

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, October 10, 1978, 9:25 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman, Representative W. R. Monroe, Vice Chairman, Senators Minnette F. Doderer and E. Kevin Kelly, Representatives Donald V. Doyle and Laverne W. Schroeder.
Also present: Joseph Royce, Administrative Co-ordinator.

CONSERVATION
COMMISSION

Kenneth Kakac, Lester C. Fleming and Roy L. Downing appeared for review of chapters 105 and 107, filed emergency. (IAB 9/20/78) Kakac reported that migratory game bird regulations, chapter 105, were unchanged from the previous year and were adopted to federal method of take.

In re waterfowl and coot hunting seasons, chapter 107--they must be set within the framework established by the federal government.

Lester C. Fleming, Grants-in-Aid, Conservation Commission, discussed chapter 72, IAB 9/20/78, dealing with land and water conservation fund grants-in-aid program for local entities. The rule governing grant applications was amended in an attempt to overcome committee objection.[72.5]

Kakac reviewed filed rules, chapter 103, pheasant, quail and partridge hunting seasons and chapter 110 (IAB 9/20/78), inland commercial fishing. Two commercial fishing companies indicate they use long seines in the Mississippi River. Discussion centered around chapter 110 and Schroeder opposed the arbitrary minimum length of 500 feet for a seine. Kakac advised shorter seines are permissible, but licenses are required. He said the fishing industry is interested in removing the rough fish from the river.

OBJECTION

Schroeder moved the following objection:

The committee objects to 110.3(109) relating to seining of rough fish on the grounds that it is arbitrary and unreasonable. The committee notes that the rule would require seines of 500 feet or more. The committee notes that such a rule would unreasonably restrict small fishing operations and would benefit only large fishing operations.

Priebe suggested the problem could be resolved by removing the words "at least 500 feet in length".

CONSERVATION
COMMISSION
(cont'd)

Monroe arrived - 9:35 a.m.
Doyle inquired if there was a uniform citation
and Kakac responded in the negative.

WITHDRAWAL

Kakac was willing to amend the rule and Schroeder
withdrew his motion to object to 110.3(109).
In the event a problem develops in drafting the
amendment, Dodgerer requested the department notify
the committee in ample time to permit the committee
to petition for such an amendment.

AGRICULTURE

Betty Duncan, hearing officer and State Veterinarian,
Dr. Merle H. Lang, reviewed rules 16.147(12), 16.151
(3), 16.152(2) and 16.152(3) IAB 9/20/78 dealing
with Aujeszky's disease. Duncan noted the rules
were amended to provide for vaccination of herds.
An emergency rule was filed after a committee ob-
jection. According to Duncan, the department deemed
it advisable to rewrite the rule allowing for
perusal by the public. Therefore, a second emer-
gency rule was filed to provide a notice of public
hearing scheduled for Thursday, October 12, 1978.

Duncan explained amendment 16.147(12) IAB 9/20/78
re controlling herds by vaccination. Amendment to
16.152(2) states the immunization product will be
U.S.D.A. approved. Both Priebe and Schroeder ex-
pressed interest in the rule being written so as
not to adversely affect Iowa cattlemen.

Discussion of pros and cons concerning live vaccine
as opposed to killed virus. Dr. Lang stated live
vaccine is proven to be safe as killed virus.
Release from quarantine of vaccinated animals is
provided in 16.152(3) amendment and amendment 16.151(3)
enumerates three means for releasing any quarantined
animal: (a) if the animal goes to slaughter (b) if
all animals in a herd have passed two negative tests
within sixty days of each other (c) herds are
quarantined on the basis of positive serology.
If ten percent of the herd tested receives negative
tests, the herd may be released after six months.

Schroeder questioned how this would solve the swine
owners' problem of having five extra sows at farrowing
and being required to send the sows to slaughter.
Dr. Lang said 16.152(3) addresses this problem.
Schroeder indicated a preference for the quarantine
process being handled as previously. Priebe suggested
the vaccination and quarantine be done on the same
day that swine are taken to the sale barn. Dr. Lang
indicated vaccine manufacturers will not stand behind
vaccine if time for immunity to become established
is not allowed.

Dr. Lang advised that in 1978, 264,000 doses of

AGRICULTURE
(cont'd)

vaccine have been administered in 1,402 herds. Persons concerned with cattle marketing have agreed this is a safe method. Schroeder discussed the profit-making aspect of vaccine and stated that purebred breeders do not want the two-week vaccine requirement. Schroeder moved the following objection:

OBJECTION
30-16.151(3)

The Committee objects to subrule 30-16.151(3) on the grounds that it is arbitrary. The subrule relates to release from quarantine for Aujeszky's disease, and the Committee feels the subrule to be arbitrary in that it does not allow a producer to vaccinate swine at or before the time of sale and then transport them into a quarantined herd. This restriction will pose a serious problem to producers who have an excess number of bred sows ready to farrow; without the ability to vaccinate and move these additional animals, their sales price will be considerably reduced. The Committee requests that the department amend the subrule to allow for such vaccination and movement.

Doderer was concerned that the rule was beyond the scope of the law. She wondered if the agriculture department would recommend a change and Duncan reiterated the law was vague. Duncan was unsure as to the sufficiency of the legislation.

VOTE

The Schroeder motion carried with 5 aye votes by Priebe, Monroe, Doderer, Doyle and Schroeder. Kelly not present.

9:55 a.m. - Kelly arrived. Duncan reviewed rules 16.64(1,2), 16.71(1,2), 16.101(1,2), 16.134(1,3) and 18.1(3) pertaining to livestock diseases and livestock movement, and fees for same. (IAB 10/4/78) In re fees, Duncan advised they were change in 1967 and 1974 and that some fees were higher in 1974 than the increases being proposed.

In answer to Priebe's question, the committee was informed that the fee changes were recommended by the Iowa Veterinarian Association. Priebe also inquired if consumers had been involved in the decision. Lang responded the auction sale people were represented and added that the average fee increase amounts to less than 7 percent per year.

Also, Schroeder expressed opposition to increased fees of up to 100 percent. Priebe concurred.

Schroed moved the following objection:

OBJECTION

The committee objects to the 100 percent increase in fees, as they are excessive, arbitrary and unreasonable, and the committee recommends the

AGRICULTURE
(cont'd)

fee increase be no more than 25 percent. The committee objects to all of the rules (IAB 10/4/78) which have been changed.

General discussion of a way to resolve the committee's objection, with Schroeder suggesting the cattle stop fee be no higher than \$10, the same as for hogs. Discussion of tagging and branding reactors, injection of swine and fees, and time needed to perform these duties. Duncan sought recommendations from the committee for ways to overcome the objection. Priebe requested the \$1.00 fees not be doubled.

WITHDRAWAL

After further review, Schroeder withdrew his objection.

CITY FINANCE
4.1

James Dysart and Darol Schweer were present to review chapters 4 and 5 (IAB 10/4/78) in re employee benefits and declaratory rulings for City Finance Committee. As a result of hearings in Carroll and Cedar Rapids and input from the public, 4.1 was changed by adding life insurance and disability benefits.

4.2

It was noted that an editorial change would be necessary in 4.2.

Doderer questioned 4.2, mandatory procedures, as written and Dysart replied there is an \$8.10 per thousand limit on the general fund. The Code, under §97B.9 and 97C.10, requires the employer's share of FICA and IPERS to be taken out of the general fund. Doderer said the language is not clear and asked if the Code allows the excess amount to be taken from the trust and agency fund. Dysart indicated this was done as a result of an attorney general's opinion. In further discussion, the committee was informed that utilities, sewer, water, transit, etc. are separate from the general fund.

In answer to Doderer, Dysart said the City Finance Committee objects to the levy being budgeted in two different funds. The attorney general's opinion holds that the Code allows the levy to be from funds available. Schroeder asked why City Finance had not sought legislative action on the matter and Dysart responded that Senate File 2151 was intended to resolve the problem.

Barry suggested the department insert Code implementation clauses in their rules.

CITY FINANCE
(cont'd)
MOTION

Doderer moved a delay be placed up to 70 days on 4.2, mandatory procedures. Doderer suggested the City Finance Committee has the authority for flexibility without advice. Dysart advised that budgeting begins December 1.

Doderer asked Royce to visit with Assistant Attorney General Blumberg. Kelly requested Royce reproduce the opinion for committee use.

VOTE

The Doderer motion carried viva voce.

DENTAL EXAMINERS

Dr. Wayne Barnes, chairman, Board of Dental Examiners, was present for review of the following rules:

Forms, 6.4	N	10/4/78
Auxiliary personnel, ch 20	N	10/4/78
Dental laboratory technician, ch 21	N	10/4/78
Advertising, ch 26	N	10/4/78
Professional notices, ch 27	N	10/4/78
Designation of specialty, ch 28	N	10/4/78
Discipline, ch 30	N	10/4/78
Complaints, ch 31	N	10/4/78

DENTAL EXAMINERS[320]

General provisions, chs 1, 5-7, 10-15, 25 F..... 9/20/78

20.2(1)

In re 20.2(1), Doderer took issue with the nebulous language. Barnes was willing to redraft.

26.3(153)

Schroeder opined that 26.3 is not good advertising practice. Barnes stated the board is encouraging dentists to use conventional advertising forms.

Schroeder also questioned the language regarding signs. (27.4) He wondered if a dentist would be required to maintain more than two signs if the office is located in a large shopping center. Barnes noted the rule was intended to prohibit multisign advertising.

ch 31

Doderer expressed her opposition to the limitation in 31.1 providing that all complaints be made in writing. In her opinion, telephone complaints should also be investigated. Barnes agreed to consider Doderer's suggestion. He reminded the rules are under notice of intended action and in response to Monroe, Barnes said no petition has been made for public hearing. Chairman Priebe returned.

Barnes advised the board designates the Iowa Dental Association as the peer review committee for all complaints. Doderer wondered how this practice complied with the law. In response to a question by Doderer, Barnes reported that the Iowa Dental Association compensates for the peer review committee.

DENTAL EXAMINERS
(cont'd)

The point was made there is no routine inspection of dental practice. Monroe asked if the Department of Health served on peer review and Barnes responded a member could be used, however, one was usually not available. General discussion of dental hygienists and definition of practice of dentistry--also unauthorized practice of dentistry.

Priebe assumed the chair.

Mary Rita Jones, member, Iowa Dental Assistants, took the position that 20.1 conflicts with 153.13(1,2) of the Code. She specifically took issue with 20.2(1)"a" which defines unauthorized practice of dentistry or dental assistants as being "acts which are mechanical in nature in that they require little skill and no professional judgment." Barnes noted the primary purpose of dental hygiene is the scaling and cleaning of teeth. Doderer asked him to elaborate as to specifics. Doderer contended the board had used a negative approach in defining unauthorized practices. The committee concurred that the language in 20.2(1)"a" (little skill and no professional judgment) was degrading and suggested revision be considered.

Robert Throckmorton, lawyer, representing fourteen dentists of the Gnatofstatic Society, stated their concern for these rules and indicated they need additional time to study the rules and petition for a public hearing.

ch 21

Ronald Adams, attorney, the Iowa Dental Laboratory Association, questioned the definition of auxiliary personnel in chapter 21. Adams requested that the definition of auxiliary personnel be stated in the affirmative. Doderer asked where, in the Code, dental lab technicians are mentioned. It was noted they are referred to in 153.32(5).

Doderer requested Royce peruse S.F. 312, 67GA, re continuing education.

PUBLIC HEARING

Doderer requested a public hearing be held concerning proposed rules of the Board of Dental Examiners. She expressed concern for protection to the public in the rules and Royce responded that the Board of Dentistry has the power to investigate and prosecute unlawful practice.

DENTAL EXAMINERS
(cont'd)
MOTION

Kelly moved that the committee go on record as concurring with Doderer's request for a public hearing. The motion carried.

In reference to rules covering chapter 20, auxiliary personnel, Vivian Klaus, Dental Assistant, asked how rules could be written for a group which did not exist according to the Code. She also expressed a desire to work with the Board of Dental Examiners.

AGENDA

Chairman Priebe announced the committee would not have time for Commerce, Insurance or Parole Board during the morning meeting and requested the respective representatives to return for the afternoon session. No objections.

Priebe called out of the meeting. Kelly assumed the chair.

Amendments to general provisions, chapters 1, 5-7, 10-15 and 25 (IAB 9/20/78) were discussed. Barry quoted from the minutes of the last meeting as to areas where recommendations had been made by the committee. The committee ascertained the board had met their requests and rules were acceptable as filed.

Kelly made the point the board did not follow up for providing banking of hours for continuing education. No further action.

Doderer asked Royce to research 10.4 (IAB 9/20/78), unauthorized practice.

HEALTH

Peter Fox, Hearing Officer, was present for the following rules review:

Economic impact statement, Chiropractic examiners, 141.10(1)	N	9/20/78
Chiropractic practice, rescinded, filed emergency 141.14	FE	10/4/78
Funeral directors, disciplinary procedures, 147.200-147.213	N	9/20/78
Mortuary science examiners, open meetings, 147.300	N	9/20/78
Cosmetology examiners, 151.3(4)	N	9/20/78
Cosmetologists, disciplinary procedures, 151.101-151.114	N	10/4/78
Cosmetology examiners, open meetings, 151.201	N	10/4/78
Speech pathology and audiology examiners, 155.3(3), 155.3(4)	N	10/4/78
Speech pathology and audiology examiners, 156.2(1)"b"	N	9/20/78
Immunization officials, 7.7(1), filed emergency after notice	FEAN	10/4/78

Discussion of economic impact statement on licensing fees for chiropractic examiners. (141.10(1))
Monroe suggested the chiropractic board was setting their budget for the next year. He stated the key question is whether the amount is indeed their appropriation for 1979. In response to a question by Monroe, fee increases go into effect July 1, 1979.

HEALTH
(cont'd)

Royce opined the board had proposed a fee increase before the budgeting request had been presented to the legislative budget subcommittee.

Jack Kelly advised of the full amount appropriated to all licensing boards, \$383,977, the chiropractic board was allowed \$26,846; \$12,101 of that amount was the executive secretary's salary.

141.14

The rescission of 141.14 was acceptable as filed.

147.200-213

Schroeder reminded Fox that the Committee had asked for the same correction in 147.201 re anonymous telephone complaints. Fox was told the engineering board had been requested to include provision for investigation of such complaints. Fox was requested to discuss the matter with the Engineering Board and Fox was amenable.

147.300

At the request of Monroe, Fox agreed to substitute "may" for "shall" in 147.300(2).

151.101-151.114

Schroeder asked Fox to include the same procedure re anonymous telephone complaints in the disciplinary procedure rules. The remainder of the rules for cosmetologists were acceptable as filed.

151.201, 155.3(3,4) Amendments to 151.201 and 155.3(3,4) were acceptable as published.

156.2(1)

Neil Ver Hoef, Chairman, Licensing Board, reviewed 156.2(1) and stated the rule was intended to clarify the fact that a newly licensed person would not be required to complete continuing education during the first year of licensing. Monroe inquired about authority to implement the rule and thought the department was not complying with 67GA, S.F. 312. The committee agreed that continuing education requirements for the first year of licensing were unnecessary, but Monroe reiterated this was not within the scope of S.F. 312. He suggested the board seek clarifying legislation.

Ver Hoef stated that first-year licensees have been under the temporary clinical licensure provision, which involves supervision. Ver Hoef advised that the calendar year (January 1 to December 31) and the continuing education year (September 1 to August 31) overlap.

In reply to Doyle, Ver Hoef said there are three testing periods per year. Monroe asked for

HEALTH
(cont'd)
7.7.(1)

Ver Hoef's help in clarifying continuing education.

Fox noted rule 7.7(1) explains immunization rules. Schroeder questioned the problem arising when a doctor moves, taking records with him; subsequently, parents would have no proof of immunization. Jack Kelly, Disease Control, stated the rule was written for the broad scope and Schroeder's example of the doctor would be the exception. In reply to Schroeder, Jack Kelly noted there is a 120-day waiver period for children of military personnel.

Monroe suggested the department of health consider producing a standardized form to inform the public.

Acting Chairman Kelly suggested allowing Fox to discuss the Nursing Home Administrator rules which were scheduled for the afternoon. The committee agreed.

NURSING HOME
ADMINISTRATORS
2.6(4) "a"

According to Fox, a provision will be added concerning hearing process for license denial. An attorney of the Wasker, et al firm spoke in opposition to striking, in 2.6(4) "a", "denying". Senator Kelly asked that the paragraph include a provision for notice of right of hearing. Fox agreed to include the language.

Priebe assumed the chair.

3.2(1)

The Rules Committee requested continuing education date requirements be changed from January 1, 1979 to January 1, 1980. Department officials were amenable so committee members agreed to withhold objection.

RECESS FOR LUNCH

The chairman recessed the committee for lunch at 12:15 noon to reconvene at 1:30 p.m.

RECONVENED

The committee reconvened at 1:40 p.m. with Priebe, Doderer, Kelly, Monroe, Doyle and Schroeder present.

COMMERCE

The chairman announced that it would be unnecessary for commerce representatives to appear.

PAROLE BOARD

Janet Johnson, Board member, John Ayers and Donald Olson were present for review of chapters 1-9 (IAB 10/4/78) Johnson advised changes were made

PAROLE BOARD
(cont'd)

at the request of the Rules Review Committee and the Parole Board was ready to adopt the rules.

3.4

Re 3.4, Doyle expressed interest in requiring annual progress reports for life-inmates. Johnson stated progress reports tend to have negative impact on life-inmates.

7.6 (1)

In re 7.6(1), Doyle questioned the statutory authority for placing the liaison officer on the hearing panel. He suggested that language be substituted in 7.6(1) to provide "members of the board". Johnson replied the Morrissey case clearly sets up the idea that one individual can serve as the final hearing officer, so long as the person is an independent. Johnson agreed §908.7 does not include "liaison officer".

Johnson reminded that the full board considers recommendation for revocation and agreed to amend the rule accordingly.

James Clearly, Drake Law School, representing the Catholic Diocese of Des Moines and the Lutheran Church, presented the following statement:

COMMENTS TO THE ADMINISTRATIVE RULES REVIEW COMMITTEE ON PROPOSED
PAROLE BOARD RULES RELATING TO THE GRANTING AND ADMINISTRATION OF
PAROLES

Page 2

The proposed Parole Board rules before the Committee on October 10th contain some changes from those offered by the Board last year. Some of these changes adopt suggestions we made to the Board at public hearing held early this year on the rules first proposed; others accommodate to the fact of a five-member rather than a three-member Board, while yet others are totally new.

However, in the new rules the board has again avoided matters with which they should deal, which will directly affect the fairness of the paroling system and, just as important, can have serious corrective impact on the Iowa prison system.

We would highlight some of the changes that should be made:

1. The Board's proposed rules do not presently exclude data and information gained from the inmate during psychiatric treatment in its parole granting process. As written, they allow the Board to learn not just the diagnosis but the revelations of an inmate patient undergoing treatment. (615-4.7 (247)). The prison system has not viewed information gained during such treatment as confidential in the past; such coarse handling of information revealed by the patient assures that effective treatment will simply not take place; confidentiality in the treatment of mentally ill persons or those with psychosocial disorders, in or out of prison, must be rigidly adhered to, in order for the treatment process to take place. The Parole Board should declare itself on the matter, by specifically excluding such information from the paroling process and from the Parole Board files.

2. The Parole Board has dealt unsatisfactorily with the problem of anonymous inmate information, which it allows at parole hearings. (615-4.7 (247)). Inmate informants and secret-source information are the power base of inmate government in a prison yard and a recurring reason for inmate-to-inmate violence. Penologists recognize the "snitch" system as a source of inmate hostility and violence; the Iowa Criminal Justice Standards and Goals project recognized the need to ban such information from parole hearings and proposed that the Board reject evidence from inmate-informants from its consideration. Yet the Iowa corrections authorities knowingly foster that system; they do so in the name of security, despite the fact that it produces quite the opposite effect within the walls of Iowa's prisons. The proposed rules should be amended to reject such information and all such evidence from sources which do not give opportunity for refutation or cross-examination at parole hearings.

3. The "confidential source" problem appears again in parole revocation hearings. (615-7.5(7) (247)). The proposed rules give the hearing officer the power to decide whether or not to reveal the sources of adverse information; in the context of the revocation process proposed by the rules, that decision is virtually without review by the Board. Confidential information is a spawning ground for injustice and, while protection should be given where it is necessary, the importance of the matter of incarceration requires that the question of confidentiality be handled at a higher level. The rules should at least require that the decision to hold identifying confidential should be made by the Board of Parole rather than the hearing officer.

4. The Board has incorporated into its rules the "star

PAROLE BOARD
(cont'd)

10-10-78

Page 3

parole conditions" each parolee shall accept, (613-6.2 (247)), and has made the violation of any of those conditions a basis for parole revocation. (613-7.2 (247)). A quick perusal of the standard conditions shows that technical violation or minor violation would not be unusual or unexpected. The rules should contain language which puts those conditions, and violation of any of them as a cause for revocation, into balance to make it clear that technical or minor overights or situations which should be remedied without revocation will be viewed as such by the Board.

Other basic questions, such as right of representation at parole hearings, the lack of involvement of the Board in the establishment of a treatment program for each inmate, over-emphasis on institutional disciplinary infractions, also deserve better treatment by the Board than they have given in the proposed rules.

At the earlier hearings we asked the Board to deal with each of the listed areas of concern. We bring these matters to the Committee's attention in the hope that your awareness of such issues, now and when they return for final approval, can encourage the Board to focus upon them and attain more rational solutions to them. We propose once again to request the Board to amend its rules to correct these problems. It is evident that the fact that some of them fly in the face of policies in the Iowa corrections system has influenced the Board in its determination on the issues. We suggest that the perpetuation of invalid corrections policies is of negative value. We will be making specific recommendations to the Board of Parole at its public hearing on the proposed rules, and we encourage this Committee to carefully scrutinize the final format and substance of the rules when they again come before you.

by: James C. Harty, Drake Law School
as Col. H. F. X.

6.2 (4)

Discussion followed and Schroeder questioned 6.2 (4), restricting a parolee's travel. Johnson replied the decision is at the discretion of the supervising parole agent. Responding to a question by Schroeder, in re 6.2 (8), the committee was reminded the owning or possessing of firearms by paroled persons is defined by federal law.

6.2 (8)

PUBLIC HEARING
REQUEST

Monroe invoked Rule 8, Committee Rules of Procedure, requesting a public hearing be held on proposed rules of the Parole Board.

6.2 and 26.4

Doyle requested John Ayers to compare Social Services rule 26.4 with Parole Board rule 6.2 and to write identical language.

INSURANCE
15.90-15.93

William Hager, Deputy Insurance Commissioner and William Homann, Insurance Department, were present for review of notice rules re skilled nursing coverage. The rules are intended to implement 67GA, H.F. 2273. The problem is that, in some policy provisions, benefits covered in skilled nursing facilities were not included in intermediate care facilities. Identical services are provided by the intermediate facility. Hager explained the rule declares that failure to indemnify a benefit in a skilled nursing facility when the insured does not indemnify the same benefit in an intermediate care facility is a violation of the discriminatory provision of chapter 507B. The critical language is in rule 15.93. Kelly reasoned that legislation on the subject was a classic example of poor drafting. He also noted an attorney general's opinion had been issued on the matter.

Hager commented that, in this rule, the department tried to meet the objections of the attorney general. The legislation did not address all insurance poli-

INSURANCE
15.93

cies, which the rule does. Hager said the rule is predicated on Code §507B.12. Kelly pointed out that section is merely the department's rule making authority.

In answer to Kelly's question, Hager replied identical service can be provided in intermediate facilities. Kelly wondered why residential care facilities were not included. Hager noted the focus is on the benefit provided as opposed to the facility provided. Hager was willing to hear the intent of the legislature if the department had misinterpreted H.F. 2273.

James West, Life Insurance Association, took the position the rule was being promulgated under the wrong Code section. He noted that 507B.4(7) deals with unfair discrimination. West discussed the various types of policies offered by Iowa-based insurance companies.

A public hearing is scheduled October 26, 1978.

Since implementation of the Act, 67GA, H.F. 2273, Schroeder had been advised by a major insurance company that 15,000 policies have been cancelled. Iowa-based companies have written riders for policies on nursing care facilities until the question is resolved.

Kenneth Gingerich, representing Blue Cross-Blue Shield, commented they are interested in low-cost level of care for their subscribers.

The committee discussed the possibility of providing insurance benefits for persons receiving twenty-four hour care as opposed to those who do not. Hager said he would have no difficulty in amending the rule to include the coverage for the two types of care facilities. Kelly said the benefits received become identical, hinged on the premise of a nurse being on twenty-four hour duty, i.e. two different types of care provided regardless of the twenty-four hour care. No formal action taken by the committee.

SOCIAL SERVICES

Judith Welp was present for review of the following rules under notice of intended action:

SOCIAL SERVICES

(cont'd)

Economic impact statement, mentally retarded, intermediate care, ch 82.....	N.....	9/20/78
Iowa security medical facility, 20.2(1), 20.2(3), 20.2(8)	N.....	10/4/78
Aid to dependent children, 41.6(1), 41.6(4), 41.6(6), 41.6(7), 41.7(4)"i"	N.....	10/4/78
Medical assistance, 78.1(1)"i", 78.11(1), 78.13	N.....	10/4/78
Dental services, 78.4	N.....	10/4/78
General provisions, 130.3(3)	N.....	10/4/78
Homemaker-home health aide services, 144.2(4), 144.5	N.....	10/4/78
Rural rehabilitation student loan and grant program, 146.3(1), 146.5(1)-146.5(3)	N.....	10/4/78

ch 82

In response to committee request in July for an economic impact statement re intermediate care of mentally retarded, Welp reported that the department determined there would not be an economic impact.

20.2(1), 20.2(3),
20.2(8)

Rules re limiting visits to the Iowa security medical facility were reviewed, with Welp indicating the visits are limited because of the facility size and short time of incarceration. Doyle questioned restricting visits to immediate family members in 20.2(8). John Thalacker explained the dining rooms are inadequate to handle a large number of visitors and restaurants are available within 1/2 mile. After further discussion, Doyle suggested adding "except if authorized by someone in the institution." Thalacker hesitated to make the warden responsible for this authorization. Thalacker suggested adding "friends will be permitted to also purchase meal tickets with the approval of the social worker." The committee agreed.

41.6(1), 41.6(4),
41.6(7),
41.7(4)"i"

The department has completely updated the ADC manual--expansion of exempt resources, availability to the client, and disposition of damage judgment insurance settlements. These were acceptable as published.

78.11(1)

Welp summarized the intent of 78.11(1) and 78.13. No committee action.

41.6(6)

Royce advised the committee re 41.6(6), limitation on sale of personal effects. Priebe feels the rule is too broad. Royce suggested limiting the dollar amount--up to \$500. The committee suggested amending the rule to include "personal effects not to exceed \$500." Welp agreed to amend accordingly.

AGENDA - Revenue

The committee agreed to have the Department of Revenue appear at 4:30 p.m.

78.4

Welp noted the department had rewritten these rules re payments for dental services, using the language of the American Dental Association. In the future, ADA coding and nomenclature will be used on dental claims.

SOCIAL SERVICES
(cont'd)
130.3(1) "b"

The amendment to 130.3(1) "b" defines gross income for Title XX services and was written as an attempt to overcome the committee objection of June 13, 1978. Welp referred to the department's correspondence wherein they set out reasons for the different levels of eligibility. Welp continued the department is asking the Rules Review Committee to reconsider their filed objection.

MOTION

Monroe moved to withdraw the committee objection to 130.3(1) "b" in that the amendment will overcome the committee's objection. Motion carried viva voce. Doderer absent.

144.2(4), 144.5
146.3(1)

In re 144.2(4), 144.5 and 146.3(1), they were acceptable as published.

SPECIAL REVIEW

Discussion centered around medical services, 78.1, and food stamps, chapter 65. In re 78.1, Priebe reiterated additional expense of dual billing for treatment by psychologist-psychiatrist was a problem. Welp said the state will pay the maximum of \$25.00 per hour for treatment by a psychologist under the personal supervision of a psychiatrist.

Penny Bjornstad, representing the department, was present for the special review.

Monroe commented the whole rule generates unnecessary costs in that direct personal supervision by a physician is required.

MOTION FOR
PETITION
78.1(13)

Schroeder moved the committee petition for review as follows:

The Administrative Rules Review Committee petitions the Department of Social Services, pursuant to section 17A.7 of the 1977 Code and [770] IAC Chapter 4, to amend rule [770]-78.1(13) to allow psychologists to participate in the 42 U.S.C. Title XIX program without the imposition of direct supervision and employment by a physician.

The motion was adopted.

FOOD STAMPS
chapter 65

Monroe discussed a procedure deployed by the Social Services Department concerning excessive loss of food stamps in the mail. Monroe continued that the department, by memorandum, rather than by rule making

FOOD STAMPS
(cont'd)

process, has determined that one loss of stamps by mail will necessitate the recipient obtaining the stamps in person thereafter. He said the department is attempting to adopt rules by memo on the basis that it is a federal rule. Monroe moved that staff prepare a petition, pursuant to the authority of chapter 17A of the Code. The petition is as follows:

The Department of Social Services
Lucas State Office Bldg
Des Moines, Iowa

In Re: Petition by the Adminis- (
trative Rules Review Committee (
for the Adoption of Rules Relat- (
ing to Home Delivery of Food (
Stamps (

PETITION FOR RULE MAKING

PETITIONER STATES:

1. That Petitioner is a statutory committee of the General Assembly, mandated by Code section 17A.8(6) to review all administrative rules whether proposed or in affect, and therefore as a real and direct interest in the adoption and enforcement of all administrative rules.
2. That Petitioner's address is Statehouse, Des Moines, Iowa., 50319 , telephone: (515)281-3084.
3. That the department of social services has established a "policy" relating to the home delivery of food stamps, which provides in part:
 - A. Whenever a PAW household has one mail loss [of food stamps mailed directly to the recipient], future mail issuance for the household will be mailed to the local office. The head of the household or authorized representative will then pick up the coupons in the local office.
 - * * *
 - C. Each household whose food coupons will be mailed to the local office will be notified in writing by the state food programs office. A letter will be mailed to the household by the 15th of the month advising the household to pick up the coupons in the local office the following month...
4. That the "policy" is an administrative rule which must be promulgated under the provisions of Code section 17A.4 and 5 before it may be enforced. Code section 17A.2(7) defines a rule as:

...each statement of general applicability that implements, interprets, or prescribes law or policy...but does not include:

* * *

c. An intergovernmental, interagency, or intra-agency memorandum, directive, manual or other communication which does not substantially affect the legal rights of, or procedures available to the public or any segment thereof.

FOOD STAMPS
(cont'd)

Clearly the "policy" described in section three (3) of this petition is a "statement of general applicability which...implements policy", and just as clearly it has a substantial effect upon the rights of or procedures available to the public. The "policy" is therefore an administrative rule and pursuant to Code section 17A.4 (3) it is void unless adopted under the provisions of Code section 17A.4.

The department has maintained the "policy" has already been adopted by reference into the Iowa administrative code when the department adopted the federal Food Stamp Act of 1964 and it's attendant regulations. However, the "policy" described in section three (3) of this petition does not appear in the federal regulations, which provide in part:

Home delivery through the mail of PAW coupon allotments is the most desirable means of implementing PAW issuance. This may not be feasible in all situations, therefore, FNS will consider an alternate delivery system proposed by the State Agency [sic]. However, every effort shall be made to provide home delivery through the mail to at least some categories of PAW participants, including the elderly, the disabled or handicapped and the invalid. The FNS will work with the State Agency [sic] in developing an alternate delivery system.

This section does not establish a strict policy, rather it is a delegation of authority to the department to create a policy of its own, subject to FNS approval. A policy cannot be adopted by reference which does not appear in the adopted document itself.

THEREFORE: Pursuant to the authority of Code section 17A.7 the Department of Social Services is petitioned to adopt as an administrative rule any policy it may choose to enforce, concerning home delivery of food coupons.

Bar E. Pugh

Dated this 10 day of October, 1978

Mary Eldred, Director, Food Program, presented information. She commented that food stamp rules have always been adopted by reference because the United States Department of Agriculture does not allow for flexibility. Eldred continued that 734-3 deals with

FOOD STAMPS
(cont'd)

the mail issuance in counties and areas pertaining to holding of deliveries was discussed. The federal government has concluded that one-fourth of one percent loss by mail is excessive. The state mails food stamps to approximately 11,000 households each month, with mail loss of one-half of one percent. Consequently, the federal government has requested corrective action or the state must be prepared to assume financial liability. Eldred pointed out that theft may be involved, in some instances.

Monroe reiterated the department has set state policy for four counties circumventing the rule making process.

VOTE
ch 65

Discussion of possible solutions to the problem, after which Schroeder requested a vote on the Monroe motion to petition. The motion carried.

SOCIAL SERVICES

The following filed rules were presented for review:

Women's reformatory (correction requested by committee), 1.3(4)"a"	F	10/4/78
Oral presentations, 3.3	F	10/4/78
Mental health institutes, liability for support, 29.3	F	10/4/78
Hospital-schools, 30.2	F	10/4/78
Aid to dependent children, status change, 41.4(2)	F	10/4/78
Medical assistance, mental health centers, 78.1(2), 78.5(1), 78.6(11), 78.7(5), 78.16	F	10/4/78
Medical assistance, hearing aids, 78.14	F	10/4/78

3.3

Welp summarized rule 3.3, which was adopted to comply with requirements of 17A.

29.3

In re liability for support in a mental institution, after 120 days, Welp advised the department states the amount would be standard for one person in an aid to dependent children family.

30.2

Re 30.2, the liability for a person in a hospital-school is determined in the same manner as parental liability for foster care children.

41.4(2)

Diane Heins, Iowa Association for Retarded Citizens, thought 41.4(2) was in conflict with the ICFMF program. She noted a department booklet titled "Medical Assistance Pamphlet for Intermediate Care Facilities" states there is no parental liability for ICFMR care.

According to Welp, Title XIX regulations would disallow deeming of income to a parent of a child in that situation. Burns plans to seek an attorney general's opinion on the subject.

SOCIAL SERVICES
(cont'd)

Discussion of cost of housing for a mentally retarded child. Welp said the parents' liability is determined according to their income, and the maximum for mentally retarded is \$71.50 per month.

Schroeder informed there is a \$60 per day difference between sending people to Mt. Pleasant or Cherokee. Priebe questioned the accuracy of the amount and requested Bjornstad to research and present an answer at the next meeting.

78.1(2)

Welp stated the rule has been expanded and requirements for community mental health centers have been changed.

78.14

In re 78.14, payment for hearing aids, previously a recipient visited the doctor, the audiologist, and the hearing aid dealer. Presently, a person may consult a physician, who prescribes the hearing aid, which may be purchased from the audiologist or the hearing aid dealer.

Robert F. Holz, Jr., attorney, Iowa Speech and Hearing Association, submitted a memorandum as follows:

Administrative Rules Review Committee
State Capitol
Des Moines, Iowa

Re: Social Services [770]
Medical Assistance, Hearing Aids 78.14

Senators and Representatives:

The hearing aid rule filed by the Department of Social Services is on your agenda for October 10, 1978. It is respectfully requested that:

- (1) you file an objection to this rule under 17A.4(4)(a) on the grounds that it is unreasonable, arbitrary and capricious, and
- (2) you delay the effectiveness of the rules under 17A.8 so that the General Assembly may become aware of this matter.

The rule was first proposed by notice IAC Supp. April 19, 1978. Public comment period was set for May 12, 1978.

The notice came before this committee at its meeting of May 18, 1978. Since a public hearing was being called, your committee deferred any consideration of the rule until after the hearing.

Public hearing was scheduled for July 11, 1978 in IAB June 14, 1978.

On June 9, 1978, the Department filed the rule under the "emergency" provision of the IAPA to become effective July 5, 1978 (published IAB June 28, 1978). In response:

- (1) An action was filed in the Polk County District Court on June 27, 1978, and a stay of the emergency rule ordered by Judge Missildine on July 3, 1978.
- (2) This committee considered the emergency rule at its meeting of July 11, 1978, and filed its objection to the adoption of the rule on an emergency basis in IAB July 26, 1978.

The public hearing was held as scheduled with John Zumwalt of the Department presiding. A summary of the hearing prepared by Judy Welp of the Department is attached as Appendix "A".

The Department submitted its recommendation to the Iowa Council on Social Services, attached as Appendix "B".

The Council met on September 1, 1978, and an excerpt of its minutes is attached as Appendix "C".

The proposed rule was then filed IAB October 4, 1978, with an effective date of November 8, 1978.

SOCIAL SERVICES

(cont'd)

78.14

As may be seen from a comparison of the proposed rule, emergency rule and filed rule, there has been no change in the Council proposal from beginning to end (except, as stated in the filed rule, for changes "to clarify the wording and correct the names of the forms").

The action of the Council has been taken in spite of a contrary position of the Department, the nearly unanimous opposition of persons involved with the hearing impaired (excepting only the hearing aid dealers), and a final contrary recommendation of the Department. The summary of comments (Appendix "A") speaks for itself. What it does not show is the cross section of people who presented positions against the rule. The opposition is a virtual who's who of those involved with the hearing impaired. This was pointed out in a letter to the Department attached as Appendix "D".

The action of the Council is unreasonable, arbitrary and capricious in light of the contrary recommendation of its department and the opposition of the affected health community. On this basis, the committee should register its objection.

The case of Patterson v. Montana Dept. of Revenue, 557 P.2d 798 (1976) is instructive. The court held that the Administrative Procedures Act requirement for comment and public hearing was not intended to be an empty gesture for the amusement of the agency. The court said that the reason for the hearing was to get public input which must be fully considered and concluded that:

"The vice of the situation here is that these objectives become subordinated to bureaucratic justification of the Plan." (p. 804)

So also here, the proposal was put in the hopper by the Council, processed through the public comment period and filed at the end unscathed even though it didn't find the support of the Department or the cross section of affected and interested persons.

The comments point out the leadership of the State of Iowa in this field and the cost effectiveness of its existing plan. The effective date of the rules should be delayed so that the legislature may have the opportunity to be aware of this proposed change.

Lois Emmanuel, member, Council on Social Services, stated that the council has often been accused of being a rubber stamp for the department. She thanked the committee for dispelling that rumor. The department considered not requiring more for Title XIX patients than for private patients. She continued that, in the past, the department has often been criticized by the legislature for that position. Emmanuel commented that she concurred with the department, who has said all along to audiologists, "If it is good for Title XIX, it is good for private patients, and why don't you go to the legislature and have the licensing law changed?"

Emmanuel added, "I have to assume that when the legislature licensed hearing aid dealers to do these kinds of things, that they looked into it rather thoroughly on whether they would be qualified to do them." She proceeded that the department did not wish to enter the argument about who can test hearing better, and there was never a discussion about resolving or considering to treat the Title XIX patient the same way we treat the private patient; with one exception--and that is, the Title XIX patient would not wait for the physician's exam. She concluded, "I think we are on firm ground in that respect. If the

SOCIAL SERVICES
(cont'd)
78.14

legislature wants to change the licensing, that is up to them. But our whole criterion (and I think you got a letter from our chairperson) was to this effect, was it not?" Priebe replied, "That's right."

Holz restated his request for an objection and delay by the Rules Review Committee. In answer to Monroe as to what grounds, it was Holz's opinion that the action was unreasonable, arbitrary and capricious.

Charles Anderson, Chairman, Iowa Speech and Hearing Association, disagreed with Emmanuel. The Rules Committee took no action.

In answer to a question by Doderer as to possible litigation, the reply was affirmative.

LANDSCAPE
ARCHITECTS
EXAMINERS

Jesse Lewis, Board of Landscape Architect Examiners, was present for review of continuing education, disciplinary action, IAB 10/4/78.

3.1

In re 3.1, definitions, an hour of CEU, continuing education, being equivalent to ten hours, Schroeder expressed opposition. Royce commented that 67GA, S.F. 312, makes reference to recognized units when determining what hour. Discussion of carryover hours and Priebe asked why they were not allowed. Lewis took the position the Landscape Architects were keeping within the spirit of the law. In reply to Doyle's question regarding inactive status, Lewis responded that, under the law, only active status was defined, and retired persons may apply for renewals.

Doyle proposed a hypothetical question relating to architects who leave the state and return in a few years as to the status of their continuing education hours. Lewis determined that, under Iowa law, Landscape Architects would be ten hours short. He continued that this would perhaps be an extenuating circumstance, and probably additional time would be required to make up the deficit. Doyle requested Lewis look at other professions re inactive status and out-of-state architects, then return to the committee with some recommendations. Lewis was amenable. No further action by the committee.

ENVIRONMENTAL
QUALITY

David Bach, hearing officer, discussed three related rules, 25.1(6), 27.12(3)"f" and 28.2(1)"1", published in the 9/20/78 IAB--all associated with the concept of limiting location of landfills near airports. These rules are proposed to prevent attraction of

ENVIRONMENTAL
QUALITY
(cont'd)

birds to landfill sites, thus creating hazards to airplanes. Bach stated 28.2(1)"1" was implemented as a petition for adoption of rules, went through the notice and hearing procedures. The location of a landfill within 10,000 feet of any runway used or planned to be used during the life of the landfill would be prohibited; or within 5,000 feet of any runway planned to be used by any piston-type airplane during the approved life of the landfill. The rule pertains to landfills located within the conical surfaces of airports, which are determined on a case-by-case basis for each airport. In answer to Schroeder's inquiry re dates, Bach said the rule applies to new landfills only. Schroeder expressed concern that the DEQ was adopting proposed federal rules. Bach agreed but indicated the DEQ has reason to believe the rule will not be adopted at the federal level. Bach stated the Environmental Protection Agency will not prohibit landfills near airports. He continued that the EPA is relying on the Federal Aviation Agency to enforce its rule associated with airports and airport safety and the FAA treats guidelines as rules. Bach said the FAA, at the hearing, supported the DEQ rule. No action taken by the committee.

The following corrected version of the 70-day delay to DEQ rules was before the committee for perusal.

On June 13th, 1978 the Administrative Rules Review Committee delayed for seventy days Department of Environmental Quality rules relating to anaerobic lagoons, and on August 15th, 1978 the Committee suspended these rules until 45 days into the 68th General Assembly. It has been discovered that in both instances Mr. Royce has incorrectly recorded the Committee's action.

In both actions the Committee's motion covered subrule 1.2(7), rule 3.1, and rule 4.5., while the motions as stated in letters dated June 14th and August 15th, 1978 refer to subrule 1.2(7), rule 3.1, and subrule 4.5(3). Shorthand notes taken at both meetings by Mrs Vivian Haag and Mrs. Phyllis Barry demonstrate that "rule 4.5" is the correct version.

Therefore, at its October 10th meeting the Administrative Rules Review voted to correct the notice of delays appearing in the 6-28-78 IAB, page 194 [70 day delay] and the 9-6-78 IAB, page 433 [45 day delay into 68th GA] by striking the subrule number 4.5(3) and inserting the subrule number 4.5. This action is taken pursuant to section 700 of Mason's Manual of Legislative Procedure, and the minutes of the June 13th, and August 15th, 1978 meeting will be amended to reflect this correction.

Certified a true and correct copy this 10th day of October, 1978
by:

Schroeder moved to accept the corrected delay and that the minutes in regard to this subject be corrected accordingly.

VOTE

The motion carried unanimously.

PUBLIC
INSTRUCTION

The agency decided to withdraw the rule at this time and file in the regular manner. [15.41]

ENGINEERING
EXAMINERS

Francis Holland, represented the Engineering Examiners re chapter 3, continuing education. Kelly inquired if they have a provision for banking of hours and Holland replied in the affirmative.

Doyle asked about inactive status, and Holland informed the committee that when a person moves out of Iowa and returns, the license may be adopted through comity. Holland said a total of 15 formal or 25 informal hours of continuing education were needed by an individual. The agency defines formal as college or university courses and informal as publishing a book or research paper.

IOWA
DEVELOPMENT

Paul Comer, Director, Iowa Community Betterment, and Richard Powell, Assistant Director, were present to review chapter 3, rural community development, IAB 9/20/78, filed emergency. The rule was acceptable as filed. The committee was advised the law was enacted July 1, 1978 as a one-year appropriation, the committee was appointed, adopted guidelines, and hearings had been held. The rule was excerpted from the Act itself.

COMPTROLLER

Brian Hall, Project Director, Personal Management Information System (PMIS), reviewed 5.2 IAB 9/20/78. Monroe questioned the legality of the rules in view of Code §8.6(16), notice of intent to make rules, requires approval by the governor. He pointed out that 5.2 doesn't comply with this requirement. Monroe said that the agency's appearance before the committee is premature in presenting the rule.

Hall responded the PMIS is not an agency per se, but a system. The comptroller was requested by the governor's office to initiate a committee representing the various payroll systems of the state for possible development of a management information system. The committee met, reported to the comptroller; the comptroller, according to Hall, after conversation with the governor, reconvened the committee with instructions to implement the system. In reply to Doderer's question, Hall said the system was implemented to combine, in one place, data on the state's employees.

Monroe also stated that in Code §8.6, he could not find authority for the comptroller to set up a review board. Hall will report the matter to the agency. In answer to Doderer, Hall said payroll information, some personnel information, position and budget information are included in the system. Hall continued chapter 68A is not clear re personnel information. Chapter 19 covers merit records, but

COMPTROLLER
(cont'd)
5.2

Hall indicated, to date, merit system records have not been incorporated into the system. Doderer said chapter 19A pertains to the Regents. Monroe requested a written response to questions raised. Doderer questioned the practice of identifying individuals by name, rather than by number. Hall responded that some individuals work in two different positions thus are budgeted separately. Doderer requested Hall or Royce to check merit rules to learn the definition of personnel information. Royce said, according to Bonfield, this is a problem with chapter 68A. Hall commented that the whole area of public versus private is being studied. No action taken.

LABOR BUREAU

Walter Johnson, Deputy, Iowa Bureau of Labor reviewed 4.7, illnesses and injuries and 10.21, 26.1, 28.1, occupational safety and health, reference rule modification, IAB 9/20/78.

4.7

In re 4.7, they were acceptable as published.

10.21, 26.1, 28.1

These rules contain periodic updating of OSHA rules. Johnson advised a problem had arisen on benzene standards and information relative to the matter would be available at the October 25 public hearing.

Monroe in the chair.

NATURAL RESOURCES

Gus Kerndt and James Wiegand, Deputy Water Commissioner, reviewed the following:

Oral presentation and rulemaking procedure	N.....	9/20/78
Water, divert, store or withdraw, 2.1, 3.1(7)"d", 3.4, 3.5, 3.9, 3.10	F.....	10/4/78
Channel changes, Landowner notification, 5.16(8)	F.....	10/4/78

The committee was told an opportunity for oral presentation would be held within two weeks and rules are designed to implement 67GA, ch 455A.

Kerndt discussed director-approval for flood plain construction. Presently, construction is approved by the resources council. Under the proposal, the director would make the initial approval, with right of appeal to the council. The council could challenge any decision made by the director. The agency is interested in curbing amount of time required for council meetings.

Monroe commended Kerndt for the rules, but suggested

NATURAL RESOURCES
(cont'd)

notifying the public as to where a copy of the proposed rules might be obtained. Kerndt was amenable.

Schroeder took exception to several rules as proposed (p. 441, IAB 9/20/78); (1) He wondered why a council is needed if the director will approve requests. Kerndt said this was written according to 67GA, H.F. 2212 requirement. (2) Schroeder continued that the buffer zone concept of item 2 is completely unworkable and he feels the public will object. Kerndt responded that the council is not ready to promulgate rules concerning buffer zones along streams and will deal with stream-straightening requests on a case-by-case basis. (3) Item 3 is proposed to overturn a supreme court case, INRC versus Van Zee, in which the court held in order for the council to abate an unauthorized project, a public nuisance has to be proven. The new rule states that if the council discovers an unauthorized project within one year, public nuisance does not have to be proven. Schroeder and Kerndt discussed a problem in Council Bluffs where an industrial park is being developed along the river without approval of the Resources Council.

ch 2,3

Kerndt reviewed water withdrawal rules, IAB 10/4/78. Schroeder asked if the CFS rating had been changed and Kerndt replied in the negative, saying that the policy has been in effect for over eighteen years. Wiegand added rules have been made more restrictive relative to drainage and a provision is included allowing effective permits to continue until 1988.

5.16 (8)

Channel change rules were acceptable.

TRANSPORTATION

Carol Coates, Director, Vehicle Registration, was present for review of [07,D], 11.1(5), 11.6(8), 11.43, and 11.61, under notice, re vehicle registration and certificate of title. Charles Sinclair was also present.

[07,D], 11.1(5)

Coates explained, on motorized bicycles, the state requires the manufacturer's statement of origin. Priebe expressed concern for the number of MOPEDS and suggested exploring the possibility of licensing of drivers of MOPEDS.

[07,D] 11.6 (8)

Coates said the certificate of title for salvage allows a person to delay payment of fees until the vehicle is retitled under a regular title. The proper method in working with salvage and one which

TRANSPORTATION
(cont'd)

most people use, is placing the license plates in storage, thus fees are not required to be paid. Fees are then due after the vehicle is rebuilt and license is reissued.

[07,D] 11.43

Storage of vehicles, plates are turned in to the treasurer, and if more than thirty days elapse, the plates are destroyed. Doyle questioned what procedure would be followed when the plate-with-owner law becomes effective. Sinclair said the plate would still be turned in to avoid payment of penalty.

[08,E] ch 2

Chapter 2, concerning the great river road fund, was reviewed by George Wilson, Planning and Registration Division. Wilson noted that the 67GA, H.F. 2490, established a revolving fund to be utilized by the affected jurisdictions in eastern Iowa, to match federal funds available for the Great River Road. The legislature set up a ten year no-interest loan procedure to those jurisdictions. The DOT implemented the rules under emergency procedure because of potential threat of lapse of federal funds on September 30 and the fact that the two projects were eligible for letting bids.

[07,E] 21.13(1)

Beth Brannon presented 21.13(1), motor vehicle inspection rules and they were acceptable.

Candy Baeke, Operating Authority, noted a 14 foot wide mobile home will be allowed on interestates under [07,F] 2.1(15)"d". Priebe said he thought the governor had vetoed legislation on this subject and questioned the legality of the ruling. Baeke agreed to research the matter.

CONSERVATION
33.3(3)

Doyle moved that the Conservation Commission be petitioned to amend subrule 33.3(3) pertaining to construction of "L" or "T" docks to read as follows:

In Re: Petition by the Admin-)
)
 istrative Rules Review Commit-)
)
 tee to Promulgate Rules Relat-)
)
 ing to the Construction of "L")
)
 or "T" Docks)

PETITION FOR RULEMAKING

Petitioner States:

1. That Petitioner is a statutorily created body of the General Assembly, empowered by Code section 17A.8 to review all adminis-

CONSERVATION
COMMISSION
(cont'd)

10-10-78

trative rules whether proposed or in effect; and therefore Petitioner has a real and direct interest in all administrative rules to insure their just and equitable operation upon the people of Iowa.

2. That Petitioner's address is the Statehouse, Des Moines, Ia., 50319, Telephone (515)281-3084.

3. That subrule 33.3(3) be amended to read:

No permit shall be issued for the construction of a dock within fifty feet of another dock except in the case in which the applicant owns, in fee title, a lot which, due to its width, makes it impossible to be fifty feet or more from a dock constructed by an adjacent riparian owner which is covered by a valid dock permit issued by the conservation commission. A permit for an "L" or "T" type dock within fifty feet of another dock shall be issued only when the portion of the "L" or "T" type dock at right angles to the dock extending from the shore is not greater than eight feet in length, and the applicant provides a waiver, signed by the adjacent land owners, waiving the fifty foot minimum.

4. That the amendment is necessary to allow those persons who have constructed "L" or "T" type docks on frontages of less than fifty feet, to have their permits reissued by the commission. The commission is currently refusing to reissue such permits on the grounds that an "L" dock located less than fifty feet from another dock tends to "fence off" a portion of the lake. By reducing the "L" or "T" portion of the dock, and requiring consent by the adjacent land owners, this problem is solved and dock owners may continue to enjoy the privilege previously granted, without substantially interfering with the use of the lake.

It should further be noted that under the current subrule the commission has no authority to specifically deny permits for "L" or "T" docks. The subrule provides that a "dock" may be constructed less than fifty feet from another dock subject only to these conditions, 1. that the applicant holds fee title in the land, 2. that the width of the land makes it impossible for a dock to be constructed less than fifty feet from an adjacent dock, and 3. the adjacent owner has a dock covered by a valid permit. The term "dock" is all inclusive, and therefore, under the current rule, an "L" or "T" dock is eligible for the exception if it otherwise meets the three specified conditions.

THEREFORE: For the reasons stated in paragraph four (4), the conservation commission is petitioned, pursuant to Code section 17A.7, to amend subrule 33.3(3) as specified in paragraph three (3).

CONSERVATION
COMMISSION
(cont'd)

Motion carried with 6 aye votes.

Doderer excused for remainder of day.

REVENUE

Schroeder raised an issue over filed 7.9, identifying details, IAB 9/20/78 and questioned the language in 7.9(2) stating "a corporation may not claim an unwarranted invasion of personal privacy" and its affect on trade secrets.

Monroe questioned the committee on an unrelated matter not before the committee, an attorney general's opinion issued in September pertaining to sales tax on photo copy, etc.

APPROVAL OF
MINUTES

Schroeder moved the approval of the minutes of the September meeting with corrections re absence or presence of committee members. Motion was adopted.

MOTION

Royce notified the Rules Committee of the Ad Hoc Steering Committee meeting of the National Conference of State Legislatures in Phoenix, November 29, 1978. Doyle moved that members of the Administrative Rules Review Committee, Joseph Royce and Phyllis Barry be authorized to attend the meeting, should they so desire.

VOTE

The motion carried.

Royce advised there is also a meeting in St. Louis in November on administrative law, authorized by the National Association of Secretaries of State. The dates are November 15 and 16, St. Louis, Missouri. No action taken.

The committee moved for unanimous consent to waive the appearance of representatives for the following agencies and that the rules be acceptable as published:

BANKING[140]

Time deposits, interest, 8.2(2) F 10/4/78
Time deposits, 8.2(2), filed emergency 10/4/78

HEALTH[170]

Chiropractic examiners, 141.6(1), 146.6(6) 10/4/78

VOTER REGISTRATION[345]

Files, update and maintenance, 7.1(4)-7.1(6) F 10/4/78

The chair adjourned the committee at 5:40 p.m.
The next meeting will be held Tuesday, November 14, 1978, 9:00 a.m.

Respectfully submitted,

APPROVED _____

CHAIRMAN

- 707 -

Phyllis Barry
(Mrs.) Phyllis Barry
Assistance of Vivian L. Haag