MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, Wednesday and Thursday, April 8, 9, 10, 1980 and Wednesday, April 16, 1980.

Place of Meeting: Senate Committee Room 24 and the Legislative Dining Room, Statehouse, Des Moines, Iowa.

Chairman Schroeder called the meeting to order at 7:05 a.m. April 8.

Members Present: Representative Laverne W. Schroeder, Chairman; Senators Edgar H. Holden and Dale E. Tieden; Representative Betty J. Clark.
Not present: Representative John E. Patchett. Senator Berl E. Priebe, excused because of a death in the family.
Also present: Joseph Royce, Committee Staff. Brice Oakley, Administrative Rules Co-ordinator.

ENERGY POLICY COUNCIL

Douglas Gross, Director, Fuel Division, presented the following rules:

ENERGY POLICY COUNCIL[380]
Energy conservation grants, 6.6(2)"b", 6.6(4)"a", "d" ARC 0917 .....F.....3/5/80
Rulemaking procedures, ch 7; Declaratory ruling, ch 8; Contested case proceeding, ch 9 ARC 0983 4/2/80

ch 7

Holden asked, re 7.2(93), if hearings would be conducted by the staff and Gross answered in the affirmative. Gross advised the Committee that the director is allowed to hold evidentiary hearings in contested case proceedings. Council rules provide for a set-aside appeals board which can hold hearings.

Oakley pointed out that the rule addresses hearings on rules--not on contested cases. That also applies to public hearings on proposed rules.

9.12(5)

Holden questioned the practice as stated in 9.12(5) of the council imposing sanction on other council members and wondered if it were a common practice.

Royce explained that matter was part of ex parte communications sanctioned by §17A.17, which attaches stringent penalties for violations.

Oakley recalled the Committee, at a previous meeting, had raised question as to the matter of privileged communication. Holden reiterated his point that information which legislators had requested from EPC as to where the product originated had generated much "to do". However, although information was not

ENERGY POLICY COUNCIL Cont'd

available to legislators through EPC, they were able to obtain it from the Department of Revenue. Oakley said the agency, in his opinion, was acting within their rights and he favored a "gentlemen's agreement" on the matter.

Delay lifted EPC, 3.36

Clark moved to remove the 70-day delay imposed on 3.36, 3/11/80 [published IAB 4/2/80]. Motion carried viva voce.

NURSING HOME ADMINISTRATORS

Present for discussion of the following Nursing Home Administrators rules were Blaine L. Donaldson, Chairman of the Board and Peter Fox, Hearing Officer, Health Department:

NURSING HOME ADMINISTRATORS BOARD OF EXAMINERS[600]
Licensure, 1.3(2), 2.2(2), 2.3(3), 2.4(1), 2.4(2), 2.6(2-4, 8), 2.7 ARC 0966 ..... N 4/2/80

2.6

Tieden questioned the reason for striking the last sentence of 2.6(3) and Donaldson replied it was not needed as a shortage of administrators no longer exists.

2.4

Clark, re 2.4(1), last sentence, preferred "The fee" in lieu of "A fee". Re 2.4(2), Clark asked what was intended by including paragraph e, and "unethical conduct" in paragraph f, and Donaldson replied the language was gleaned from SF 312 [258A, The Code].

2.7

Re 2.7(2)d(5), Clark questioned the inclusion of "mortuary science" in the health professions. Donaldson admitted it was very difficult to draft exact equivalency rules.

Oakley recalled he had specifically requested the presence of other board members at today's meeting since this was a second attempt to propose acceptable rules. Donaldson declared the members had been notified a week ago, but none were in attendance. Board members include Sid Vanderwoude, Iowa City, Phyllis Peters, Sioux City and Elaine Hulseberg, Cedar Rapids.

With respect to reciprocity--2.7(2)d(2)--Schroeder commented there could be homes with less than 40-bed capacity and perhaps variance would be advisable. Donaldson commented they had attempted to keep requirements identical for initial licensure. Oakley recalled Priebe had been concerned last year for the fact that, if licensed after 1977 in another state, all the applicant was required to have was an associate of arts degree or any bachelor's degree

NURSING HOME ADMINISTRATORS Cont'd

to be licensed as registered nurse which was substantially below requirements for Iowa residents. According to Donaldson, Hospital Administrators are not licensed in Iowa as they are in other states. Oakley opined the matter would probably require legislation.

2.6(3)

In 2.6(3), Oakley suggested that "person" be substituted for "licensed nursing home administrator" and that the rule be rewritten for clarity before it is adopted.

Discussion of education qualifications in 2.2(2).

ENERGY POLICY COUNCIL Cont'd

Holden asked to make concluding remarks re set-aside as a result of obtaining a copy of the Annual Report of Gasoline Tax Receipts. He expressed displeasure over the lack of information from the Energy Policy Council when it was readily available through the Revenue Department. He reiterated that he was most unhappy with the attitude taken by EPC.

TRANSPORTATION

Al Oppel, Director, Motor Vehicle Division, Charles Sinclair, Vehicle Registration Officer, Robb Forrest, Director, Office of Driver License, and Candace Bakke, Director, Office of Operating Authority, were present for review of the following:

Financial responsibility, accidents, [07,C] 14.3, 14.4(1-4), 14.5(1), 14.6(1, 4, 6, 7) ARC 0930 .F... 3/19/80
Mobile home dealers, manufacturers and distributors, [07,D] ch 7 ARC 0909 .F.....3/5/80
Travel trailer dealers, manufacturers and distributors, [07,D] ch 8 ARC 0910 F.....3/5/80
Mobile homes, sale or transfer, [07,D] 10.8 rescinded ARC 0911..F.....3/5/80
Vehicle registration, [07,D] 11.7(8), 11.12, 11.30, 11.32(5), 11.43, 11.57, 11.58 ARC 0912 .F.....3/5/80
Interstate motor vehicle fuel permits, [07,F], ch 7 ARC 0907..fV.....3/5/80

Chapter 14 amendments were acceptable as filed.

[07,D]ch7

Al Oppel reviewed 07,D, ch 7 pertaining to mobile home dealers, manufacturers and distributors. In response to Holden, Oppel affirmed that the realtor, Cornelius, who had appeared before the Committee previously, was "now satisfied" the rule was acceptable. Royce explained that Cornelius was concerned that he would need a special license to sell vehicles 8 feet and under and was hopeful the law could be changed. General discussion of the matter. No Committee action.

In the matter of 7.2(4), Oppel advised Tieden he was not aware of opposition to the subrule.

In re chapter 8, travel trailers, Oppel commented the same general format was used in drafting as in chapter 7.

TRANSPORTATION Cont'd

07D, 10.8 was acceptable as filed.

11.7

Tieden asked if every county treasurer had the list of necessary information on foreign cars; Oppel replied in the affirmative and said rules would implement SF 204 [68GA].

07F, ch 7

Bakke explained that 07F, ch 7, covering interstate motor vehicle fuel permits was necessitated as a result of legislation transferring this function from the Department of Revenue to the Department of Transportation. In answer to Schroeder, Bakke replied $5 covers administrative cost for a permanent permit, and processing costs of $12 for a single trip permit across the state are in lieu of the tax.

Discussion of 7.4(15) and 7.5(4) with respect to errors in taxes collected and audit of records.

HEALTH DEPARTMENT

Present for discussion of the following were Robert D. Leggett, Director of Mobile Home Park Licensing, and Kenneth Choquette, General Health Services Division; Peter Fox, Hearing Officer.

Mobile home parks, ch 71 ARC 0926 ....F.....3/19/80
Medical examiners, address change, 135.4, 135.10(5), 135.301(4), 135.501(5), 135.506, Filed without notice ARC 0916....3/5/80

In answer to Schroeder, Choquette said Representative Kenneth Miller had not contacted them in the last two months. Royce commented he had given Miller a copy of the proposed rules. Choquette explained major changes which had been made since the Notice. In making changes, they had worked closely with the mobile housing institute and one of the major items was the co-ordination between DEQ and Health on water supplies.

Choquette, in response to Schroeder, said the distance between accessory sheds in mobile home parks had been an important issue, and a change allowed more flexibility to the owner.

71.12(1)

In re 71.12(1), Schroeder did not recall the statute provided this structure to be at least ten feet from any doorway. Schroeder pointed out potential problems and preferred a lesser distance. He suggested possible elimination of specific footage and rewriting the rule to prohibit "blocking of any doors". Choquette agreed to check with the fire marshal who had input in the rule as they wanted to ensure no doorway would be blocked.

HEALTH
Cont'd

Choquette advised the Committee that park owners have received at least 3 or 4 mailings regarding the issue. Leggett said the ten feet had been picked up out of conversation with the fire marhsal's office.

At Schroeder's request, Royce agreed to work with the Department to draft an amendment to the rule, which was to become effective June 1, 1980. Barry suggested the amendment could be filed without notice, to become effective June 1, also.

Oakley could forsee a serious problem of enforcement because of the nature of the criminal penalty, which should be addressed by the legislature. He continued that local boards of health are charged with the enforcement, and a civil penalty would be more realistic. He recommended a policy letter from the ARRC to be more lenient until the law could be changed. Schroeder asked Royce to pursue the issue and prepare a draft by Wednesday.

SOCIAL SERVICES

Judith Welp, Policy, Research and Analysis, John Walton, Adult Corrections, Cris Perkins, Children's Services, Broxanne Keigley, Adult Corrections, Harold Poore, Children's Services and Kathy Grovenburg, Planning were present for review of Social Services rules.

Penitentiary, visits, mail, 17.2(5), 17.4 ARC 0938 ..N.....3/19/80
Men's reformatory, visits, mail, 18.2, 18.4 ARC 0939 .N.....3/19/80
Women's reformatory, visits, mail, 19.2(8), 19.4 ARC 0940 N.....3/19/80
Security medical facility, visits, mail, 20.2(3), 20.4 ARC 0941 N.....3/19/80
Riverview release center, vistis, mail, 21.2(8), 21.5 ARC 0942 .N.....3/19/80
Mt. Pleasant facility, visits, mail, 22.2(1), 22.4 ARC 0943 ...N.....3/19/80
Community-based corrections, 25.1(2, 6, 8, 13), 25.2(7), 25.3(1-3), 25.4(2, 9, 13, 15), 25.5(2), 25.6(2) .4/2/80
Food stamp program, 65.8 ARC 0924 .N.....3/5/80
Countable income, persons in medical institutions, 75.5, ARC 0441 terminated ARC 0913 N.....3/5/80
Intermediate care facilities, payment procedures, 81.10(5) ARC 0968. N.....4/2/80
County and multicounty juvenile detention and shelter care homes, 105.1(6), 105.20, 105.21 ARC 0962.4/2/80
Eligibility for services, 130.3(3)"r" ARC 0963 .....N.....4/2/80
Child day care, 132.1(7, 8), 132.4(3), 132.5 to 132.8 ARC 0915 .N.....3/5/80
Children in need of assistance, 141.5(4) ARC 0944 N.....3/19/80
Domestic abuse, 160.1(5), 160.10 ARC 0945 ...N.....3/19/80
Intermediate care facilities, 81.13(3)"j" ARC 0914 ..F.....3/5/80

Of main concern to Committee members was "strip search" of visitors at correctional institutions. According to Keigley, 3 or 4 strip searches, documented, occur weekly. In re 17.4(6), Schroeder questioned the advisability of requiring inmates to bear the expense of returning unauthorized materials. He suggested holding these items for 30 days and then, destroying them. Keigley thought, in practice, the inmates would have the option of asking for disposal. There was general discussion of the rule pertaining to items which may be received by inmates, in particular, disposable

SOCIAL SERVICES
Continued

razors. Committee members could see a potential for graft in 17.4(6)d, requiring money drafts or money orders to be made payable to the warden. Discussion of the fact that some allowable items at Fort Madison or Anamosa were excluded in the rules for Rockwell City. Welp agreed to investigate the method by which inmates receive money.

Keigley agreed to check other rules on the subject. Schroeder thought it should be acceptable for inmates to receive cash and preferred it be stated that, although cash is not recommended, variance may be allowed on a case-by-case basis. Clark thought a receipt would be appropriate. Keigley commented weapons or drugs would be considered contraband and would be confiscated.

Clark pointed to existing language in 17.2(5) providing for criminal charges for smuggling contraband items and noted 19.2(8) should contain similar language. Welp thought it was included elsewhere in the chapter but agreed to check.

Ch 25 amendments — Welp said amendments to chapter 25 were intended to update Code references, place two more restrictions on the funding, clarify grievance procedure and provide recommendations on community resources when requested by the court.

25.4(15) — Clark and Tieden raised question in 25.4(15)--fiscal procedures. Walton advised that funds are appropriated, but most are derived from client fees, not from investment funds. Walton added funds are obtained on a quarterly basis.

81.10(5) — In answer to Tieden, Welp agreed the rule had been somewhat controversial and said they were paying 80% reimbursement for those empty beds.

ch 105 — According to Welp, chapter 105 would add another level of care--family shelter homes--with same standards as those for foster family homes, except less stringent as to recordkeeping and extensive medical exams.

65.8 — Welp stated federal regulation requires yearly updating of the standard allowance for utilities. Schroeder requested percentage increases and he was also interested in knowing of any problems with the program.

75.5 — Welp reported that proposed 75.5, dealing with countable income of persons in medical institutions, was being terminated. The rule was based on the Herwig case.

SOCIAL SERVICES Cont'd

The higher court upheld deeming of income but also held that social security, railroad retirement and civil service benefits could be counted as income. The department intends to file an emergency rule to reflect this.

130.3(3)

Subrule 130.3(3) was acceptable.

ch 132

Discussion of amendments on child care services. It was noted clarifying legislation was pending. Some members were still opposed to exclusion of graduate students from assistance and the eligibility requirement that parents be employed 30 or more hours per week. Welp said that 30 hours would be basically acceptable as full-time employment. Oakley reiterated his continued opposition to the disqualification of graduate students.

Clark asked for clarification of 141.5(4). Welp had basically repeated the statute but agreed to rewrite the language.

ch 160

Rules 160.1(5) and 160.10 state the purpose of the domestic abuse registry and set out reporting and access procedures and provide for expungement of information by court order.

169.10(1)a

Clark recommended "visible evidence of abuse" in lieu of "evidence of visible abuse" in 169.10(1)a.

Recess

Schroeder recessed the Committee at 9:15 a.m.

Reconvened

Reconvened at 9:30 a.m.

CREDIT UNION DEPARTMENT

Present for discussion of chapter 5 were Betty Minor, Director, Credit Union Department; David Butler, Iowa Bankers Association; and Gary Plank, John Sullivan, Iowa Credit Union League.

Small employee groups, ch 5 ARC 0921.....3/5/80

Butler spoke in opposition to the rule. He declared, "If you look at the structure of our Code for employment-based credit unions, the basic general rule is 'credit union', face-to-face, interaction, controlling your own financial destiny with people like yourselves." He continued the rules would "automatically send 55% of Iowa's employees to another kind of financial institution--a sort of co-operative bank, where there is no face-to-face interaction." Only 33% would come under the statutory norm. Iowa Bankers contend the rules exceed the department's authority and Butler urged the ARRC to place an objection on the rules.

CREDIT UNION
Continued
ch 5

Clark disagreed with Butler's interpretation and took the position the Department was within the framework of the law.

Gary Plank, Credit Union League, pointed out that those "norms" were adopted some 15 years ago, as a group too small to support a credit union. General discussion as to possibly deferring final action until all of the Committee was present. Royce reminded the Committee that the rules would become effective Wednesday, April 9, 1980. Oakley stated he had no problems with the rules.

Holden expressed concern that "two" employees could be considered as a group. There was discussion of possible 70-day delay on the rules. Oakley commented, as a matter of policy, the executive branch had made a concerted effort to consider all of the questions which had been raised during the several months the rules have been pending.

Betty Minor, Administrator, spoke in defense of the rule. She pointed out that the "numbers game had been played for ten months." Of the applications on file in the office, Minor said that most applications fall within the category of 5.1(1) and average 80 to 90 employees. She maintained the 55% figure referred to by Butler was unrealistic, and reminded the Committee that Credit Union members of Iowa had waited 5 years to have a workable set of small employee group rules. Schroeder called for Committee recommendation. None was offered.

PHARMACY EXAMINERS

Present for discussion were Susan Lutz, Chairman, Board of Pharmacy, Norman Johnson, Executive Secretary, Board of Pharmacy; R. B. Throckmorton, representing four clinics; and James B. West, representing the Iowa Medical Society.

PHARMACY EXAMINERS[620]
Unethical conduct or practice, 6.5 ARC 0927...F..... 3/19/80

Lutz gave a brief overview of the filed rules on unethical conduct. She commented that the rules had been reviewed by the attorney general's office and mentioned a memorandum from Nancy Powers of that office. [Full text of the memo as well as a statement prepared by the Medical Society on file with the Minutes of this meeting.] Lutz said the rules had been through the public hearing process and she recommended approval. She emphasized the Board was not attempting to regulate the practice of medicine.

BOARD OF PHARMACY EXAMINERS Cont'd

In answer to Schroeder, Lutz stated a private hospital that had doctors on the board would not be permitted to operate a pharmacy within its confines.

Oakley, in discussing the perspective of the rule, saw it as an example of two licensed professions exploring their areas of regulation which was a difficult issue. He discussed briefly the legal briefs on the matter. He thought a "policy question was if it is recognized and assumed there are opportunities for self-dealing and inappropriate conduct, so far as medical doctors or prescribers of the drugs are concerned, to benefit financially from that in a sense they would have leverage on the pharmacist." Oakley continued whether or not that should be regulated through ethical consideration by the Board of Pharmacy, case by case basis requires co-operation between the Board of Medical Examiners and Pharmacy Examiners, and the availability of records. He was convinced there was a potential problem.

Chairman Schroeder asked for a show of hands from people who wished to comment and seven responded. However Holden pointed out it was time for the general assembly to convene. He wondered about the impetus for 6.5(3). Schroeder suggested each interested person take a minute for presentation.

Lutz informed the Committee that 7 clinics exist which would be affected, and in terms of ownership, the Pharmacy Board wanted them separate.

Lutz opined the Board was concerned about the public and there should be no hint of coercion.

Oakley stressed the rule deals with the question of undue influence and 6.5(3)d does not preclude ownership or having an interest in a pharmacy--he recommended approval of the rules. He commented, however, the governor would need to review them.

Schroeder thought the language to be "all inclusive".

West stated there was simply no way the arguments on the rule could be presented in one minute and asked if discussion of the rule could be deferred. Schroeder asked for the wishes of the Committee and members indicated they would prefer time to read information available. Throckmorton concurred with West's request.

Defer 6.5

Schroeder asked and received unanimous consent to defer the matter until Wednesday, April 16 at 7:30 a.m.

Recess

The Committee was recessed until Wednesday, April 9, 1980, Legislative Dining Room.

Reconvened

The Administrative Rules Review Committee reconvened Wednesday morning, April 9, 1980, in the Legislative Dining Room, Statehouse, Des Moines, Iowa. Members present were: Representative Laverne W. Schroeder, Chairman, Senator Berl Priebe, Vice Chairman, and Senators Edgar H. Holden and Dale E. Tieden; Representative Betty J. Clark and John E. Patchett. Also present: Joseph Royce, Staff, and Brice Oakley, Administrative Rules Co-ordinator.

CIVIL RIGHTS

Present for discussion of Civil Rights Commission rules were Artis Reis, Director, Rachael Evans, Chairperson, Evelyn Villines, Vice Chairperson, Ed Detlie, Hearing Officer; Tait Cummins and Annette Piper, Commission members; Louis Martin, Marvin Turman and several other staff members. Also present were David Henry, Vice President, Iowa State University; Roger Maxwell, Board of Regents; Wendell Halvorson, Iowa Association of Independent Colleges and Universities; Ione Dilley, Iowa Association of Christian Schools; Don Hauser, Vice President, Kathleen Reimer, legal counsel, and Dennis Drake, Iowa Manufacturers Association.

The following rules were reviewed:

CIVIL RIGHTS COMMISSION[240]
Public accommodation, discrimination, 6.2(6)"a"(2), 6.2(6)"b", 7.2 ARC 0932 *F* 3/19/80
Discrimination in schools, ch 8 ARC 0933 *F* 3/19/80

Reis introduced Commission members and advised the Committee that the concept of "reasonable accommodation" for handicapped persons is not new--employers, since 1975, have been required by rule to make reasonable accommodation, unless they can demonstrate the accommodation would create undue hardship on the operation of their program.

She gave a brief outline of the rules and reasons for their promulgation--to clarify how and when employers are to make reasonable accommodations for employees and applicants. The Commission was aware that employment of the handicapped continued to be a problem. Reis distributed a paper outlining sequence of events and what the Commission had done in the past with regard to rulemaking. She pointed out that recommended changes pertain to two areas--more specific factors such as overall size of the employer's program, type of operation, cost, etc. Amendments published in April 1979 had been objected to by the ARRC in July 1979. The rules were republished in the same form as those objected to last July; public hearings were held, additional comments were received; after consideration of the comments, the Commission adopted amendments relating to reasonable accommodation at their February 1980 meeting. [See Minutes, July and September, 1979, for detailed statements].

CIVIL RIGHTS COMMISSION

Reis continued that critcism centers around two areas: 1. Cost to the employers; 2. Whether an employer's economic condition should be considered. Provisions in the rules include job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices--to be determined by the employer. The Iowa Civil Rights Commission does not intend that the rules require complete restructuring of a business or a government operation, or that two persons be hired to do one job. Reis cited 601A.6 and 601A.18, The Code, as authority to promulgate the rules. She noted that 601A.18 mandates broad construction. In their opinion, the statute need not include reasonable accommodation to grant them authority to promulgate these rules--implied authority was sufficient according to the rules which implement federal §504 to minimize confusion.

In answer to Royce, Reis indicated the Commission had not had a case in which they determined whether the de minimus standard would be applied; cases which discuss religion seem to apply that standard. The Commission would look at the facts of a particular situation. Reis stressed that the ICRC was not listing specific instances for employers--the employer determines the feasibility. Turman commented that many times, innovative thought and well-placed fabrication or adaptations succeed.

Schroeder envisioned each case needing to go before the Commission for a "judgment call". Villines noted that would be so if someone were to file a complaint. She reminded the Committee it was a congressional mandate.

Discussion centered upon placement of the handicapped and possible backlog of people the Commission had been unable to place. Since "reasonable accommodation" had been required since 1975, it was Reis' opinion the rule modification should not create increased costs.

In response to Holden, Detlie explained a few employers had co-operated with the Commission as they had seen the profitability. Whenever the Commission had tried to "break open new turf", it had been difficult! Detlie said there are probably between 300 or 400 persons prepared for placement. In answer to Holden and Tieden, Detlie said figures were not available as to numbers of persons not placed because of lack of employer co-operation.

Reis pointed out federal regulations cover employers receiving federal funds or federal contractors only.

CIVIL RIGHTS
Cont'd

The Commission's rules are all encompassing.

Hauser, IMA, introduced Reimer and Drake. Hauser stated IMA had presented a number of timely comments to the Commission and the Committee. Reimer reiterated the position of the Iowa Manufacturer's Association. As in the past, they asked the Committee to review the rules to determine whether they were within the statutory authority of the Commission. She presented Committee members with a copy of comments by IMA and reminded them that the Iowa Supreme Court had acknowledged that rules of any agency have the force and effect of law. With respect to job description, she raised the point that a collective bargaining agreement would be difficult to renegotiate. She continued IMA had asked the Commission for the basis for statutory authority for the rule and had no response. They interpreted the Code sections dealing with employment of the handicapped to require the employer to treat the handicapped as any other employee rather than show special preference. Reimer reiterated their opinion that the rule exceeds the statutory authority.

Royce posed this question: "The Civil Rights Commission does establish a protective class for disabled persons, but within that definition of disability it said 'a condition of a person which constitutes a substantial handicap, but is unrelated to such person's ability to engage in a particular occupation'. If the handicap is supposed to be unrelated to their ability to participate, how then do you justify a reasonable accommodation?"

Detlie advised the Committee that the Commission, at their next meeting, would hear a case which might clarify that question. He has proposed to the Commission the fact that the employer (in the case) was not guilty of discrimination based on the individual's disability--he held that was basically part of the defense if someone could establish the employer was able to employ those disabled if they were able to perform their job regardless of the workplace. He agreed the rule was unclear but was gleaned from the federal version.

Martin thought that definition applied to the occupation as opposed to the task at a particular job site. There was general discussion.

7:50 a.m. Patchett arrived.

CIVIL RIGHTS
Cont'd

Detlie called attention to a Supreme Court case wherein the court ruled a collective bargaining agreement would not take precedence over the civil rights of the citizens of Iowa--that was also true in public employment. He added that section 20.28, The Code, states if a law is inconsistent with a collective bargaining agreement, the law would supersede the bargaining agreement. He hoped that section of the Code would stand in matters pertaining to civil rights and collective bargaining.

Reimer opined that Detlie was making reference to the pregnancy area, which was specifically litigated. Job descriptions, in a collective bargaining agreement, are not illegal on their face. Discussion of the history and possible conflict of the two identical amendments to 6.2(6) and the effect of the objection placed by the Committee on the first filing, [Published IAB 7/25/79] and whether or not it would carry over to the second filing without further action.

Oakley asked if IMA continued to hold their position that the Commission must express authority to adopt rules concerning "reasonable accommodation". Reimer cited a Supreme Court decision holding it is necessary to look at statutory authority to determine if a rule is within its purview.

Holden requested clarification from Royce on the point which had been made that there could be a conflict, assuming ARRC took no action on the rules before them today.

Royce responded that, in his estimation, if the Committee is so inclined to object to a particular set of rules, but does not, the old objection on the other set of rules, even though language is identical, will still lapse. He maintained that an objection attached to a specific rule promulgated at a specific point in time, is one of the reasons each page of the Iowa Administrative Bulletin and IAC is dated. Since the rule before the Committee today was promulgated at a different time and an objection is not also moved against it, the old objection will simply lapse, by virtue of the process alone. Priebe questioned Royce's explanation because the rules were almost identical. Royce continued an objection is the Committee's opinion as to the legality or propriety of the rule. There is nothing to say that time alone could not change position of the Committee. General discussion of the proper

CIVIL RIGHTS COMMISSION Cont'd

procedure to follow, with Priebe contending the old objection would stand. Clark noted that amendments still did not address some of the other Committee concerns. She pointed to language in 7.2(3) as being too broad; also, 6.2(6)b(1), referring to size of budget to determine whether or not compliance would be a hardship on the employer. According to Clark, it should be profit margin, not the size of the budget. Tieden concurred the budget should not be a consideration. Clark voiced opposition to 7.2(5) as well. However, she wanted to make it clear that the Committee was not opposed to helping the handicapped.

Oakley stated that the governor, in the summer of 1979, asked the CRC to rescind chapters 6, 7 and 8, for a variety of reasons, in order to renotice the subject matter. The Commission complied with the request with regard to chapters 7 and 8. The Commission, however, chose not to change objectionable portion of chapter 6.

Oakley discussed the legal question surrounding the civil rights rulemaking process; "Can the governor veto, is there anything to veto, can the Committee object to--is there anything to object to, how does it affect the filing of summer, 1979?" Oakley continued he entertained the notion of recommending that the governor rescind the latest filing, not to affect the substance of the rule, but to eliminate the cloud that hangs over it. The perception in doing that may very well be reported by the media that the governor opposed the rule--the substance of it--which would not necessarily be the case.

Reis stated the position of the CRC to be that the rules are currently in effect, but under objection by the ARRC. The existing rules were not rescinded, but were renoticed in identical form so the Commission could take additional arguments and again consider the concept. The Commission was hopeful the Committee would not object to the current rules and that the "cloud" might be lifted. They saw no need for two sets of rules in effect on similar topics--one or the other could be rescinded. However, Reis said it was her position that the Commission could have two effective filings on the same subject. Schroeder said that would put the Committee in an "awkward position".

OBJECTION, Ch 6 amendments

Clark thought some action should be taken and she moved an objection to amendments in chapter 6. There was general agreement that the existing objection could be repeated with some modification. Motion carried unanimously.

Vote

CIVIL RIGHTS COMMISSION
Cont'd
Objection, ch 6
6.2(6)a(2)
6.2(6)b(1)

[The following language was prepared by Royce and was published in IAC 4/30/80].

The Committee objects to ARC 0932, items 1 and 2, appearing in II IAB 19 (3-19-80), subparagraph 6.2(6)a(2) and subparagraph 6.2(6)b(1), relating to reasonable accommodation, on the grounds the provisions are beyond the authority of the Commission.

Subrule 6.2(6) requires that employers make "reasonable accommodation to the physical or mental handicaps of an applicant, unless it can be shown to be an "undue hardship". The above cited paragraph provides that reasonable accommodation may include:

> Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

It is the opinion of the Committee this definition of reasonable accommodation far exceeds that which may be fairly imputed from section 601A.6(1)a, which in part declares it to be unfair discrimination to:

> "...refuse to hire...any applicant for employment... because of....disability of such applicant or employee, unless based upon the nature of the occupation. If a disabled person is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis of exception to the unfair or discriminating practices prohibited by this subsection."

For the purposes of the above paragraph, section 601A.2(11) defines disability as:

> "...the physical or mental condition of a person which constitutes a substantial handicap, but is unrelated to such person's ability to engage in a particular occupation."

In reading these two sections together and giving effect to each, it appears that the Civil Rights Act prohibits employment discriminiation on the grounds of disability only if either of the following criteria is met; 1) the handicap is not related to that particular occupation, or 2) the applicant is qualified by training or experience to perform that occupation, even if the handicap does relate to the occupation.

The General Assembly clearly has the authority to ban any or all discrimination against disabled persons, or to require employers to make the type of "reasonable accommodation" mandated by subparagraph 6.2(6)a(2). However, the statute does neither. Instead, the criteria listed in the above paragraph are established to prohibit discrimination only against a "qualified" disabled applicant. The statute is designed to benefit the handicapped individual who has managed to overcome his or her disability. To mandate this type of reasonable accommodation would, in the case of more affluent employers, require that the handicap be ignored, and require these employers to overcome the handicap for the applicant. If employers are to make this type of reasonable accommodation, the General Assembly should so provide by law, or specifically authorize the Civil Rights Commission to make rules on the subject. To proceed otherwise implies that an administrative agency may interpret a broadly worded statute to mean whatever the agency chooses, and reduces the statute itself to a mere tool for the transferring of lawmaking power to administrative agencies.

CIVIL RIGHTS COMMISSION
Cont'd
Objection
Ch 6

The Committee also objects to suparagraph 6.2(6)b(1) on the grounds it is unreasonable. The subparagraph provides that the nature of the business and its budget will be factors used to determine if reasonable accommodation must be imposed. If reasonable accommodation is to be required at all, it should be a burden placed on all Iowa businesses. Under this subrule, its application will vary depending on the type of business from which the disabled applicant seeks employment. If reasonable accommodation is to be mandated at all, the burden should be equally imposed upon all employers, without singling out any specific groups to be exempt from the burden imposed.

Priebe thought it important for the Committee to offer suggestions for overcoming the objection. Schroeder noted the previous minutes of the Committee would reflect this.

Ch 7

Discussion moved to chapter 7. Changes from Notice included elimination of definition of "public accommodation". Patchett asked if chapter 7 rules were consistent with federal requirements. Reis responded reasonable accommodation rules were consistent with §504.

Maxwell reported that Regents objections remain the same as indicated at previous meetings. A controversial area has been whether the public accommodation law would apply to colleges and universities. Legislation has been recommended to specifically classify them as "public accommodations".

In answer to Patchett, Henry said they do not maintain any view that private colleges and universities should be treated differently from the state universities. Henry contended the Commission had not taken the definition of "public accommodation" from the federal law--but the definition for "school". He emphasized the university does not offer its services to the general public.

In the discussion, Reis advised Henry that civil rights rules address discrimination on mental disability rather than on mentally retarded.

Ch 8

Maxwell discussed the frustration of several complaints being filed against an institution on the same issue.

Dilley, Iowa Association of Christian Schools, speaking for that association and the nonpublic schools, expressed their opposition to chapter 8 as constituting burdens which were "intolerable". She urged Committee objection on the basis the rules were legislating--the definition of "eduction institution" in 601A.9 did not include private religious schools, she argued. Discussion of lack of definition for mental disability and legislative

CIVIL RIGHTS COMMISSION Cont'd

intent with respect to §601A.9.

Halvorson, Iowa Association of Independent Colleges and Universities, indicated they had voted to join Drake University in expressing their opinion about the rule in urging an appraisal and appropriate limitation of powers.

Patchett, who had chaired the interim committee that developed amendments to 601A.9, was of the opinion legislative intent was to emphasize prohibition of sex discrimination in schools [mini Title IX], largely directed at K thru 12. He thought that was apart from the issue whether or not Regents and private institutions were included in the definition of "public accommodation". Patchett was unconviced that any school, for other than religious reasons, would be exempt from the definition and he was more concerned about inconsistencies between the state and federal. He preferred that those areas be cleared up during the 70-day delay.

In response to Tieden as to why Regents institutions were not included in §601A.9, Patchett said the institutions convinced legislators that it was not necessary because they were already adequately covered.

Holden suggested the record show the Iowa Catholic Conference had communicated with the Committee to voice opposition to the rule, but were unable to be present today.

Motion Inconsistencies

Patchett reiterated inconsistencies were of major concern and he moved that ICRC, Regents and federal officials address this issue. Motion carried viva voce.

Delay, ch 8 Motion

Clark reasoned if the definition of "school" in 8.3(4) includes public and private institutions, then there are problems. She thought a definition of "mental disability" was necessary. She moved a 70-day delay on chapter 8. Discussion followed.

Oakley commented discrimination in education was the most invidious kind. He opposed an interpretation that higher instituions were in someway immune. In his opinion, the obligation rested squarely on the legislature to take up that issue. He discussed the effect of a 70-day delay and pointed out the governor would have to exercise his prerogative re the rules by April 23, without Committee direction. He could see no advantage to delay.

CIVIL RIGHTS COMMISSION Cont'd Ch 8

In answer to Royce, Reis said the rules provide specificity as to what the Iowa Public Accommodation law means to schools. She added the ICRC can enforce Iowa law only. Reis contended Iowa law afforded some protection not covered under the federal laws and Schroeder requested Reis to prepare a list of those items for the Committee. She was amenable.

Clark motion to delay withdrawn -- Objection motion

Discussion returned to the Clark motion and she asked unanimous consent to withdraw her motion to delay ch 8 and moved to place an objection to that chapter.

Priebe indicated a preference to defer voting on the Clark motion to object until Wednesday, April 16.

Patchett reiterated preference for the 70-day delay for study. At the end of 70 days, the Committee could place an objection or the 45-day delay into the next General Assembly and perhaps force legislative action.

Oakley referred to the "substantial study" and detailed report for which the Committee contracted. [Denise Lange] to prepare. He could not conceive, with study results and Royce analysis, what more could be done, unless the Commission wanted to reconsider their position. Oakley thought the Committee had some responsibility after the amount of time the matter had been considered. Holden thought a delay would be more effective than would an objection.

Substitute Motion ch 8

Discussion as to whether or not to place a 70-day or 45-day delay and Priebe moved, as a substitute to the Clark motion to object, to defer Committee action until April 16. Motion carried.

Recess

Schroeder recessed the Committee until Thursday, April 10, 1980, 7:00 a.m.

Reconvened

The recessed meeting of the Administrative Rules Review Committee reconvened Thursday morning, 7:00 a.m., April 10, 1980, in the Legislative Dining Room. All members were present. Patchett arrived 7:50 a.m. Also present: Royce, staff.

CONSERVATION COMMISSION

Al Farris was present for review of filed ch 105, ARC0964, 4/2/80 IAB. Farris said 105.3(3) of the migratory game bird regulation was controversial in that restriction to steel shot use was mandated in certain parts of Iowa. Farris restated his original comments against the advisability of using lead shot and the preference for steel shot. He exhibited photographs of masses of dead mallards. Death was attributed to lead poisoning. He urged acceptance of the rule by the Administrative Rules Review Committee.

Also present for review discussion was Les Licklider, Executive Secretary, Isaac Walton League.

Schroeder commented the Committee was sympathetic with the position of the Commission but thought it advisable to delay the rules to await legislative action on the numerous amendments relating to steel shot being considered in the General Assembly. It was noted that the legislature may request a two-year moratorium.

Royce discussed a map showing the areas dealing with steel shot use or prohibition. Farris said the federal government would probably require steel shot along the flyway on the Mississippi River.

Tieden reiterated his concern for availability of steel shot for Iowa's hunters. He had checked with Winchester and Remington and was advised steel shot was not on their order list.

Farris said those two companies had not indicated they would make steel shot. However, Federal Cartridge Corp. began making it in November. Tieden wanted assurance that if the rule were implemented, people in his area would have the steel shot available.

Clark thought if the laws were changed to require it, supply would meet the demand for steel shot. She had heard from gun clubs, conservation-concerned clubs, etc. who support the steel shot rule. She pointed out the omission of "Iowa" before "water" in line 1 of 105.3(3). Also, 105.3(7) needed clarification. Farris agreed to check the subrules. General discussion of severity of lead poisoning in birds, with Farris stating there is a possibility that lead could affect the reproductive system of birds that ingest it.

CONSERVATION COMMISSION Cont'd

Tieden was interested in knowing whether pesticides in the water could also be a contributing factor. In answer to Priebe, Farris opined the issue of lead shot was not limited to duck population. Farris reminded the Committee that progressively, use of lead in gas and the environment is being outlawed because it pollutes. To him, lead in waterfowl was the same sort of issue.

Farris disagreed with Priebe's comment that more crippling of birds results with steel shot. Farris declared, "As conservationists, we have an obligation to ban use of a known pollutant in the environment."

Licklider spoke in support of steel shot use as good conservation practice.

Responding to Clark with regard to ramifications of birds or animals eating ducks with lead poisoning, Farris said there were known cases of bald eagles eating waterfowl with lead poisoning.

ch 105 deferred

Schroeder asked and received unanimous consent to defer ch 105 until Wednesday, April 16, 1980, 7:00 a.m.

BOARD OF REGENTS

Present for discussion of the following were: Elizabeth Stanley, representing the Board; Robert Ferguson, Building and Campus Services, Dick Seagrave, Chairman, University Traffic Committee, and John Herrod, Physical Plant and Campus Services, all from Iowa State University.

REGENTS, BOARD OF[720]
Iowa state university, 4.30(9), 4.34(5), 4.36(3), 4.38(8), 4.41(3), 4.42(2), 4.45(1, 2) ARC 0931 ..IV. 3/19/80

Seagrave discussed housekeeping amendments to correct minor inconsistencies pertaining to registering and identifying all types of vehicles on campus.

In answer to Schroeder, Seagrave said no changes were made on fees and fines. Seagrave commented the whole enforcement system relies heavily on registration, which is convenient and easy. Failure to display permit generates a cost. Tieden asked if the student unrest had been resolved with input--Seagrave replied in the affirmative.

No recommendations were offered.

WATCHMAKING EXAMINERS

James R. Van Denover, Chairman of the Board, Dee DeKock, Executive Secretary, and Irv Palm, watchmaker, were present for review of the following:

WATCHMAKING EXAMINERS Cont'd

1.2(4) In re 1.2(4), Royce called attention to the fact that the Committee, usually, preferred the majority of the entire board be present in order to take action. Van Denover was amenable.

Clark suggested that use of "said" or "such" be avoided.

1.6 In 1.6, Clark questioned use of "except as otherwise provided by statute" and preferred "as provided below" and called attention to typographical errors.
In 3.4(5), Holden suggested substituting "it" for "the same as hereinafter provided".

Clark recommended the following changes: 3.5(1), strike "therefor" and in 3.5(3), "provided for herein"; 4.1(1), strike "of continuing education"; 4.2(2), strike "aforementioned"; 4.6, strike "for hearing" 7th line; 5.4(4) change "imply" to "employ"; 5.7(3) change "five-sevenths vote" to "five votes"; 5.9, remove "aforementioned".

Priebe preferred four votes--a simple majority. Board members were amenable.

Holden assumed the chair.

2.1(1) Re 2.1(1), good moral character affidavit from two reputable persons, Holden reminded Board members that the affidavit required in 2.1(1), they may not be watchmakers, and reference should be made to the fact that the statute prohibits it.

3.1(1) Holden discussed definition of watchmaker in 3.1(1) and asked if it implied their work would be limited to mechanical watches. Palm advised Holden it was doubtful a nonwatchmaker would have technology and equipment to work on mechancial watches.

Priebe suggested striking "mechanical" from the rule. Royce said the statute was very specific and the rule followed statutory language. General agreement that the statute might need changing. There was general discussion as to whether watchmakers should be licensed.

Schroeder in the chair.

3.5(1)(3) Holden questioned whether the Board, in 3.5(1), 3.5(3), could prevent an individual from becoming a licensed apprentice. Holden thought the discretion should be with the watchmaker apprenticing the individual, not the Board.

WATCHMAKING EXAMINERS

Holden could forsee a conflict between 4.2 and 4.3 re continuing education requirements. Palm was amenable to revision, explaining the rule was written bearing in mind handicapped with hearing problems who would need to read and study individually. Holden thought 8 hours per year would be insufficient.

In answer to Holden's question as to how long it had been since a license had been revoked, Palm recalled one case in Mason City in 1947. Holden made the point that most licensed professions do not make suspensions or revocations. Royce complimented the Board on recognizing that the continuing education law does permit home study.

Clark expressed appreciation for the fact that the board had drafting a more comprehensive set of rules than existing ones.

LANDSCAPE ARCHITECTURAL EXAMINERS BOARD

John M. Roberts, Vice Chairman of the Board, and Jack E. Leaman, Board member, were present for review of filed 2.4(1), 2.10, ARC 0970, 4/2/80 IAB.

Holden challenged 2.4(1)--landscape architect-in-training--as exceeding the statute. Leaman indicated they were relying on an opinion from former attorney general assistant Elizabeth Nolan. It was their intent to establish a program similar to those of other designing professions, e.g. engineering. Schroeder thought the opinion addressed the fact the test could be taken in stages. After checking the Code, Royce doubted that engineers have that authority either.

Objection 2.4(1)

Holden moved to object to 2.4(1) as being beyond the statute. Motion carried. Patchett not voting. The substance of the objection prepared by Royce follows:

> The Committee objects to subrule 2.4(1) which provides for registration as an architect in training, on the grounds it exceeds the statutory power of the board. The subrule appears as part of ARC 0970 in II IAB 20 (4-2-80). Section 118A.9, the Code, provides only for a registration as a landscape architect, while the subrule establishes a type of temporary registration. It is the opinion of the committee an agency may not create by rule that which is not authorized by statute.

REVENUE

Present for review of the following rules were Carl Castelda, Director, Mel Hickman, Acting Director, Exise Tax Division, Mike Cox, Property Tax Administrator, and Jenny Netcott, Confidential Secretary to the Director:

REVENUE DEPARTMENT[730]

Property tax credits and rent reimbursements to elderly and disabled, 73.2-73.5, 73.7-73.11, 73.13, 73.15, 73.17, 73.19, 73.20, 73.22 to 73.24, 73.26 to 73.28 ARC 0975 ..F.....4/2/80

Cigarette and tobacco taxes, chs 81 to 84 ARC 0976 ...F.....4/2/80

REVENUE DEPARTMENT Cont'd

REVENUE DEPARTMENT[730]
Examination of records, 6.3 ARC 0972 ...N.....4/2/80
Coins and other currency exchanged, 15.18 ARC 0952..N..... 3/19/80
Hotel and motel tax, 104.7 ARC 0973....N.....4/2/80
Assessors, continuing education, 124.6 ARC 0974..N.....4/2/80

Amendmendments to chapter 73 were acceptable as filed.

Chs. 81-84 Brief discussion of chapters 81 to 84. To Castelda's knowledge, the Iowa Tobacco Distributors and Manufacturers had no opposition to the adopted rules.

6.3 Castelda said the purpose of 6.3 was to meet statutory requirements in the area of disclosure of information. The Department would not release information unless authorized by statute.

104.7 Rule 104.7 was acceptable as filed.

124.6 Netcott reported that rule 124.6 had been well received by assessors. She said all the information was listed because of S.F. 221 mandate [67GA, ch 1150], and only courses listed qualify for continuing education.

REVENUE Rule 15.18 Discussion of proposed Rule 15.18 relating to taxes when coins and other currency are exchanged at greater than face value. Castelda explained the Department recognized a need for the rule two months ago when the price of silver skyrocketed and merchants began offering "gimmicks"--an example being, home furnishings for silver. They thought it was imperative to apprise merchants of sales and use tax "consequences."

Discussion of trading coins for furniture and Schroeder wondered how merchants' books could be audited after one of these "fiascoes". Castelda replied that it should be simple since detailed records are kept for income tax purposes.

Patchett questioned statutory authority for the rule and referred to §422.42(6)b, The Code, with respect to "gross receipts" and transactions in which tangible personal property is traded. He cited an example of trading $200 worth of tangible personal property for a $200 stereo where gross receipts would be zero and no sales tax would be paid.

Castelda stated that the Department learned from this kind of transaction--in the case of coins--the intent of the parties was not to trade coins for furniture but to "assign a higher than normal value to the currency.
In response to Priebe, he said if it were the intent of the parties that the transaction was a "trade" and not a "purchase", the Department would not require sales tax to be collected.

Patchett contended statutory revision was needed. Castelda emphasized the Department had researched the matter and the Attorney General's office had assisted in drafting the rule

REVENUE Cont'd

in reliance on the Code definition of "sale". Castelda reiterated that if parties agreed that a transaction was a trade rather than an increase in face value of the coins, there would be no sales tax.

Tieden reported it was his understanding that a Des Moines auto dealer has agreed to accept grain as payment for a pickup truck. The purchaser would pay sales tax on the difference between the value of the grain and the list price of the vehicle. Castelda pointed out that this particular type of transaction would not qualify as a "trade"--the farmer sells the grain to an elevator in his name and requests the operator to forward the check to the auto dealer.

Holden took the position there would not be a loss of tax since the person selling the grain would pay the tax. Other Committee members pointed out that, in most instances, grain is not subject to tax.

REVENUE

Castelda noted that the final product of grain is taxed, e. g., cereal.

Committee could forsee problems with this practice and Castelda assured them the Department was pursuing their study of the situation.

Discussion of problems with the rule in general.
Castelda said that when retailers contacted the Department concerning basis for the sales tax when coins were being used to purchase items, they were advised sales tax would be on the fair market value of the item sold.

Patchett thought it advisable to alert the Department that the Committee takes a dim view of the practice of "advising" prior to adoption of a rule.

Castelda reiterated the Department action was based on the statute and that it was their position they could not prohibit a retailer from using a "trade scheme."
He agreed to seek a formal opinion from the Attorney General on the matter prior to adoption of the rule.

ENVIRONMENTAL QUALITY

Odell McGhee, Hearing Officer, David Bach, Compliance Officer, and Keith Bridsen, Chief of Water Supply Section, were present for discussion of the following rules:

ENVIRONMENTAL QUALITY[400]

Water supplies, 22.1, 22.2(3), 22.3(2, 7), 22.4(4-7, 22.5(2), 22.12(7) ARC 0955 ..Y... 3/19/80
Beverage containers, labeling, 34.3(10) ARC 0954 ....Y..... 3/19/80

Ch 22 amendments

Bridsen addressed the Committee concerning amendments to chapter 22 which reflect changes made in federal law governing public water supplies. He explained two exceptions to the federal

ENVIRONMENTAL QUALITY Cont'd

provisions: (1) Application for a reduced monitoring requirement based on satisfactory results the first time around has been eliminated. (2) Specific monitoring requirements placed on the supply as a result of modifications in the treatment process were eliminated.

34.3(10)

Bach exhibited a Perrier water bottle to be used in "bottle-deposit" states only. Tieden questioned if the rule would cover other bottles containing noncarbonated beverages. It was noted Perrier water is carbonated and the law addressed this. Distributors of Perrier water had petitioned DEQ to authorize "return for deposit" in lieu of "Iowa Refund 5¢". According to Bach, DEQ took the position Perrier had a reasonable argument. Back asked for guidance from the Committee. He said the bottle could be declared as refillable and he added the word is not defined by statute or rule. Holden thought there should be some reference.

Priebe questioned 4th paragraph of 3.43(10) "...in any other state where beverage containers bearing the phrase 'Return for Deposit' are sold the deposit is same as Iowa" as to how this could be applicable in other states. Back pointed out minimum deposit was provided in the statute. Priebe could forsee problems if the amount was changed. Schroeder asked if DEQ would delete the questionable paragraph and Bach agreed to take it under advisement. Bach added the deletion of the objectionable language would force the bottle deposit on Perrier products to 10¢.

Holden posed the question as to how the Perrier bottle differed from a Coke or Pepsi bottle. Perrier could contend their product was in that category. Bach explained a county attorney had initiated action that Perrier had violated labeling requirements of the statute.

The Committee deliberated as to the proper procedure to follow with Bach suggesting that Perrier request a declaratory ruling that the bottle was refillable.

No Representative

Schroeder requested Committee members peruse the list of rules where no agency representative had been called and notify him if a member desired an agency appearance. He reported that DOT had sent written opposition to chapter 12 of Office of Planning and Programming rules pertaining to Governor's Highway Safety Office. Chairman Schroeder asked that the letter which he had received from DOT be sent to OPP with recommendation that the rules be revised accordingly. Schroeder asked that chapter 21, OPP, be placed on the April 16, 1980 agendum. Art Speas, Iowa Hospital Association, requested time to submit comments conerning Health rules 204.1 and .2 on Uniform Financial reporting--they had already sent them to the Health Dept. but wanted ARRC members to have copies. Royce agreed to distribute.

No Representative Cont'd

AGING, COMMISSION ON[20]
Elderly care program, 8.1(6)"a", 8.5(4), 8.6 to 8.13 ARC 0978, N - - - - ——— 4/2/80
also filed emergency ARC 0977 ..... N.F.E. 4/2/80

AGRICULTURE DEPARTMENT[30]
Pesticide applicators, certification renewal, 10.22(4) ARC 0946 ...N..... 3/19/80

COMMERCE COMMISSION[250]
Residential conservation service program ARC 0980 ..N..... 4/2/80

CONSERVATION COMMISSION[290]
Snowmobile registration revenues, ch 52 ARC 0898 .....N..... 3/5/80
Hunting seasons, rabbit and squirrel, ch 102 ARC 0899 ...N..... 3/5/80
Hunting seasons, pheasant, quail and partridges, ch 103 ARC 0900 .N..... 3/5/80
Seasons for taking certain fur-bearing animals, ch 104 ARC 0901.N..... 3/5/80
Deer hunting, ch 106 ARC 0902 ..N..... 3/5/80
Hunting seasons, waterfowl and coot, ch 107 ARC 0903 .N..... 3/5/80
Hunting seasons, snipe, rails, woodcock and grouse, ch 109 ARC 0904 .N..... 3/5/80

EMPLOYMENT SECURITY[370]
Records and reports, 2.8(2), 2.9(1), 2.18(3) ARC 0894 .F..... 3/5/80
Employer's contribution and charges, 3.1(1)"e", 3.1(20), 3.6(1)"h", 3.6(2), 3.8(8), 3.28(1-4), 3.32(1), 3.40(2, 4), 3.41(3), 3.43(4, 7-12, 14), 3.44(3), 3.54(2, 5, 6), 3.58, 3.59(2), 3.70(13), 3.71(4), 3.72(3, 6), 3.85 ARC 0895 F..... 3/5/80
Claims and benefits, 4.2(1)"h", 4.8(7), 4.22(4)"c", 4.24(16), 4.26(6, 18), 4.34(11) ARC 0896. F..... 3/5/80
Employer's contribution rate, 6.7(1)"a" ARC 0897 F..... 3/5/80

ENVIRONMENTAL QUALITY[400]
Air quality, odors, 1.1, 4.4, 4.5, 14.3, ARC 0707 terminated ARC 0956 .....N.F..... 3/19/80
Air quality, state-wide standards, 10.1 ARC 0971 .....N..... 4/2/80
Air quality, sulfur dioxide emission standards ARC 0981 N..... 4/2/80

HEALTH DEPARTMENT[470]
Uniform financial reporting, 204.1, 204.2 ARC 0965....N..... 4/2/80

INDUSTRIAL COMMISSION[500]
Contested cases, 4.2, 4.8, 4.17, 4.18, 4.23, 4.30 ARC 0951 ..N..... 3/19/80

INSURANCE DEPARTMENT[510]
Administrative hearings, ch 3; automobile cancellation and nonrenewal hearings, rescinds ch 22 ARC 0979...N.....4/2/80

IOWA DEVELOPMENT COMMISSION[520]
Speculative building loan Act, ch 4, ARC 0563 terminated ARC ~~0936~~ 0935..... 3/19/80
Rural community development Act, rescinds ch 3, filed emergency ARC 0937 ..... 3/19/80

IOWA DEVELOPMENT COMMISSION[520]
Speculative building loan Act, 4.3(16), 4.3(17) ARC 0936 F..... 3/19/80

LABOR, BUREAU OF[530]
Applications for variances, 5.7(2)"e", 5.8(2)"h" ARC 0918 .....N..... 3/5/80
Rules of practice, amendments to ch 5, filed emergency ARC 0920...N..F.E..... 3/5/80

MENTAL HEALTH ADVISORY COUNCIL[566]
Alternative diagnostic facility, ch 2, ARC 0721 terminated ARC 0959 ..... 3/19/80
Alternative diagnostic facility, ch 2 ARC 0928 .....N..... 3/19/80

MERIT EMPLOYMENT DEPARTMENT[570]
Work time and geographic list, 1.1(20), 1.1(48) ARC 0947....F..... 3/19/80
Classified service, 2.2(4) ARC 0948 .....F..... 3/19/80
Project appointment, 8.3 ARC 0982.....F..... 4/2/80
Probationary period of appointments, 9.1-9.6, 9.8-9.10 ARC 0949....F..... 3/19/80
Promotions, reassignments, transfers, 10.1(2-5), 10.2, 10.3, 10.4(1 and 2) ARC 0950 ..F..... 3/19/80

PUBLIC INSTRUCTION DEPARTMENT[670]
Itinerant teacher endorsements, 15.42, 15.43, filed emergency ARC 0929....F.E..... 3/19/80

TRANSPORTATION, DEPARTMENT OF[820]
Permits for vehicles, loads of excess size and weight, [07,F] 2.3(2)"g"(5), filed emergency after notice ARC 0908 .....3/5/80
Drivers' license, school permit, [07,C] 13.5(2)"b" ARC 0934 F..... 3/19/80
Drivers' license, [07,C] 13.5(3) to 13.5(9) ARC 0905 .....F..... 3/5/80

VOTER REGISTRATION COMMISSION[845]
Voter registration forms, 2.3(1)"a" ARC 0893 ....F..... 3/5/80

Recess The Committee recessed at 9:20 a.m. until 7:00 a.m. Wednesday, April 16, 1980.

RECONVENED

The Administrative Rules Review Committee reconvened Wednesday, April 16, 1980, 7:10 a.m. in Senate Committee Room 24, Statehouse, Des Moines, Iowa. Members present: Representative Laverne W. Schroeder, Chairman; Senator Berl Priebe, Vice Chairman; Senators Edgar Holden and Dale Tieden; Representatives Betty J. Clark and John E. Patchett. Also present: Joseph Royce, Staff and Brice Oakley, Co-ordinator.

CONSERVATION COMMISSION

At Committee request, Farris returned for continued review of chapter 105 of Conservation rules--migratory game bird regulations--ARC 0964 IAB 4/2/80. Discussion centered on 105.3(3) where hunting in designated areas was restricted to use of steel shot. In answer to Schroeder, Farris reiterated Commission support for the rules and agreed to answer questions concerning them. He was aware of the pending legislation which would allow for additional research, information, and at a designated time, it would be implemented. Farris did not agree with the concept.

Tieden called attention to a news item concerning the availability of steel shot. Farris had called Federal Cartridge on Monday and they advised him the shell would be produced.

Motion to Delay ch 105

The chair entertained the motion for a 70-day delay and after general discussion as to whether or not the legislature was in the final 21 days of the session, Clark moved to place a 70-day delay on chapter 105.

Tieden was curious as to what effect there would be if Iowa didn't use 20-gauge steel shot shells in 1980.

Farris said Conservation had provided use of 12-gauge only for three years in order to phase into 20-gauge. Their experience was that 75 to 78% of the hunters in Mills and Fremont counties used 12-gauge shotguns. When Conservation lifted the steel shot restriction, suddenly, 92% of the hunters had 12-gauge shotguns.

Tieden supported the 70-day delay, but Priebe favored placing a 45-day delay. The Committee discussed the impact of sine die adjournment of the legislature on the delay process and possible problem of the rule becoming effective or a special session being called. It was noted the Governor has the option of item veto. Farris asked for clarification of the options available. Schroeder preferred the 70-day delay and after sine die, the Committee could vote a 45-day delay. Schroeder confirmed Farris' interpretation that the 45-days would not begin until convening of the 1981 session.

Substitute Motion

Tieden moved a substitute motion to delay 105.3(3) 45-days into the 1981 legislative session. After discussion, he withdrew his substitute motion.

CONSERVATION COMMISSION

Clark motion carried viva voce with Priebe voting "no".

Cont'd

Responding to Farris concerning status of rules, (in particular Mills and Fremont counties and the Upper Mississippi Wildlife Refuge) Royce commented that when the Committee delayed the effective date of the subrule [105.3(3)], the old rule would remain. Since the old rule addressed only 12-gauge shot, Royce suggested Farris consider an emergency amendment.

7:20 a.m. Oakley arrived.

PHARMACY EXAMINERS

6.5

Present for review of 6.5, unethical conduct or practice, filed; ARC 0927, IAB 3/19/80, were Susan Lutz, Chairman, Board of Pharmacy, Norman Johnson, Executive Secretary, Board of Pharmacy; R. B. Throckmorton, representing four clinics; James B. West, Iowa Medical Society; Robert Gibbs, Executive Director, Iowa Pharmacists Association; Dr. J. W. Rathe, Rohlf Memorial Clinic Pharmacy, Waverly; David Burkhart, Dubuque pharmacist; Melivn Harris, pharmacist; Ray Burkett, Hilltop Clinic, Des Moines; Tom McGrane, Assistant Attorney General; and several other interested persons.

Clark interpreted 6.5(3)--undue influence--to make it impossible for a pharmacist to be employed by a doctor-owned clinic without undue influence.

Lutz responded that the pharmacist would need to own the pharmacy and rent the space at a reasonable fee based upon community standards. In answer to Clark, excessive rental fees had been charged in the past. Johnson said the Board was not addressing tradename stores since they are not physician-owned. Schroeder thought every pharmacist would have to check stockholders to ensure compliance with the rule. Johnson said the Board requests that information on applications. It had been Clark's experience that prices were not higher in physician-owned pharmacies and she had not observed any difference in doctor-pharmacy relationship between the two types of pharmacies. She was curious to know what had prompted the rule.

Lutz commented that several years ago, prior to the promulgation of these rules, there were a number of clinics with this type of operation. It was Clark's understanding there were only 7 in the state. There was general discussion of availability of prescription records, with Johnson commenting they could go through the courts. In answer to Holden, Lutz thought she had said prior to the original promulgation of the rule there were reports of charging extremely excessive rental fees -- up to $50,000 a year. Holden made the point the pharmacist could have moved. Johnson thought the need for competitive prices would be nonexistent if patients had no freedom of choice for purchasing their prescriptions.

PHARMACY EXAMINERS Cont'd

Board officials did not think they had evidence in their files related to any specific incident. However, they recalled a story by Gordon Gammack, Des Moines Register and Tribune writer, where it was pointed out there were a number of arrangements where the fees were excessive. Johnson said there are 2 or 3 lease arrangements in the files where fees are probably excessive.

There was general discussion of the problem of excessive rentals, prices, competition, etc. Patchett asked if there were cases where the pharmacist's rental would be based upon a percentage of the pharmacist's income. Johnson knew of none, but in that case, the tendency could be there to ensure the pharmacy more business.

McGrane reasoned that while the pharmacy was making a profit, so was the doctor and the inclination could be to "overprescribe

Priebe reminded all present that the Committee was there to decide whether, under The Code, the Board of Pharmacy had authority for the rules.

McGrane opined they did and Oakley concurred. Tieden found it regrettable the two professions couldn't resolve the matter without rules.

Royce commented he had originally agreed with Oakley, but subsequently changed his mind for the following reasons: "In both chapters 147 and 155, The Code, there is a long laundry list[147.55, 155.13] of activities that are automatically considered unethical. The General Assembly has decided on those and each, by its very nature, is evil--going to cause a detriment to the public." He distinguished those grounds from the rule on the face that he saw nothing intrinsically bad about a proprietary interest by a doctor in a pharmacy. When abuses do occur, according to Royce, the other grounds in the rules and Code should take care of individual situations.

West, Iowa Medical Society, quoted from their statement opposing the rule. By this reference, the comments are part of these minutes. [Copy may be obtained in the Code Editor's office]

Lutz thought the Committee was forgetting the rules were to regulate the Pharmacy profession, not physicians. Schroeder viewed the rule as "cutting off an avenue to allow a pharmacist to earn a living." Lutz disagreed.

In summary, West argued that 6.5(3) was beyond delegated authority of the Board and he urged objection. He made the point that the pharmacy board, under chapter 155, could not

PHARMACY EXAMINERS Cont'd

make rules applying to a physician's office. The Medical Society was of the opinion the board was trying to make a substantial change in the law, which could only be accomplished by the Iowa legislature. The rule appeared to have the effect of being anticompetitive. West commented on the deficiencies of the attorney general's opinion on the subject.

Patchett was unsure as to statutory authority. He thought one must presume that the legislature contemplated doctor-owned pharmacies and they took no action to prohibit this. In fact, legislation specifically excluded doctors, contemplating nonpharmacist-owned pharmacies. Patchett asked the Committee to peruse the section relating to engaging in "unethical conduct...harmful or detrimental to the public" [147.55], and said it seemed to him that was the Board's basis for the rule.

Throckmorton, representing four of the seven clinics to be affected by the rule, reiterated West's point that they believe this to be an attempt to legislate through rule-making. Throckmorton discussed the history of the statute and referred to 155.12(3) defining "pharmacist-owner". According to Throckmorton, rule 6.5(3) was a "prohibition on the basis of suspicion", not on actual facts and would usurp the power of the legislature. He contended Iowa would be unique with a rule on this subject although 8 states have statutes. It was pointed out that California also has a rule. He asked the ARRC to place an objection on the rule instead of delaying it.

Holden asked if there were complaints of improprieties to the Board by pharmacists. Johnson had knowledge of none.

Holden declared this situation was the boldest example of what legislators complain about in rulemaking--a rule to address a situation which previously hadn't caused problems.

Priebe disagreed with the Medical Society and thought the Board of Pharmacy had the authority for the rule. He spoke in favor of placing a 45-day delay to allow MD's and pharmacists to resolve the issue.

Gibbs claimed, in the history of professional pharmacy, nationally and in the state, they had tried, inter-professionally, to resolve this problem of conflict of interest. The basic issue was conflict of interest for the pharmacist not to be subservient to others in the peer field.

Schroeder reminded Gibbs they should have approached the legislature requesting a statutory change. Gibbs observed that pharmacy was a minority profession compared to medicine and medicine's political influence nationally and in Iowa was very evident.

PHARMACY EXAMINERS Cont'd 6.5(3)

Patchett indicated he had not been contacted by any pharmacist or doctor concerning the rules. However, Priebe had heard from both. In answer to Patchett, Lutz said the Board's "hands are tied" in many cases to take action against a licensed pharmacist for lack of the ability given us by the legislature or the rules to do so. Patchett thought the rule was too much of a "sweeping change when based on historical perspective." He concluded the conflict of interest issue was one for the legislature to resolve and not the Board of Pharmacy Examiners.

OBJECTION 6.5(3)

Patchett moved to object to 6.5(3) as exceeding the authority of the Pharmacy Examiners Board. [The following language was prepared by Royce]:

The Committee objects to 620 IAC 6.5(3) on the grounds these provisions are unreasonable and exceed the authority of the Board of Pharmacy Examiners. The subrule appears as part of ARC 0927 in II IAB 19 (3-19-80). In essence it provides that it is unethical conduct for a pharmacist to be employed by a prescriber of prescription drugs or a business entity controlled by such a prescriber.

It is the opinion of the Committee that business relationships constitute a property right which may be abrogated only when necessary to protect the public health, safety and welfare from a real and direct threat. This principle appears to be embodied in §147.55, The Code, which empowers the various licensing boards to suspend or revoke a license for the following acts or offenses:

"1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect his or her ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this Act."

This laundry list is supplemented by the provisions of §155.13, applying specifically to the practice of pharmacy and providing these additional grounds for the suspension of a license to practice pharmacy:

"1. Fraud in procuring a license.
2. Conviction of an offense, or where a penalty or fine has been invoked, for violation of Chapter 147, Chapter 203, Chapter 203A, Chapter 204 or the federal food, drug and cosmetic Act. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, verdict of guilty, or a conviction within the meaning of this section.
3. Distribution on the premises of intoxicating liquors or drugs for any other than lawful purposes.
4. Willful or repeated violations of the title on "Public Health" of the Code or the rules of the department of health.
5. Use of untrue or misleading statements, or untrue or misleading advertising, pertaining to the products which they are licensed to sell, or pertaining to the type of license they hold.
6. Substitution of a drug or substance other than the drug or substance ordered in the prescription of a...[prescriber of prescription medicines].
7. Conviction of a crime involving turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section.
8. Violations of the provisions of this chapter."

All of these proscribed activities are "malum per se", obviously posing a real and direct threat to the public health, safety and welfare; and thus rendering a participant in these activities unfit to hold a professional license to serve the public. §§147.76, 155.19 and 258A.4(1)"f" of the Code empower the board of pharmacy examiners to expand upon these laundry

PHARMACY EXAMINERS Cont'd

Objection 6.5(3)

lists by appropriate rulemaking. These rules cannot be at variance with the enabling statutes nor can they amend or nullify legislative intent. Iowa Department of Revenue v. Iowa Merit Employment Comm., 243 N.W. 2d 610 Iowa 1976). It is clear the legislative intent manifested by §§147.55 and 155.13 is to prohibit those activities which by their very nature are harmful to the public. It follows that all rules promulgated by the board interpreting these provisions must follow the legislative intent contained in them.

There is nothing inherently evil in an employee/employer relationship between a pharmacist and a prescriber of pharmaceuticals. Any threat posed by these relationships is speculative, not real and direct. A number of factors bolster this conclusion:

First, Iowa law does not prohibit a prescriber of drugs from also dispensing those drugs. §155.2(2) specifically excludes physicians from the class of persons who must obtain a pharmacist's license to dispense drugs. Further, 155.3(8) specifically provides that physicians are not subject to Chapter 155. If then a prescriber may lawfully fill those prescriptions him/herself, it would also appear lawful for a pharmacist to exercise that function on behalf of an employer/prescriber.

Second, §155.12(1)"c" clearly contemplates that a pharmacy may be owned by an entity other than a pharmacist. If the General Assembly had intended to prohibit prescriber-owned pharmacies, this paragraph would have been the ideal place to do so. The fact that the General Assembly has not chosen to exercise this option indicates that prescriber-owned or leased pharmacies did not pose a threat to the public welfare sufficient to require their prohibition.

Third, prescriber-owned or leased pharmacies are currently operating without allegation that they pose a threat to the public welfare. These pharmacies can provide a public service by providing a convenient method of filling prescriptions for those who are unable or unwilling to travel to an available pharmacy, either as a matter of convenience, physical disability or simply, no pharmacy in the locality. There has been no evidence that the employer/lessor prescribers have been exerting undue influence, otherwise impinging on the judgment of the pharmacist, or exploiting patients by over-prescribing.

Fourth, Iowa law currently prohibits any abuse of the employer/employee relationship between the prescriber and the pharmacist. 470 IAC 135.401(8) is an administrative rule having the force and effect of law which provides:

"In the practice of medicine a physician should limit the source of his/her professional income to medical services actually rendered by him/her or under his/her supervision to his/her patients. His/her fee should be commensurate with the services rendered and the patient's ability to pay. He/she should neither pay nor receive a commission for referral of patients. Drugs, remedies or appliances may be dispensed or supplied by the physician provided it is in the best interests of the patient."

This rather sweeping rule is legally binding on Iowa's physicians and on its face appears to forbid any sort of professional or employment pressure on the part of an employer/lessor prescriber. Under the provisions of this rule a physician who violates it will be subject to license suspension or revocation, and an employer/lessor prescriber who abuses that business relationship with the pharmacist for pecuniary advantage will surely be in violation of the rule. This same spirit is also reflected in the Code of Ethics of the American Pharmaceutical Association which provides that a pharmacist "...should never agree to, or participate in, transactions with practitioners of other health professions or any other person under which fees are divided or which may cause financial or other exploitation in connection with the rendering of his/her professional services. While neither of these standards relate to specific business relationships, it is clear members of both professions are required to maintain the welfare of the patient paramount in whatever relationship they devise and failure to do so may have dire consequences.

For these reasons the Committee reaches the following conclusions: 1) the proscribed activities in 147.55 and 155.13 show legislative intent that only activities which pose a real and direct threat to the public welfare are grounds for license suspension or revocation; 2) that no real and direct threat to the public welfare is posed by an employer/employee relationship between a prescriber and a pharmacist; 3) that §155.12(1)"c" clearly contemplates that non-pharmacists may own a pharmacy does not preclude a prescriber from doing so and 155.2(2) and 155.3(8) clearly permit physicians to own pharmacies; 4) that adequate legal remedies exist to effectively deal with those licensees who abuse whatever business relationship they may enter into. It is the opinion

PHARMACY EXAMINERS Cont'd

of the Committee that subrule 6.5(3) fails to recognize the legislative intent of the statute is unnecessary for the protection of the public welfare and is therefore unreasonable and exceeds the statutory authority of the Board of Pharmacy Examiners.

[Motion was adopted, see page 1208]

Oakley thought the legislature had delegated authority to the Board of Pharmacy. He asked Throckmorton, if the rule were to become effective, with or without objection, what would be the position of those physician-owned pharmacies after April 23. Throckmorton did not know.

Johnson thought their license would be in jeopardy. Oakley said there was no opportunity for litigation to resolve the question and the opportunity to readjust the relationships or for those persons to seek legislative change of the rule. In his opinion, the problem as to when the rule would become effective was a serious one.

Clark was concerned the rule would preclude establishment of a centrally located pharmacy to accommodate several rural communities.

Oakley questioned Throckmorton as to whether or not a patient could obtain prescribed medicine from a nurse or paraprofessional in a physician-owned pharmacy. Throckmorton answered that was another issue and a bill had been drafted to resolve it. However, under the AG's opinion, that would not be possible.

Oakley doubted that all physician dispensing of medicine in a doctor's office was done by the physical process of the doctor actually handing it to the patient.

Rathe took exception to the fact that no one had been given an opportunity to present the other side of the issue--only the Pharmacy Board and the ARRC had knowledge of what was occurring. He pointed out there were many conflicts of interest in medicine. Rathe maintained physicians who own pharmacies could hold down health costs.

Burkhart contended the rule would preclude him from being a purchasing agent for a clinic. He had never had a doctor interfer with the operation of the pharmacy where he was a partner serving under three doctors.

Harris, who was employed in a doctor-owned clinic thought the pressure was greater under private management.

Patchett had no preconceived notion on how he would vote in the legislature on the issue but he doubted authority had been granted to the Pharmacy Board, and there didn't seem to be any substantial evidence of problems. He had a serious

PHARMACY EXAMINERS Cont'd

concern as to what would happen if the rule were to go into effect April 23. He continued there were serious due process and constitutional questions about the rule and favored the objection to 6.5(3).

Oakley opposed objection and the problem of legal fees for litigation being imposed on the state. Patchett pointed out that if the delay is placed, there is no opportunity for a court case. Oakley announced that if the 45-day delay is not adopted, the governor will communicate with the Board of Pharmacy Examiners and recommend a one-year delay in the effective date of the rule to allow opportunity to resolve complex legal questions.

Substitute Motion

Priebe made a substitute motion to place a 45-day delay on the rule into the next General Assembly. Roll call: The motion was defeated with one "aye" vote by Priebe and five "nay" votes by Schroeder, Holden, Tieden, Clark and Patchett.

VOTE ON OBJECTION 6.5(3)

The motion to place an objection to 6.5(3) was adopted by six "aye" votes by Schroeder, Priebe, Holden, Tieden, Clark and Patchett, being unanimous.

Schroeder recessed the Committee for five minutes.

CIVIL RIGHTS COMMISSION 6.2(6)

Chairman Schroeder reconvened the meeting at 8:50 a.m. Artis Reis, Director, Civil Rights Commission, returned for further discussion of 6.2(6)a(2) and 6.2(6)b(1). Other interested persons were present.

Royce presented copies of the full text of the objection to Civil Rights 6.2(6)a(2) and 6.2(6)b(1), adopted April 9, 1980. [See page 1189 of these minutes]. The Committee concurred the objection stood as presented.

ch 8

Reis, in discussion of chapter 8, responded to Clark that the council was scheduled to meet 4/17/80 and at that time would probably deal with the matter of defining mental disability [8.3(4)]. It was not the intent to address mental ability but rather conditions such as epilepsy.

Schroeder observed that chapter 8 was a duplication of federal requirements, but Reis thought he was "overgeneralizing" --she pointed out CC does cooperate with federal and local agencies having the same powers. Some schools were not covered by any other agency.

Oakley, in a general statement with regard to chapters 6 and 8, indicated they had no objection to chapter 6 other than the fact there were double filings. However, under such a broad rule, in their opinion, there was potential for abuse on the part of the agency that administers it. The only reason for

CIVIL RIGHTS COMMISSION Cont'd

supporting the rule as submitted was that it was not a new concept of reasonable accommodation and it was consistent with federal §504.. Oakley was aware of inconsistencies in chapter 8, but would wait until after the Commission meeting Thursday before announcing any action.

Motion to Delay 70-days ch 8

Patchett moved a 70-day delay on chapter 8, to allow for further study. He urged the Commission to consult with interested groups also.

In response to Patchett question on 8.14(1), Reis was not particularly comfortable with the language. She said she would propose the Commission revise to provide "No person will be denied or excluded from participation in these athletic programs." The "treated differently" language was not appropriate, because people with physical and mental disabilities are treated differently so they can participate.

Oakley could see no advantage in 70-day delay and Schroeder commented that hopefully, there would be a meeting of minds to eliminate some of the inconsistencies. There was general discussion with Reis stating the rules could be improved upon.

Schroeder said the Committee could move a 45-day delay into the General Assembly during the 70-day period of delay, if necessary. Patchett requested a progress report for the June meeting of this Committee.

Progress Report

Ch 8 Delayed Motion to delay Adopted

On the Patchett motion to delay chapter 8, motion carried unanimously viva voce.

OFFICE OF PLANNING AND PROGRAMMING

PLANNING AND PROGRAMMING[630]
Governor's highway safety office, ch 12 ARC 0957.....N.....3/19/80
Energy crisis assistance program, ch 20 ARC 0925.....N.....3/5/80
Rural community development Act, ch 21 ARC 0958.....N.....3/19/80

ch 21

Representing the Office of Planning and Programming were Sven Sterner, Director, Highway Safety for Governor's Office, and John Lynch. Also present was Representative Joseph Welsh, Dubuque, present to speak on behalf of the City of Centralia, re ch 21.

Sterner, on ch 12, did not understand part of the letter which had been written by Mr. Kassel, Director, DOT. In reality, nothing had changed except for a bit of reorganization as far as the office was concerned. He acknowledged that OPP was preparing a response.

Schroeder deferred discussion of chapter 12 to return to the rule pertaining to the rural community development Act, ch 21. He noted there had been some complaints with respect to past practices, and he asked if there were safeguards to prohibit repetition.

PLANNING AND PROGRAMMING Cont'd ch 21

Lynch said the grants were made on March 21. Patchett questioned legality of the grants since they were made prior to adoption of rules under 17A. Lynch recognized they were remiss in not having rules -- and apologized, although he said there were a series of reasons.

According to Oakley, there was statutory authority for the grants and criteria were not changed so he saw no need to adopt emergency rules because the grants were already made. The matter was brought to his attention when the jurisdiction of the program was shifted from Iowa Development Commission to OPP. Guidelines that mirrored rules which were previously applied to these grants were sent out by OPP. Applicants for grants relied on what was contained in these rules under Notice. [Iowa Development Commission rescinded their rules on ch 3, 2/27/80 ARC 0937]

Oakley could see two questions: (1) Was there a policy which was not in the rules, which was Representative Welsh's concern; (2) Whether or not there was a need to have these particular rules either emergency adopted or placed under notice.

Patchett viewed the procedure which had been followed as a very dangerous precedent.

Oakley pointed out that 78 times last session, the legislature mandated further rulemaking by agencies. He emphasized a need for more opportunity to monitor this volume of rules.

Royce quoted from 17A.3(2) "no agency rule...is valid or effective against any person or party nor shall it be invoked by any agency for any purpose...until it has been made available for public inspection...".

Royce continued that apparently, one of the criterion for the evaluation of a grant was that the matched funds could not have been spent prior to the application of the grant. He opined that was not in the proposed rule or the guidelines. He could not see how that could be applied against an applicant for a grant who has followed the guidelines. Lynch admitted the criteria were not in the proposed rules and this was clearly an oversight.

Royce mentioned that the City of Centralia relied on the guidebook in making its application. There was general discussion of the situation. In discussing the rating of Centralia, Lynch responded to Priebe they had rated zero points. Technically, it was assigned fifteen points, but their program was an ineligible project and was not reimbursable.

PLANNING AND PROGRAMMING Cont'd

Welsh discussed the time element in the application and the language on same. He reiterated that the rule did not reveal all the criteria on which the applications were to be evaluated. Lynch pointed out that the Centralia project would not have been funded because it was not a "self-help type".

Priebe recalled there was a $5000 maximum per project and failed to see how the city could get another $5,000 on the same project, regardless of the number of years involved. Discussion of construction of the language on the application "When did the project start". It was Schroeder's opinion this did not infer that the project could not be started before the grant approval.

In answer to Patchett, Lynch replied the checks were in the comptroller's office.

Motion

Patchett moved that the Committee notify OPP and the Rural Development Committee that it desires every community which was denied funds, under that unwritten policy, be allowed the opportunity to resubmit their application, with OPP redetermining the priority and using available fund.

Lynch said no money was available at this time and this would place undue burden on cities.

Oakley thought Patchett's motion was a matter that should be dealt with by the agency involved in the grant program.

Substitute Motion

Patchett moved a substitute motion that ARRC advise the chairmen of the house and senate appropriations committees of the existing problem and urge amending the appropriations bill.

Lynch could see inherent problems in pursuing the course recommended by the Patchett motion. He advised that 4 or 5 communities could be involved in the matter. There was general discussion. In answer to Priebe, Lynch said $137,000 was reverted by communities in 1979, out of $160,000 which was committed.

Motion Carried

Schroeder restated the Patchett motion to write a letter to the appropriations committee chairpersons concerning this potential problem. Motion carried--viva voce.

ch 12

Discussion returned to correspondence from DOT concerning their opposition to OPP's proposed Chapter 12. Sterner interpreted the letter to say that under Title 23, U.S.C., section 402, the secretary of transportation should not approve any program which was not administered through the governor's office. Sterner said $3.7 million was available to the

PLANNING AND PROGRAMMING Cont'd

governor for use in highway safety programs. Sterner could not discern the apparent misunderstanding since OPP has control.

Schroeder requested that OPP respond to DOT and furnish copies to all Committee members, Royce and Oakley.

MINUTES

Priebe moved to accept the minutes of the March meeting as submitted. Motion carried.

Committee Business

Priebe moved that the May meeting of this Committee be changed from its statutory date of May 13 to May 20. Patchett reminded ARRC members of the Administrative Law Seminar scheduled in Des Moines May 13 and 14. The Committee agreed that any member who wished to attend the seminar, as well as Royce could be reimbursed for their actual expenses out of 17A.8(3).

Members concurred it should be a two-day meeting beginning at 9:00 a.m., May 20, 1980.

Grain Probes

Priebe expressed a desire to review the matter of grain probes with the secretary of agriculture. Schroeder suggested writing a letter, drafted by Royce, on behalf of the Committee, requesting the secretary of agriculture to appear at the May meeting.

Blended Fertilizers

Also, Royce was requested to draft a letter on behalf of the Committee calling attention to the lack of rules on the subject of blended fertilizer.

Health Ch 204

Tieden requested that Health Department rules re uniform financial reporting be placed on the agenda for the next meeting. [ch 204].

Adjournment

Chairman Schroeder adjourned the meeting at 9:50 a.m.

The next regular meeting is scheduled for Tuesday, May 20, 1980.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assistance of Vivian L. Haag

Approved James Schroeder
Chairman