

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, October 14, 1975, 10:05 a.m.

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

Members Present: Senators E. Kevin Kelly and Minnette Doderer, Representatives Donald Doyle and W. R. Monroe.
Not present: Senator Berl E. Priebe and Representative Laverne Schroeder.
Also present: Wayne A. Faupel, Code Editor
David Charles, Legal Counsel

Minutes: Moved by Kelly to dispense with reading of minutes of the September 9 meeting and that they stand approved. Carried.

EMPLOYMENT
SECURITY COMM.

Vice Chairman Monroe called on Ross Williams, Administrative Hearings Officer, to make a brief presentation concerning proposed rules of the Employment Security Commission, summary of which was published under notice in 9/22/75 IAC Supplement. Said rules would replace those appearing in 1973 IDR as Chapters 1 to 4, 6 and 7. It was noted that two drafts of proposed rules were submitted to the Committee. Williams asked that the later submission of Chapter 1 be considered. Subjects to be covered in the rules included: The organization and operation of the Commission; employer records and reports; employer's contributions and charges; claims and benefits; appeal procedure; IPERS eligibility and benefits.

Doderer recommended that the rules be neutered and the Department indicated a willingness to co-operate.

In response to question by Kelly, Williams stated that copies of the rules were made available to the public and six requests were received. No one appeared at the public hearing held by the Commission.

Discussion of printing problem with respect to numerous "organization charts" set out in the rules. Williams indicated they would be reluctant to omit the charts but agreed to review the matter. It was suggested that reference only be included in the rules.

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Chairman Monroe observed that/both drafts of Chapter 1 there was conspicuous utilization of abbreviations and designations without definition.

EMPLOYMENT
SECURITY Cont'd

Monroe noted that 1.1(2) 6. did not follow normal parliamentary procedure in re adjournment. He pointed out that Chapter 28A of the Code requires notice of scheduled meetings.

Charles called attention to 4.6(1) wherein the former statutory definition of "partially unemployed" had been incorporated. It was noted that the 66 GA rewrote said definition this year.

No formal objections were proposed.

ARTS COUNCIL
Chs 1, 2

Dwight Keller, Fiscal Officer, represented the Arts Council for review of substitute rules for those appearing under notice in 7/25/75 IAC Supplement to which this Committee voiced objection. Revised rules were published under Notice in IAC Supp. 9/22/75.

Doderer noted a few areas where neutering of the rules was needed before they are filed.

Monroe recommended that 1.2(304A), third sentence be amended by striking after "Recommendations" the word "can" and inserting "to the governor may".

Monroe voiced objection to the last sentence of 2.1(5) b(3) in re artist's eligibility requirements for grant programs. Said sentence provided: "Finally the artist must be appropriate in person, lifestyle, and creative product to the host community."

Committee members concurred that the sentence should be stricken and indicated formal objection would be filed if the Council fails to do so.

Doderer pointed out the objectionable language would be in conflict with 2.2.

Charles thought clarification was needed in 2.1(2)d to distinguish which films are available at no charge.

Doderer asked for clarification of the second sentence in 2.1(2)e. Keller agreed to rewrite it to read: "No admission fees are allowed and the building shall be approved by the state fire marshal."

Monroe recommended that 2.1(2)a be amended by striking from the end the words "can be checked out at a time" and inserting "may be checked out (by one user at a time)".

AGRICULTURE
Referendum

Thatcher Johnson, Deputy Secretary of Agriculture, appeared before the Committee for review of proposed amendments to Chapter 2 of their rules on referendum procedures. Notice was published in 9/8/75 IAC Supplement.

Johnson explained that the rules will permit referendum elections to be conducted either by mail balloting or voting at a designated polling place--the mail ballot concept being new.

A public meeting was held concerning the rules and revisions were made. Johnson provided Committee members with copies of the proposed revisions.

Doderer suggested that 2.2(5) defining "election judge" be neutered by striking "his" before "designee" in line 2.

It was noted that Item 1 purporting to amend 2.3(1) should be changed to indicate amendment to "2.3(12)".

Monroe suggested that 2.4(3)A 2., line 3, be amended by substituting "may" for "will" before "distribute".

Doderer recommended further amendment to the subrule, in 3. by striking from line 2 the words "whenever he/she is unable to vote in person".

In re voting procedures, Charles pointed out possible conflict in 2.4(1) and 2.4(3) C.

Monroe had reservations concerning selection of persons to receive mail ballots.

Johnson said the statute grants the Secretary of Agriculture authority to conduct the referendum and the Department works in conjunction with the particular Marketing Co-op.

In answer to Charles concerning marking of absentee ballot--2.4(5)d, Johnson had no objection to making the provision less restrictive.

Monroe was of the opinion the rules probably exceed the statutory authority as to the mail ballot procedure. However, he would study the matter further prior to making formal objection.

BEER AND
LIQUOR

Roy Gallagher, Director of Beer and Liquor Control, and James Robbins, Assistant Attorney General, appeared for review of rules published under notice in 9/8/75 IAC Supplement as follows:

BEER AND LIQUOR Chapter 1--Policy. Substitute for 1973 IDR, page 615.
 Cont'd Chapter 9--Contested case hearings--director--procedure,
 being new rules.
 Chapter 10--Contested case appeals--department hearing board--
 procedure. Substitute for July 1973 IDR, pages 38 and 39.

Gallagher pointed out that Chapter 9 will permit him to designate someone from the staff to act as hearing officer. Presently, Gallagher has been the presiding officer at all hearings. He recalled having conducted 42 hearings in 45 days.

Charles noted that much of the language in Chapter 9 had been drawn from Chapter 17A of the Code. He suggested that 9.10, second paragraph, include language advising an individual of their right to apply for rehearing.

Doderer quoted from 9.2--presiding officer and 9.7--continuance and suggested clarification by inserting in 9.7, line 1, the words "presiding officer" in lieu of "director".

COMMERCE
 Ch 22 Defer

Michael May, Commerce Counsel, requested further deferment of rules of Commerce Commission regarding telephone utilities (Ch 22) published under Notice in 9/8/75 IAC Supplement. Deferment granted by unanimous consent of Committee members present.

CONSERVATION
 Ch 60

Fred Priewert, Director of Conservation Commission, and Stanley Kuhn, Chief of Administration, were present for review of proposed rules of Conservation relating to organization, method of operation and public participation, being Chapter 60 published under Notice in 9/8/75 IAC Supp.

Doyle pointed out the use of "his" in 60.3(3). Committee members asked the Department to consider rewording the second sentence which stated: "The deputy director acts for the director at his direction or in his absence."

In re 60.4(3), second paragraph, concerning hearing and review of unfavorable action relative to any permit, application, agreement, lease or contract, Charles was of the opinion "twenty" should be substituted for "ten" working days to comply with 17A.

Doyle raised question concerning the last sentence of 60.4(3): "The commission shall then take whatever action it deems appropriate." Charles commented this might be in violation of 17A and he quoted from the definition of "contested case".

HEALTH
Infants, eyes

Filed rule 2.1(140) in re treatment of infant eyes with silver nitrate was before the Committee. Said rule would become effective 10/27/75. No objections were voiced.

Recess:

Chairman Monroe recessed the meeting at 12:05 p.m.

Reconvened:

Meeting was reconvened at 1:20 p.m. Kelly not present.

CITY DEVELOP-
MENT BOARD

The following persons appeared before the Committee to present proposed revision to rules of the City Development Board: Michael Dunn, Board Chairman, Jeff Segren, Administrative Assistant, and Larry Blumberg, Assistant Attorney General. Said rules were published under Notice in 7/14/75 IAC Supplement and amendments were proposed by this Committee at their 8/12/75 Regular Meeting.

Dunn said the Board was willing to accept most of the suggestions offered by the Committee.

In re 1.4(2)--tax information on petition for incorporation, the Board took the position that the subrule should remain as originally drafted to include the words "by parcel" after "assessed valuation". Blumberg was of the opinion that all platted or unplatted land could be assessed by parcel without the distinction being made by rule.

Dunn pointed out the provision is necessary to ascertain whether a community is attempting to implement an annexation for tax purposes only which would be unlawful.

Discussion of Committee suggested amendment to 1.10(1)--discontinuance--where "unpaid allowed" would be substituted for "remaining" before the word "claims".

Although it was agreed by both factions that §368.21 should be clarified, the Committee favored their proposal.

Discussion of 2.10--briefs. Committee had suggested inserting the words "at least" prior to "five working days". It was decided, however, to delete "working days" since no reference to that language appears in the Code. Ten days was agreed upon as a substitute for five days..

The Board concurred with the Committee's suggestion to amend 2.12 by striking "ten working days" and inserting "twenty days".

Discussion of 2.13--appeal--wherein reference is made to §368.22 of the Code. The Board asked that said reference be changed to §17A.19. Monroe asked Dunn to call the matter to his attention when the legislature is in session so the statute can be amended to resolve the conflict.

Dunn submitted the following revised language for 1.2--filing of petition: If a petition for voluntary annexation is filed

CITY DEVELOPMENT BOARD Cont'd within the urbanized area of a city, other than the city to which the request for annexation is directed, a notice of the request for Board approval must be served on the other city or cities, involved. The notice will include a brief description of the proposal and the time and place that the request will be acted upon by the Board."

Committee suggested the above proposal be modified by substituting "shall" for "must" and "will" in lines 4 and 5 and the words "is to" be substituted for the last "will".

In order to comply with HF 723, Dunn also proposed that the rules be amended to substitute the words "qualified elector" for "voter" wherever necessary.

Dunn pointed out that §§368.11, 368.14 and 368.19 were amended by HF 723.

Monroe could foresee a problem determining the number of qualified electors in an unincorporated area. He offered assistance in drafting a rule to provide a method for determining "five percent of qualified electors". Said rule would be effective only until the legislature could clarify the three sections in chapter 368 of the Code.

FAIR BOARD

Dean Badeke represented the Fair Board concerning filed emergency rule 1.6(4) which was published in 8/25/75 IAC Supplement. Said rule prohibited possession of certain offensive weapons upon the state fairgrounds.

2:00 p.m.

Kelly returned.

Monroe said the Committee took the position the rule should have provided an exemption for law enforcement officers.

Doderer suggested that the Fair Board also consider rules in regard to admission fees to the fair to provide that all persons be treated equally. In addition, all of the rules should be neutered.

TRANSPORTATION DEPARTMENT

The Department of Transportation was represented by William Anderson and Julie Fitzgerald, Management Review and Delano Jespersen, Secondary Road Engineer. The following rules were before the Committee: Contested cases, filed 9/11/75; Farm-to-market funds [06,Q, Ch 16]--published under Notice 9/8/75 IAC Supplement; Highways, secondary roads [06,Q ch2]--published 9/8/75.

No objections were voiced to the rules of Transportation.

REGENTS
UNI

Committee members had no questions concerning rules of the Board of Regents--University of Northern Iowa, Chapter 14--filed 9/2/75.

PLANNING AND
PROGRAMMING

Dolores Abels, Administrative Assistant, and Marty Robbins, a member of the Health Manpower Project, represented the office of Planning and Programming for review of Chapter 16 of their rules published under Notice in 9/8/75 IAC Supplement.

Monroe questioned 16.4 in re monitoring of expenditure of funds in that no provision was made for hearings.

Robbins responded that specifics would be written into the contracts. Monroe recommended that some reference to contract agreements should be made in the rules.

ENVIRONMENTAL
QUALITY

William Anderson and David Bach, Hearings Officers, were present for review of proposed rules of Environmental Quality which were published under Notice in IAC Supplements dated 9/8/75 and 9/22/75.

Anderson said public hearings concerning the rules were held but no one appeared.

After brief discussion, Committee members decided to wait until the rules have been filed to review them.

MERIT EMPLOY-
MENT

14.2(1)

Filed rules of the Merit Employment, appearing in IAC Supplement 9/22/75, were before the Committee. It was noted that the amendment proposed by the Committee to 14.2(1) had not been incorporated by the Merit Employment Department.

Objection
filed

Moved by Kelly to file an objection to 14.2(1). The following was adopted unanimously by members present:

At its regular statutory meeting held October 14, 1975, the Administrative Rules Review Committee, under the authority of section 17A.4(4) "a" of the Code, voted to file objection to subrule 14.2(1) of Merit rules published under Notice 7/28/75 and filed September 4, 1975 to become effective October 27, 1975 as follows:

"We object to 14.2(1), appearing in 9/22/75 Iowa Administrative Code Supplement, on the basis that it goes beyond the scope of authority granted in Chapter 19A of the Code and is unreasonable. The objection can be overcome by amending the subrule to read as follows:
'Vacation leave may be applied for by the classified employee and may be used only when approved by the appointing authority, who shall designate such time or times when it will least interfere with the efficient operation of the agency, taking into consideration the vacation preference of the classified employee. Any employee shall be allowed once each two years to designate up to one-fourth the annual vacation leave to be taken at a time of the employee's choice.'"

CAMPAIGN FINANCE
DISCLOSURE COMM.

Forms

Monroe brought up for discussion the matter of Campaign Finance Disclosure and the failure of the Commission to comply with House File 431, 66 GA, regarding forms for disclosure reports. He noted that the Legislature mandated such forms be simplified but to date this had not been accomplished.

Monroe presented for Committee perusal several forms which he had prepared as suggestions for the CFD Commission.

Discussion of whether the Committee had authority to "require" the Commission to appear before them or show cause in writing reasons for delay in preparing forms.

Charles advised the Committee that a simple request for co-operation might be a more desirable approach. He added that another recourse would be for any individual [the individual could be a member of the Administrative Rules Review Committee, e.g., Representative Monroe] to ask the court for a writ of mandamus to force Commission action. He concluded that any alternative would be time consuming.

Resolution

The following Resolution which was drafted by Monroe was adopted unanimously by Committee members present upon motion by Doderer:

Charles G. Rehling, Chairman
Campaign Finance Disclosure Commission
Farm Bureau Building
Des Moines, Iowa

The Administrative Rules Review Committee, at its meeting held October 14, adopted the following resolution:

INASMUCH as the forms used by the Campaign Finance Disclosure Commission prior to the effective date of the IAPA were not contained in the Administrative Code compilation, and

INASMUCH as the Commission showed intent of rulemaking in the Notice in the 8/25/75 Supplement but subsequent supplements contained no promulgation of actual rules, and

INASMUCH as the forms required by HF 431, section 10 (66th GA) have not been promulgated by the Campaign Finance Disclosure Commission, and

INASMUCH as HF 431, section 24 required such rules to be in force and effect by November 21, 1975, and

INASMUCH as the Commission has not, as of October 14 submitted any rules for publication to meet the October 17 deadline (35 days prior to November 21, 1975), and

CAMPAIGN FINANCE
DISCLOSURE Cont'd

Resolution INASMUCH as many candidates and committees were required to file a report on July 20 and will be required to file again on October 16, October 20 and October 30 and no forms have been promulgated to allow candidates and committees to comply with the law, and

INASMUCH as the Commission has been given since June 1974 to comply with the APA and since June 1975 to comply with HF 431, and

INASMUCH as such neglect of duty by the Commission will result in mass confusion and errors for candidates and committees and more important will cause Chapter 56 of the Iowa Code to become unenforceable,

THEREFORE, the Administrative Rules Review Committee calls upon the Campaign Finance Disclosure Commission to reply to each member of this Committee prior to October 23, 1975 as to why the forms are not adopted and to appear before this Committee at the November 11 regular meeting.

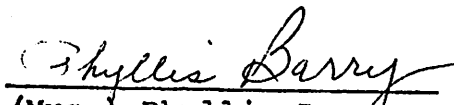
SALIENT FACTORS

1. Old forms never put through IAPA procedure.
2. No official forms in effect today.
3. HF 431 set November 21 as the date for new forms.
4. New forms would have to be in the mail by October 17.
5. QUESTION: What force and effect does Chapter 56 have ?

ADJOURNMENT

Chairman Monroe adjourned the meeting at 3:45 p.m.
Next regular meeting to be held November 11, 1975, 9:00 a.m.

Respectfully submitted,


(Mrs.) Phyllis Barry
Secretary

APPROVED

Chairman