

MINUTES OF THE REGULAR MEETING  
of the  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, July 13, 1976, 9:12 a.m.

Place of Meeting: Senate Room 24, State Capitol, Des Moines, Iowa.

Members Present: Senator Berl E. Priebe, Chairman, W. R. Monroe, Jr., Vice Chairman, Senators Minnette F. Doderer, E. Kevin Kelly, Representative Donald V. Doyle.  
Not present: Laverne Schroeder, Representative.  
Also present: Wayne A. Faupel, Code Editor  
David Charles, Legal Counsel to Committee

Minutes: Moved by Doderer to dispense with reading of minutes of the June 8 meeting and that they stand approved. Carried.

CAMPAIGN FINANCE DISCLOSURE COMM. Barbara Snethen, Executive Director, represented the Campaign Finance Disclosure Commission for review of filed amendments to 3.4--ballot information and 4.5--freewill donations, published 6/28/76 in IAC Supplement. Committee made no recommendations.

CONSERVATION Fish and Game Kenneth Kakac, Superintendent of Law Enforcement, appeared for the Conservation Commission in regard to the following filed emergency rules:

Ground hog season, Ch 17, Emergency	6/28/76
Hunting, Ch 100, Emergency	6/28/76
Trapping, Ch 104, Emergency	6/28/76
Deer hunting, Ch 106, Emergency	6/28/76

Kelly excused at 9:15 a.m.

Kakac explained the changes in the rules. The raccoon and red and gray fox seasons were shortened from last year's due to the high prices for pelts--about \$40 for fox.

In response to question by Priebe, Kakac said the season was shortened by two weeks and that nothing could be done to prevent the hunting of raccoon by nonresidents.

In re the trapping season, Kakac said it had been shortened for long fur-bearing animals.

He continued that the deer season is basically the same as before. The number of zones was increased although the number of "any sex" licenses would remain the same and the time between "split season" would be reduced to three days.

Priebe expressed opposition to the "split season" contending there is a large loss of game.



CONSERVATION  
Cont'd

Discussion of justification or necessity for the emergency rules. Doderer commented that since the seasons are based on biological balances perhaps the rulemaking process should be eliminated. She expressed opposition to lack of opportunity for public input.

Charles pointed out that the statute does provide that the Conservation Commission is the sole agency to make the biological determination. He was of the opinion that it was necessary for the agency to file rules under Chapter 17A, however. He noted a problem of emergency rules being effective for only 180 days under 17A as amended by S.F. 1288. Either the statute could be amended or the rules effectiveness kept at 180 days.

Charles suggested that the normal rulemaking process could be followed by the Commission if they would publish notice and have public participation as to whether or not the biological balance is being maintained. An emergency rule could then be filed when the biological balance was determined.

Kakac cited instances when the time frame would not permit normal rulemaking procedure.

It was decided that further study should be given the matter.

COMMERCE  
1.5

Gary Stewart, Commerce Commission, explained amendment to Rule 1.5, filed without notice, published 6/28/76 IAC Supplement. Said rule further defined duties of the executive secretary of the Commission.

It was acceptable to the Committee.

SECRETARY OF  
STATE  
Voter  
Registration

Herman Schweiker, Deputy Secretary of State, appeared before the Committee for review of filed rules as follows:  
Rescission of Chapter 5--voter registration and Rule 11.1--Forms, both sets of rules were filed under emergency provisions of Chapter 17A and were published in IAC Supplement 6/28/76. The rules dealing with registration forms were rescinded since authority for prescribing such forms was transferred to the Voter Registration Commission [HF 1011, 66GA]. Committee had no objections.

VOTER REGIS-  
TRATION  
COMMISSION

Dorothy Elliott represented the Voter Registration Commission for review of filed emergency rules, being Chapters 2 and 3, published in IAC Supplement 6/28/76. Said rules were in conformance with those which had been used by the Secretary of State prior to passage of HF 1011.

Discussion of an exception in Chapter 3 where the Department wanted to amend 3.1(2) 4. by adding following "social security number" the words ",if available".



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VOTER REGIS-  
TRATION Cont'd

Monroe pointed out there is no authority to require a social security number.

Objection

Doderer moved to object to 3.1(2)4. on the grounds that it was beyond the power of the agency to require the social security number. The objection can be overcome by removing the requirement.

AGRICULTURE  
Ch 19

Dr. E. A. Butler, State Veterinarian, appeared for review of Chapter 19 of rules of Agriculture relating to veterinarian technicians. Said rules were published in IAC Supplement 6/14/76. Question was raised as to use of "certificate" and "license" and Dr. Butler indicated they were used synonymously.

Doyle raised question in 19.5(8) in re revocations or suspensions of certificates. It was his opinion the rule was unclear. Further he objected to use of the word "turpitude" in paragraph b and he considered the word "unfavorably" too broad in paragraph e.

Butler indicated that the rules were patterned from those of other states.

Objection

Doyle moved the following objection:  
The Committee objects to 19.5(8) as being arbitrary.  
Motion carried.

Objection

Doyle moved to object to 19.5(10)g, specifically to the words "conditions of emergency" since they were not defined.  
Motion carried.

Monroe could see no authority for precluding technicians from performing certain tasks prohibited in 19.5(7)c.

Objection

Monroe moved to object to 19.5(7)c as lack of authority for the department to place such restrictions on veterinarian technicians. Carried.

Doderer noted that the statute provides for "lay assistants" not "technicians". She continued that the legislature did not envision college requirements for the assistants. It was her opinion that corrective legislation should be enacted prior to implementation of the rules.

Butler said the rules were necessary to protect the public from unqualified persons.

Doderer recommended that "moral character" in 19.5(1)a should be defined or deleted from the rule.

Doderer moved to object to use of "veterinary technicians"



AGRICULTURE  
Cont'd

throughout the rules and to 19.5(1)b and 19.5(7)a as being being the scope of authority. Carried.

Priebe referred to the last sentence of 19.5(3) and recommended that provision be made for temporary permits.

Doyle suggested that the rules set out dates for examinations.

Doderer called attention to 19.5(9) and the limitations therein as probably being more restrictive than the department intended. She suggested addition of the words "not necessarily limited to."

It was the consensus of the Committee that the rules needed complete revision and Monroe suggested delaying them for 70 days to allow time for this.

Doderer moved to defer the rules of Agriculture relating to veterinary technicians for 70 days to allow sufficient time for the department to rewrite them. Motion carried.

Objections  
Withheld

The Committee agreed to withhold filing objections to the rules.

There was brief discussion of 18.4(10) in re S brand for brucellosis exposed cattle moving to slaughter. The matter was not officially before the Committee, however. It was noted that objection was filed by the Committee and published in IAC Supplement 6/14/76.

ENVIRONMENTAL  
QUALITY  
Sulfur  
Dioxide

David Bach, Hearing Officer, represented the Environmental Quality Department for review of 4.3(3) in re sulfur dioxide emissions published 6/14/76 IAC Supplement.

Bach explained that the rule was being relaxed to permit emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit. The limitation has been 6 pounds, replicated maximum two-hour average, permillion BTU of heat input but will be increased to 8 pounds in some counties. Bach pointed out that the statute [455B.12(4)] allows for variances in ambient standards in different areas of the state.

Monroe expressed opposition to the rule as "backing down from clean air standards".

Priebe wondered how the rule compared with federal regulation and Bach responded that federal regulations set standards for new sources only and the state determines standards for existing sources.

Bach said the standards are being relaxed because of a move-



DEQ Cont'd      ment to use more Iowa coal and even though there will be increase in the ambient air concentrations of sulfur dioxide the Department doesn't anticipate that the ambient standards will be exceeded or that EPA guidelines will be violated on nonsignificant deteriorations. EPA guidelines as to how this is figured are unclear and are being revised by Congress.

Objection      Monroe moved the following objection to 4.3(3):

The Committee objects to 4.3(3), paragraphs "a" and "b", regarding sulfur dioxide which in effect relaxes the emission standards in some Iowa counties while maintaining the present standards in other counties. The objection is based on the grounds that the Department has acted arbitrarily.

Motion carried.

BONUS BOARD      Amendment to 3.3(1) of rules of the Bonus Board, published 6/28/76, was acceptable to the Committee. Said amendment was made as a result of Committee recommendation 6/8/76.

10:30      Kelly returned.  
PUBLIC      Amendment to Chapter 55 of Public Instruction rules concerning  
INSTRUCTION      data processing were acceptable. They were intended to overcome objections voiced by the Committee in January.

HEALTH      Harry Grant, Sanitarian, Kenneth Chouquette, Health Engineer,  
Plumbing      and Peter Fox, Hearing Officer, represented the Health Department for review of amendments to the plumbing code and rule 96.5 on vital records. Published 6/14/76

Numerous areas of the plumbing code were objectionable to Committee members. It was decided that a date should be set for review of the entire plumbing code. The matter to be discussed further at the August meeting.

In re 96.5--marriage certificate--the Department would be allowed to obtain statistical data on a separate form and also place it under confidentiality. Priebe recalled that the intent of HF 774 was to prohibit this data.

Doderer moved to object to 96.5 as being beyond the scope of intent of the legislature.

Department officials pointed out the importance of the information.

Kelly noted that the information is not on the marriage certificate so he could see no legal problem.



## HEALTH

The Doderer motion carried.

AGING, COMMIS- Dick Woods represented the Commission on the Aging. Chapters  
SION ON 1 to 7 published 6/28/76 were before the Committee.

It was noted that further changes in the rules would be necessary as a result of passage of HF 812 and SF 507 and 1288.

Monroe agreed to contact the Commission in re questions he had concerning the rules.

Moved by Monroe to defer for 70 days for further study the rules of the Commission on the Aging. Carried.

Committee  
Staffing

Discussion of hiring of additional staff to assist the Administrative Rules Review Committee. David Charles was requested to prepare a job description for submission to the Merit Employment Department. The matter would be discussed at the August meeting.

TRANSPORTA-  
TION DEPT.

Karen Bellis, Director of Office Operating Authority, explained the following rules of Transportation:

Interstate registration of vehicles, [07.F] 1.1(2), 1.3(2), Filed without notice  
Special permits, [07.F], Ch 2

The rules were acceptable to the Committee.

Doyle called attention to 2.1(12) which was not officially before the Committee. He pointed out that a 1½ ton pickup would be required to pull travel trailer which could normally be pulled with a smaller truck. He requested the Department to review the stringent rule.

## RECESS

Chairman Priebe recessed the meeting at 11:40.

## RECONVENED

Meeting was reconvened at 1:50 p.m.

## INSURANCE

5.14

Herbert Anderson, Insurance Commissioner, was present for review of rules of the Department as follows:  
Salvage as an asset, 5.14 Emergency 6/14/76  
Life insurance cost and benefit disclosure, 15.66-15.73.  
He explained that 5.14 was published under emergency provisions of Chapter 17A because of some differences between Internal Revenue and some of the insurance companies where for many years it has been required that property casualty companies set their loss reserves and maintain reserves for losses without any reduction for any subrogation with any salvage that they might receive. IRS has taken the position that unless the insurance department has a rule in effect prohibiting reduction for salvage and subrogation, the value of such must be



## INSURANCE

taken from the lost reserves, this creating taxable income. With the rule the reduction would not be required.

Committee made no recommendations.

15.66

Discussion of 15.66 to 15.73.

Anderson commented that rates and premiums for life insurance are not controlled under insurance law but depend on competition for regulation. It had been recognized that for competition to be effective, the prospective buyer of life insurance had to be in a position to compare the product being presented with other products. The National Association of Insurance Commissioners has had a task force working for several years to develop a satisfactory disclosure method.

The rule basically requires that an insurance company, before issuing a policy, must provide certain information contained in a buyer's guide [copies provided Committee members]. Authority for the rule is found in §507B.4 of the Code.

Ed Jackson, representing American Republic Insurance Company, distributed copies of a brief concerning the rules. He expressed opposition to the obligation imposed by the rule in requiring the buyer's guide which in his opinion was too complex to be understood by many. He emphasized they were not opposed to the concept of the buyer being aware of what he is purchasing.

Anderson referred to the statute and interpreted it to mean that failure to provide comparison would be an omission and unfair trade practice.

Charles reminded the group, there would be time to study the matter further since the hearing was not scheduled until August 19.

Anderson indicated the Department would respond to the brief.

NURSING  
BOARD

The Board of Nursing was represented by Sylvia Moore. The following rules were reviewed: 1.1(4), 1.1(5)--petition and declaratory rulings and 4.1(6)--education in another country. Filed and published 6/14/76; 1.1(6)--public hearings under Notice 6/14/76. Committee made no recommendations for 1.1(6).

Monroe questioned the restriction in 1.1(5)--"residing in Iowa." He thought "insufficient" in 1.1(5)d should be defined. He doubted the need for 1.1(5)a but if it were kept, reasons should be enumerated.



NURSING  
Cont'd

Monroe moved to defer 1.1(5) for further study. Carried with 4 ayes.

SOCIAL  
SERVICES

Judith Welp, Procedures, Social Services Department explained rule 52.1 filed emergency and published 6/28/76. Said rule in re supplementary assistance was necessary to coincide with increased benefits in social security.

The following rules under Notice were also reviewed:  
Licensing for institutional care--drugs, 107.6;  
Iowa veteran's home, 134.2(5,6)  
Purchase of services, Ch 145.

Monroe thought there was possible conflict between 107.6 and Chapter 78 of rules of the Department in re drugs and price. He called for clarification as to who is responsible in 107.6(7).

Doderer recommended adding at the end of 107.6(7) the words "designated by the administrator designated".

Monroe recommended that 107.6(17) be amended by adding at the beginning the words "for credit or destruction".

No recommendations were made for 134.2(5) and 134.2(6).

In re purchase of services [ch 145], Doderer was concerned as to the length of time for process. Douglas Miller, Director of Purchase of Service Unit for Social Services, indicated the average time is two to three months.

HEALTH  
Hospitals

John DeBiak, Licensing Division, explained proposed rules 51.7 to 51.34 in re hospitals, published IAC Supp. 6/14/76. Said rules were similar to hose construction standards followed by hospitals throughout the country since 1948.

Monroe raised question as to why signal was required in 51.7(2) b if it could be disconnected. DeBiak agreed the provision could be deleted.

Monroe also questioned why grab bars were not provided in 51.7(10)b(17). Further, he contended the requirement for intensive care windows--51.7(10) would preclude below ground level construction.

There was discussion as to whether intensive care room would be included in the definition of a bedroom to meet requirements in Chapter 413.

Monroe took the position that radio communications in 51.7(36)h were unreasonable.



HEALTH DEPT.  
Chiropractic  
Examiners

The following persons were present for review of rules of the Health Department relating to the Board of Chiropractic Examiners: Dr. Anthony Untz, Board Chairman, Joyce Fitzgerald, Executive Secretary to the Board, Dr. William Clegg, President of the Chiropractic Society of Iowa, Dr. Russell Brown, Secretary of Chiropractic Society of Iowa and Noland Gentry, Attorney. Said rules, being Chapter 141, would replace those appearing in the Iowa Administrative Code as Chapter 141 and Rule 470--160.1(167). The proposed revisions were published in IAC Supplement 6/14/76.

Chairman Priebe recognized Dr. Clegg who had asked prior to the meeting to address the Committee concerning the proposed rules.

Clegg cited three basic areas of contention:

(1) Use of the word "physiotherapy" throughout the rules. It was his contention that the principle of chiropractic should be as the statute provides "... adjustments limited to heat, cold, exercise and supports..." This would be neither "physio or physical therapy", in his opinion.

(2) Provision that Council on Chiropractic Education was the only accrediting agency.

(3) Reciprocity.

Brown spoke to these points:

141.6(2)--he expressed opposition to the restriction to CCE standards, maintaining the rule should be left open to include other schools. He recommended that the Board be permitted to set standards rather than use those of CCE.

141.6(3)d--he voiced opposition to the inclusion of physiotherapy section of the national board. Further, he didn't think the board had authority to examine an applicant on "physiotherapy" ability as provided in 141.6(4). He also objected to "physiotherapy" requirement in 141.7(5).

141.6(10)--he questioned why "partial examination" could not be administered by the board.

141.7(2).--he failed to see the reason for the provision that "The applicant shall have practiced as a licensed doctor of chiropractic for at least three years."

141.8(1)--he opposed use of "shall" and to use of "must" in 141.8(2).



HEALTH  
Cont'd

141.8(3)c--he opposed use of "shall."

In re 141.9(4)--the board shall affiliate with the Federation of Chiropractic Licensing Boards, Brown recommended substituting "may" for "shall."

In re declaratory rulings, Brown failed to see the reason for 141.13(7)a(4) allowing the board to decline a request "Not in the best public interest."

Discussion of Brown comments.

Committee recommended that 141.8(2), line 2, be amended to change "must" to either "may" or "shall."

Kelly asked if physiotherapy were a required course to be accredited by CCE. Clegg responded that it was optional.

Gentry referred to Code sections 147.32 and 151.3 and contended the rules exceeded the statute. He stated such terms as "physiotherapy" should be defined by statute or rule.

Kelly concurred that "physiotherapy" should be defined but disagreed with Gentry as to lack of authority for the rules

Doderer recommended that the board follow Code section 151.3 and be specific as to courses required.

Priebe pointed out that standards adopted by the rules should include a date certain.

Discussion of cost factor with respect to examination--141.6(3). Doderer and Kelly pointed out that the statute prohibits charging more than actual cost of administering an examination--section 147.80.

Doderer recommended that "written character reference" provisions should be eliminated from the rules--141.6(3)e. She could see no problem with "partial examination" provisions in 141.6(10).

Doyle recommended that 141.6(7) pertaining to rules of the examination be revised to permit an applicant to complete the examination before being confronted with possible cheating. Board officials were willing to rewrite the rule.

Doyle raised question concerning the requirement that schools be inspected by an examining team selected by the board--

141.8(3).



HEALTH  
Cont'd

Clegg responded that the federal licensing board recommended that such a provision be adopted. Committee questioned whether there was authority for the rule.

Further discussion in re physiotherapy. Kelly recalled that it definitely was not the intent of the legislature to require all students of chiropractic to take physical therapy education.

Clegg referred to a district court case with had ruled otherwise. He was concerned as to whether two licenses would be needed.

Monroe called attention to Code section 147.45 which required the board to certify to the Health Department the states having substantial equivalent requirements to those exisint in this state for that profession and with which said board desires this state to enter into reciprocity relations.

Clegg indicated there is no reciprocity at this time.

There were no further recommendations by the Committee.

## REVENUE

At the request of the Committee, Elliott Hibbs, Deputy Director of Revenue, appeared before the Committee for a matter called to their attention by Representative Arlo Hullinger regarding collection of tax on entry fees charged contestants in competitive sports or social events. Code §422.43 and rules 16.25 and 16.26 were reviewed.

It was noted that law on the subject was enacted in 1947 but had not been implemented. However, the Department was planning to do so immediately.

Hullinger contended new rules would be needed and he suggested that "gross receipts" be defined.

Priebe asked that the rule not be implemented until brought before the Committee in clearer form.

Kelly took the position there would be a change in enforcement but no change would be necessary in the rule.

Since the tax had not been uniformly collected, further study was to be given the matter.



7-13-76

TRANSPORTATION William Armstrong represented the Department for review of  
Airports [04,C] Chs. 1, 2, 6/14/76 IAC Supplement.  
At the suggestion of Monroe, Department was willing to amend  
1.9(3). Brief discussion of 1.5(8) and fee of \$25.00 and  
1.9(1)h(8) in re fire extinguishers and 1.9(1)h(4) in re  
lighting.

PUBLIC No recommendations were made concerning proposed amendments  
INSTRUCTIONS to Chapters 3, 13 and 19 and rules of Public Instruction--  
6/14 and 6/28/76 IAC Supplements.

5:10 Senator Priebe excused. Monroe took the Chair.

AGENDA FOR Kelly moved that the August agenda be prepared to give prior-  
COMMITTEE ity to rules under Notice. Division I show Notices and  
Division II include Filed rules. Carried unanimously.

ENVIRONMENTAL The matter of emission standards in re sulfur dioxide.  
QUALITY was brought up. Larry Crane and David Bach were present  
from the DEQ.

Sulfur  
Dioxide Kelly moved to rescind action taken by the Committee this  
morning when they voted to object to 4.3. Roll call showed  
Monroe, Doderer and Priebe voting "no". Kelly and Doyle "Failed."  
Doyle moved to reconsider the vote by which the Kelly amendment  
failed. Seconded by Priebe. Monroe, Doderer and Priebe  
voted "no." Kelly and Doyle voted "aye." Failed.

Monroe objected to loosening the standards in areas not as  
contaminated as others.

Crane indicated careful analysis was made before changing  
the standards.

Chairman Monroe adjourned the meeting at 5:30 p.m.  
Next regular meeting to be held Tuesday, August 10, 1976.

Respectfully submitted,

*Phyllis Barry*  
(Mrs) Phyllis Barry, Secretary

APPROVED

DATE