noon for lunch to reconvene at 1:30 p.m.

RECONVENED

Chairman Priebe assumed the podium. Members present when the committee convened at 1:45 p.m. Priebe, Doderer, Schroeder and Doyle. Monroe and Kelly not present.

SOCIAL SERVICE Ms. Judy Welp was present for perusal of the following rules under notice:

SOCIAL SERVICES[770] N

Oral presentations, 3.3	7/26/78
Mental health institutes, liability for support, 29.3	7/26/78
State hospital schools, liability for support, 30.2	7/26/78
Work incentive program, exempt, changes in status, 41.4(2)	7/26/78
Need standards, ADC, 41.8(2), filed emergency	7/26/78
Eligibility, dependent's income, 51.4(1), filed emergency	7/26/78
Assistance standards, 52.1(1-3), filed emergency	7/26/78
Burial benefits, 56.5, filed emergency	7/26/78
Medical assistance, persons covered, 75.1(4, 10), filed emergency	7/26/78
Medical services, 78.1(2)"a"(2), 78.5(1), 78.6(11)"a", 78.7(5), 78.16	7/26/78
Abortions, 78.1(17), filed emergency	7/26/78
Medical assistance advisory council, 79.7	7/26/78

3.3 Under notice of oral presentations, Welp stated it was amended to comply with the authority of section 17A.3 of the Code.

29.3 Welp noted that in 29.3, the liability of a person legally responsible for support of a mentally ill person is outlined.

30.2 In 30.2, liability for the mentally ill in state hospital schools is computed in the same manner as parent liability in 137.1(234), with exceptions.

41.8(2) This rule lists standards for Aid to Dependent Children to implement Senate File 2163, enacted by the 1978 General Assembly.

51.4(1) Welp continued that 51.4(1) deals with the state supplementary income increases to state supplementary assistance recipients. The increase is approximately \$10 per month.

52.1 The rule increases payments to residential care facilities and in 56.5, for one year, the maximum amount paid by the state for funeral benefits to ADC and SSI recipients is increased.

Priebe questioned Welp about the department increasing ADC payments higher than the cost-of-living amount granted by the legislature. Priebe requested Welp to provide an answer to his concern and Welp agreed.

78.1 - 78.16 General discussion of these rules, with Welp advising the



SOCIAL SERVICES committee that the department will not pay recipients  
(cont'd) for photogray lenses in glasses as they are too expensive.

- 78.16 Welp stated the rule deals with community mental health centers and the requirement that a psychiatrist must be on the premises when service is provided by one of the other professionals. Supervision is still provided by the psychiatrist, but not necessarily on the premises.
- 78.1(17) The procedure for obtaining funds for an abortion for recipients of the medicaid program is stated in rule 78.1(17). Doderer requested a copy of Form XIX (PHY-4) and Welp agreed to send one. Schroeder inquired in 78.1(17), subparagraph 2, if a doctor's certification is necessary to obtain funds for an abortion for medicaid recipients. He also asked if it is possible to predetermine when a fetus is physically deformed. Welp replied in the affirmative.
- 79.7 Royce opined that the quorum requirement in this rule should read "two-thirds". Priebe suggested an objection be filed by the committee. Welp advised that the medical assistance advisory council consists of 22 members. These rules are under notice of intended action, therefore, the committee agreed to reserve the right to object, thus allowing time for the department to make corrections. Kelly arrived.
- 106.2(3) Welp noted that the renewal request for foster family home licenses is to be made on the form used to request the original license.
- 109 - SELEC-  
TIVE REVIEW In the matter of selective review for child care centers, chapter 109, Welp advised the department is proposing amendments and said possibly the committee would desire to take up other selective review at the same time. The committee was amenable to Welp's idea.
- VOTER REGIS-  
TRATION  
2.1-2.3 Due to the absence of Monroe, the committee deferred discussion on this matter.
- AGRICULTURE Ms. Betty Duncan, Attorney, Agriculture Department, discussed the following rules:

AGRICULTURE[30] N

Processed animal waste products, 6.15—6.20

7/26/78

Livestock diseases, movement of livestock, 16.64(1, 2), 16.71(1, 2),

16.101(1, 2), 16.134(1—3), 18.1(3)

7/26/78

AGRICULTURE[30] F

Pesticides, 10.30

7/26/78

Aujesky's disease, 16.150(2), delayed to Aug. mtg.

5/31/78 Supp.

In explaining the rule under notice for processed animal

AGRICULTURE  
(cont'd)  
6.20(1)

waste products, the committee was informed that the department had reviewed similar rules implemented by the states of Colorado, Mississippi and California. Also, the model regulations for processed waste products. Duncan said the matter has not come before a public hearing and indicated the rules could need some revision. Schroeder stated the rendering companies in the state should be notified, because he feels they may be adversely affected. Duncan agreed to take the matter under advisement. Schroeder commented that 6.20(1) could also affect the rendering companies. Priebe expressed concern for businesses who would be unable to recycle animal wastes, such as poultry and egg producers.

Discussion of ruminant animals. The question was raised as to how algae could be considered a derivative of animal waste and Duncan agreed to research. Duncan will notify all interested persons of the public hearing. Doyle pointed out a typing error in 6.20(1), "accurage" should be "accurate."

16

This rule raises fees, and Duncan noted the fees had not been reviewed since 1974. Priebe commented the fees are too high and Schroeder stated the committee may want to pose an objection. A public hearing will be held August 29, 1978.

Dr. Lang was present and discussion centered around impact of fees at the sale barn for a person bringing in large numbers of cattle, swine or sheep. Schroeder suggested this be reviewed before final acceptance.

Monroe returned.

16.150(2)

Duncan commented that she had made oral and written arguments regarding the legality of the objection which was filed by the Rules Review Committee. Her contention is that the committee's objection went to the entire rule not the subrule. She advised that the Agriculture Department has taken steps, by filed emergency rules, to modify the Aujeszky's disease. Schroeder noted that this was a limited small step in the right direction and opined that possibly the department used this method to circumvent the committee. Duncan replied the emergency route was used in order to make the rule effective immediately and this confers a benefit to the public.

Schroeder called attention to the language "upon the use of a USDA approved immunization product." He said that certain entities will be affected by this rule, and, in his opinion, large chemical companies will stand to benefit. Duncan agreed to bring up the matter at the public hearing. Monroe reminded that emergency rules may be addressed for 70 days.

ENVIRONMENTAL  
QUALITY1.2(7), 3.1  
4.5(3)

David Bach appeared to answer questions pertaining to filed rules for anaerobic lagoons and notice on wastewater, water supply system construction. George Osborne, Air Quality Commission, was also present. He commented that the commission has had complaints against anaerobic lagoons and they have tried to achieve rules which both agriculture and industry can accept. He said the problems with odors emitting from anaerobic lagoons have resulted from mismanagement. In response to a question by Priebe, Bach advised that existing locations will not be affected by these rules. Priebe commented the problem is of the magnitude that it should be considered by a joint house-senate committee.

MOTION TO  
DELAY1.2(7), 3.1,  
4.5(3)

Schroeder moved the following delay:

The Committee invokes SF 244 §19, suspending the effective date of subrule 1.2(7), rule 3.1 and subrule 4.5(3), on the grounds that these rules are arbitrary and unreasonable. In essence the rules are promulgated to control odors from anaerobic lagoons by imposing separation distances between newly constructed lagoons and inhabited residences or places of public use. It is the feeling of the Committee that these draconian restrictions would seriously damage the confined feedlot industry and Iowa's agricultural economy; and are unnecessary in that an adequate remedy exists to control odors, a court action to abate a public nuisance, as authorized by Chapter 657, The Code.

It is the opinion of the Committee that the separation distances specified in subrule 4.5(3) are arbitrary in that the department has not shown that a rational relationship exists between these distances and the actual control of odors. In addition, the Committee feels the distances are unreasonable in that they penalize conscientious operators who properly maintain lagoons, and therefore cause no odor problems.

John Grace, Newton, Iowa, who lives 1900 feet from an anaerobic lagoon, spoke in opposition to the lagoons. Kelly and Doyle out of the meeting.

Discussion of comparison between city lagoons and anaerobic lagoons. Irwin Buck, Britt, Iowa, appeared on behalf of Lauritzen Foods and reminded that he had appeared at the June 13 meeting in opposition to subrule 4.5(3) and (4). Priebe stated that the Agriculture Committee should hold a public hearing. Doyle returned.

## VOTE

The Schroeder motion was adopted unanimously.

In the matter of wastewater and water supply system construction, Bach advised there will be a public hearing on September 6, 1978.

Monroe reminded Mr. Osborne that, in order for rules not to be in effect February 15, 1979, new legislation must pass both houses of the legislature and be signed by the governor before that date. Mr. Osborne thanked the committee for their time.

VOTER REGIS-  
TRATION  
2.1-2.3

Dale Nelson, State Registrar of Voters, reminded that the rules committee had requested deferment of filing of rules 2.1-2.3. He stated that their commission had met and

VOTER REGIS-  
TRATION  
(cont'd)  
2.1-2.3

reviewed some of the committee's comments. Mr. Jim Maloney, Polk County Auditor and Commissioner of Elections for Des Moines, said that the rule could create a needless expense for the taxpayer and would be invasion of privacy. George Brandt, Dubuque County Auditor, also spoke in opposition to the proposed rule. He made mention of the problem of getting the information on the machines for data processing.

Priebe out of the meeting, Monroe in the chair. Monroe opined that the supplying of the telephone number will be optional, however, if the auditor has the number, the auditor must send the information to Des Moines.

Priebe returned.

Kelly returned. The committee discussed the possibility of auditors having to ask for additional money from the counties in order to implement the rule. Doyle out of the meeting.

Doderer pointed out that the Rules Review Committee has no authority to object to rules which do not exceed the statutory authority. Royce added that the Code, in this instance, gives discretionary power to the department.

Maloney requested the committee impose a 45-day delay on the matter. Schroeder suggested that a petition could be submitted requesting the requirement for telephone numbers on the voter registration lists be deleted.

MOTION TO  
OBJECT

Doderer made the following motion:

The committee objects to filed rule 2.1(1)"e" on the grounds that it is unreasonable in that it would impose substantial hardship on those counties which do not currently maintain registrant's telephone numbers.

Schroeder commented that possibly the requirement would create more problems in the large counties than in some of the counties with rural population. Maloney noted that 20 percent of the population moves every year and phone numbers change all the time and he feels it will be impossible to keep current with the changes, thus resulting in complaints from people.

Royce suggested moving to suspend for 45 days and Dale Nelson pointed out that both the rule for placing the telephone number on the form and the implementation of the rule are deferred until 1979, thus giving time for the present registration forms to be used.

SUBSTITUTE  
MOTION

Schroeder moved to delay action until 45 days into the 1979 Legislative Session, in order to allow time for the general assembly to deal with the question.

The motion was defeated with a roll call vote of two ayes by Doderer and Schroeder and three nays by Priebe, Kelly and Monroe. Doyle absent.

VOTER REGIS-  
TRATION  
(cont'd)

Doderer requested short form voting on her motion, but Monroe suggested a roll call vote. The motion was defeated with two aye votes by Schroeder and Doderer and three nay votes by Kelly, Monroe and Priebe with Doyle absent.

Chairman Priebe was excused to attend a combined Budget-Social Services meeting. Doyle also excused for the same meeting.

No further action taken on the matter.

TRANSPORTATION James Fetters discussed the following transportation rules:

TRANSPORTATION[820]

Motor vehicle inspection station, [07,E] 21.3, filed emergency 7/12/78

Motor vehicle inspection station handbook, [07,E] 21.13(1), see also filed emergency 7/12/78

Oversized loads, permits for movement, [07,F] 2.1(15)"d" 7/26/78

[07,E] 21.3 He noted that a motor vehicle inspection station had been moved from the capitol grounds to a location at Second Avenue. The committee was informed that a new handbook had been printed and mo-peds are included and some language has been clarified. General discussion of licensing for mo-peds and requirements for spacing available to sell them. Fetters suggested the latter would be under dealer licensing, not the inspection station.

[07,E] , 21.13

[07,F] 2.1(15) Carol Spence explained that the rule will allow 14 foot wide mobile homes to use the interstate highways. The department was interested in changing this rule because of the safety factor involved. In reply to Schroeder's question, Spence did state that movement of oversized vehicles is prohibited on major holidays, except for emergency situations, which requires permits.

CIVIL RIGHTS  
1.15, 2.14

Barbara Snethen was present for discussion of notice rule regarding hearing officers (1.15) filed emergency and filed rule 2.14 dealing with employee selection. Basically, she noted that 1.15 provides for notifying the concerned parties of the hearing officer's decision and the date and time the matter will be discussed. Time for filing exceptions is also listed in the rule.

Snethen informed that rule 2.14 had been under notice, has now been passed, filed and is effective. Jack Soner, Iowa Manufacturers Association and Kathy Wimer, Legal Counsel for the Association, spoke in opposition to the rule. Soner alluded to a letter his organization had written when the rules were under notice and noted that additional information is now available. Wimer stated the rules are identical to the guidelines as set by the Equal Employment Opportunity Commission.

CIVIL RIGHTS  
(cont'd)  
2.14

Wimer said the government is considering changing the federal guidelines and he opined the enforcement of the rule in the state would not coincide with the federal government. In the opinion of the Manufacturers Association, the rules will be misleading to Iowa employers and they are asking for a 45-day deferment.

Snethen made the point that the Civil Rights Commission by these rules is trying to set up guidelines for employers.

Wimer opined that the law does not speak to affirmative action. Schroeder inquired if the rule would have been written differently prior to the decision in the Bakke case (federal) and Snethen did not believe so.

RECESS

Due to the absence of two members, Monroe recessed the committee until 4:30 p.m.

RECONVENED

Priebe and Doyle returned, and the committee reconvened at 4:30 p.m.

2.14  
VOTING

Doderer requested short form voting and the following motion by Schroeder was adopted unanimously:

Rule 2.14 provides that an employer who begins an affirmative action program pursuant to the rule:

...does not thereby violate the Act with respect to any employee or applicant for employment who is denied an employment opportunity as a result of such action. The lawfulness of such remedial and/or affirmative action is not dependent upon an admission or a finding of evidence sufficient to prove that the employer or other person subject to the Act taking such action has violated the Act.

This statement is beyond the authority of the commission, in that it states an interpretation of the commission as if it were a settled point of law. The interpretation of a statute is a judicial function, Trinity Lutheran Church of Des Moines v. Brown, 121 N.W.2d 131 (1963). Although an agency is free to interpret the meaning of a statute, the interpretation is not binding on Iowa courts. In Iowa Department of Revenue v. Iowa Merit Employment Comm., 243 N.W.2d 610(1976), the Court stated:

It is true, although not controlling, [that] courts give weight to the construction of statutes of doubtful meaning by administrative officials charged with their operation and enforcement. [cite omitted]. However, courts should not necessarily follow such rulings when on thorough study it is found the prior interpretations and rulings are not sound.

The commission should amend the subrule by specifying that it is an interpretation by the commission, and that the effect of the interpretation will be that a 'no probable cause' order will be issued on challenges to affirmative action programs.

Priebe assumed the chair. Kelly out of the meeting.

REVENUE

Elliott Hibbs was present to discuss the following:

REVENUE[730] N:

Procedures for requesting deletion of identifying details, 7.9, 7.17(3)"a"	7/26/78
Services exempt, resale of service, 26.2(6)	7/12/78
Individual income tax, 38.1(8), 38.8, 40.4, 40.9, 40.10, 40.14, 40.17, 40.18, 41.3—41.7, 43.4	7/26/78
Corporation income and franchise taxes, 53.2, 53.8, 53.9, 54.2, 54.3, 54.7(1), 55.4, 56.5(2), 59.2, 59.7, 61.5(2)	7/26/78

REVENUE  
(cont'd)  
7.9, 7.17

Regarding rules 7.9 and 7.17, Hibbs notified that the rules were redrafted and the rules relate to administrative procedures.

Hibbs explained that 26.2 had been revised, but that the intent was not to overcome a previous objection placed by the Rules Review Committee, but to clarify a misleading paragraph. An additional paragraph has been added to show the scope of the rule. Also, a citation has been added to "b".

OBJECTION  
26.2 (6)

Doyle moved the following objection, which was adopted unanimously:

The Committee objects to the proposed amendments to paragraph 26.2(6) on the grounds that they are unreasonable and contrary to the authority of sections 422.42 and 43, The Code. In essence the paragraph imposes sales tax upon the repair work provided by a subcontractor for a used car dealer, based on the rationale that the used car dealer is the 'consumer' of the work. This interpretation ignores the apparent legislative scheme in the Code that tangible personal property and services which change hands prior to the ultimate retail sale be taxed only once, at the time of that ultimate retail sale.

In support of its position the department cites Merriwether v. State, 42 So.2d 465 (1949), which held that services and goods provided by a subcontractor to repair used cars are subject to sales tax. This case is not persuasive in that under Alabama law used cars were not subject to sales tax, and in making its decision, the Alabama court stated that the exemption revealed a legislative intent that the reconditioning of used cars was a taxable event:

Merely because the legislature saw fit to exempt from sales tax the gross proceeds received from the sale of used automotive vehicles, it does not follow that it intended to exempt the sale of materials, supplies and equipment purchased for the purpose of reconditioning such vehicles for resale...[W]e think the reason for the exemption was the fact that the legislature recognized that a sales tax is due on the sale of a new car and on the sales of parts, accessories and supplies purchased and used for the purpose of reconditioning the car for resale.

In Iowa the opposite situation exists, use tax is imposed upon the sale of used cars. Therefore under the Merriwether case, since sales tax is imposed upon the sale of used cars, a legislative intent may be implied that sales of services and materials to recondition these cars is exempt. The question of double taxation, not addressed in Merriwether, is present in Iowa. Since the sale of used cars is taxed in Iowa, a tax on services and materials used to recondition these cars for resale would result in taxing these items twice. Based on these considerations it appears that the fact situation in the Alabama case is significantly different than Iowa's and is not applicable.

Section 422.43, The Code, imposes a tax upon "the gross receipts of tangible personal property...sold at retail in this state to users or consumers...". Section 422.42(3), The Code defines a retail sale as:

...the sale to a consumer or to any person for any person, other than for processing or for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with taxable services,...Tangible personal property is sold for processing within the meaning of this sub-section only when it is intended that such property shall be by means of fabrication, compounding, manufacturing, germination, become an integral part of other tangible personal property intended to be sold ultimately at retail...

REVENUE  
(cont'd)

26.2(6)

The materials used by a subcontractor in repairing a used car are tangible personal property used for processing, which by fabrication and compounding become the final product; a refurbished used car destined to be sold at retail. These materials provided by the subcontractor are used in the process of restoring a used car and are therefore exempt from tax. This conclusion is supported by dicta appearing in Sandberg v. Iowa State Board of Assessment and Tax Review, 225 Ia 105, 278 N.W. 643 (1938), in which the Court considered a hypothetical case in which a shoe repairman was in the business of selling used shoes which he had refurbished. The court stated that under this hypothetical, the repairman would be considered a processor, since he was in the business of making new shoes out of old.

Section 422.43, The Code, also imposes a tax upon 'services'. 'Services' is defined in section 422.42(13) as:

...[A]ll acts or services rendered, furnished, or performed, other than services...used in processing of tangible personal property for use in taxable retail sales or services...The tax shall be due and collectible when the service is rendered, furnished or performed for the ultimate user thereof.

The department imposes tax upon services rendered by a subcontractor on the grounds that the dealer "...is the consumer of the service since he or she owns the car." (26.2(6)b). The department's conclusion is faulty in that the tax is imposed upon the "ultimate user" of the service. The addition of this adjective is significant. Section 422.42(14), The Code defines "user" as: "the immediate recipient of the services"; by substituting the word "ultimate" for "immediate" in the imposition of tax shows a clear legislative intent that subcontracted services are only to be taxed when the goods or services are finally sold at retail. Also, as discussed earlier, the services are used in processing of tangible personal property and are therefore not taxable under the subsection.

In conclusion, it is the opinion of the Committee that the proposed paragraph, 26.2(6) is unreasonable and contrary to the authority of the department because the paragraph does not recognize the clear legislative intent embodied in sections 422.42 and 422.43, The Code; that goods and services provided by a subcontractor to a retailer, for the purpose of refurbishes a product to render it fit for resale, should be taxed only at the time of the retail sale.

38.1,8, 40.4,  
40.9,10,14,17,  
40.18, 41.3-  
41.7, 43.4

These rules relating to individual income tax contain changes and brief summaries. Statutory changes made by the last session of the legislature mandated this action. These rules are under notice so there is time for further consideration.

53.2 - 61.5

Rules dealing with corporation income and franchise taxes -- no discussion.

SUBSTANCE  
ABUSE

3.22(6)

6/28/78 IAC

General discussion of the advisability of the requirement for a licensed physician's signature in order to commit a person for treatment of drug abuse. At the suggestion of Royce, the committee agreed to place the matter on the agenda for the next meeting, thus allowing the agency time to present their arguments, for special review.

## INSURANCE

Herb Anderson, Commissioner of Insurance, appeared for



INSURANCE.  
(cont'd)

78-1

consideration of Policy letter 78-1 as requested by the Committee. Monroe took the position the "policy" should have been promulgated under 17A. Anderson agreed that, technically, the "policy" could very well be a rule. Monroe expressed concern for the fact that the concept is being advanced under the guise of bulletins, memos, etc. and strongly objected to this practice.

Anderson explained that the governor had signed H.F. 2273 into law, which affects every individual health policy issued in Iowa. He discussed options available for the consideration of insurance companies, expounding that the forms are very complex. In response to Monroe's questioning, Anderson informed the committee that the insurance department does not have a responsibility to regulate the public, they regulate the insurance companies. As a result of the law, every insurance company which has health insurance policies in effect are operating in violation of the law since July 1, 1978. Thus, the department sent out information informing insurance companies of the law.

Royce reminded Anderson of the method by which other departments resolve such passage of laws, i. e., by filing emergency rules.

Monroe requested Anderson to supply copies of all bulletins issued by the Insurance Department since 1975 and Anderson agreed to supply them. Monroe inquired if Anderson would be willing to promulgate 78-1 as a rule and Anderson replied he could not say that he would be so willing.

Priebe commented that the mailing of information to all of the regulated insurance companies was not the intent of the legislature. Monroe reiterated that when a new law is enacted, rules must be implemented to comply with the law. Anderson stated he feels the whole forms approval process will be paralyzed by such a practice.

Monroe again asked if Anderson would be willing to promulgate a rule and Anderson said if he did for this one area, he would do likewise for every other law on the books. The committee restated that he was going to be required to do so. Priebe reminded that the law is specific in stating a memo is not sufficient, but a rule is required.

Jim West, representing the Life Insurance Association, mentioned a concern as to how the bill applies to intermediate care facilities. He stated the bill will probably increase costs rather than decrease. Priebe responded the legislative intent was to decrease, not increase.

Anderson discussed the procedure the insurance department

INSURANCE  
(cont'd)

uses in working with bills going through the legislative process. The department responds to inquiries on bills that are proposed by others. They do not register to lobby. When a bill is sent to the governor, the department is prepared to respond to questions from that office about the department's thoughts on a matter. Except for bills which are initiated by the insurance department, they do not contact the governor's office.

Monroe again posed the question re promulgating a rule to cover this subject and Anderson stated he is waiting for an attorney general's opinion before writing rules. He is reluctant in that he feels that an obvious precedent will be established.

Monroe will peruse the bulletins which Anderson will supply and stated he may invoke chapter 17A of the Code in requiring the Insurance Department to implement rules. Monroe asked Anderson to have the department's attorneys check with Professor Bonfield for his view. Discussion re 17A definition of a rule.

Monroe reminded that had the department come before Rules Review with a proposed rule, the public would have had ample time for input. Anderson made the point that the public had input during the legislative procedure.

## MOTION

Monroe moved that the committee authorize the secretary to request the Insurance Department to promulgate bulletin 78.1 as a rule under the provisions of 17A.7 of the Code. Motion adopted unanimously.

As a point of clarification, Anderson inquired if this would be necessary if the attorney general's opinion is issued immediately and Monroe said there would be no need as there are sixty days in which to either adopt the rule or deny it on its merits.

ADOPTION OF  
MINUTES

Doyle moved that the minutes be accepted after correcting the spelling of the name "Tim Fowler" to "Faller" (page 628). The secretary agreed to the correction and the minutes were adopted.

MOTION FOR  
SEPT. MEETING

Doderer moved that the committee meet on Monday, September 11, 10:00 a.m. and Tuesday, September 12, 8:30 a.m. Motion adopted. Schroeder requested, approved by the chairman, review of the quality standards for the Law Enforcement Academy, and requested this be on the agenda for September.

LAW ENFORCE-  
MENT ACADEMY

No representatives were called for the following agencies:

## HEALTH[470] f.

Residential care facilities, 57.24(4), 57.24(5) rescinded	7/26/78
Intermediate care facilities, 58.27(4), 58.27(5) rescinded	7/26/78
Skilled nursing facilities, 59.32(4), 59.32(5) rescinded	7/26/78
Residential care facilities, mentally retarded, 63.22(4), 63.22(5) rescinded	7/26/78
Intermediate care facilities, mentally retarded, 64.35(4), 64.35(5) rescinded	7/26/78

8-15-1978

LIVESTOCK HEALTH ADVISORY COUNCIL[565] F

Recommendation, appropriation, 1.1, filed emergency after Notice

7/26/78

OCCUPATIONAL SAFETY AND HEALTH[610] N

Hearing procedures, 1.7(14, 15), 1.50, 1.61(3), 1.62(1), 1.76, 1.100(2, 3), 1.108

7/12/78

REGENTS[720] F

Personnel administration, 3.3(2), 3.14(3, 11, 23—26), 3.37, 3.39(1)"c",

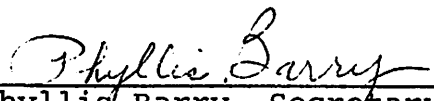
3.39(2, 3, 6—8, 15, 18), 3.52(4), 3.56(7), 3.67, 3.69, 3.84, 3.90(2),

3.104(4)"c, j", 3.104(5), 3.148, filed emergency

7/26/78

ADJOURNMENT On motion by Doyle, the committee adjourned at 5:25 p.m.

Respectfully submitted,

  
Phyllis Barry, Secretary  
Assistance of Vivian L. Haag

APPROVED \_\_\_\_\_

\_\_\_\_\_  
Chairman