MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, July 10 and 11, 1979, 9:20 a.m.

Place of Meeting: Iowa Statehouse, Senate Chamber and Committee Room 22.

Members Present: Representative Laverne Schroeder, Chairman, Representatives Betty J. Clark and John Patchett, Senators Edgar H. Holden and Dale Tieden.
Not present: Senator Berl Priebe, Vice Chairman. He had notified the Chairman of a previous commitment for July 10.
Also present: Brice Oakley, Administrative Rules Co-ordinator
Joseph Royce, Committee Staff

HEALTH[470] Peter Fox, Hearing Officer, appeared as spokesman for the Department of Health to review the following:

Psychology examiners, code of ethics, 140.1(6)....ARC 0300.....N..... 6/13/79 1478
Chiropractic examiners, cameras and recording devices at open meetings, 141.52. ARC 0303..N..... 6/13/79 1479
Mortuary science examiners, transcript, 147.210 rescinded, filed emergency..ARC 0302.....N..... 6/13/79 1484
Cosmetology examiners, continuing education, 151.2(1,5) ...ARC 0324.....N..... 6/27/79 1511
Speech pathology and audiology, transcript, 156.110 rescinded, filed emergency ..ARC 0305.....N..... 6/13/79 1484
Speech pathology and audiology, aides, ch 157 ....ARC 0298.....N.....N..... 6/13/79 1479
Speech pathology and audiology examiners, continuing education, 156.2(1)"b" ..ARC 0343.....F..... 6/27/79 1537

Fox introduced Dr. Herb Roth, Psychology Examining Board member, and they explained that proposed 140.1(6) would allow updating of the Board's Code of Ethics. The 1977 revision of the Code of Ethics of the American Psychological Association would replace the 1963 edition.

Patchett was critical of the proposal and as a practical matter preferred not to adopt by reference since not all pyschologists belong to the group. Roth could see no great problem and he cited Dental Examiners and the Bar Association as having analogous provisions.

Fox noted that an alternative would be to publish the revision of the ethics code in the rules. Copies of the 7-page standards, showing the rewording of principle 4 on public statements, had been provided to Committee members prior to this meeting.

Holden wasn't totally opposed to the reference concept but thought the standards could be condensed. He questioned whether it was even appropriate for the Board to adopt the ethics of the Association.

The Committee as a whole questioned the propriety of professional groups that tend to be too closely aligned with trade associations.

Fox agreed to review the questions raised at the next meeting of the Board.
No formal action taken by the Committee.

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Schroeder recommended that 141.52(2) be reworded to provide that a majority of the Committee, as well as the presiding member, be allowed to exclude certain persons from a meeting. Fox was amenable.

Fox told the Committee that 147.210 was rescinded upon recommendation of the Co-ordinator [Mr. Oakley]. No objection voiced.

Fox continued that amendment to 151.2(1,5) was intended to clarify that persons who are licensed to practice electrolysis under §157.5 of the Code must comply with continuing education requirements for cosmetologists.[8 hours].

9:40 a.m. Oakley arrived.

In response to question by Tieden re availability of continuing education courses in Iowa, Fox indicated that many of the schools offer these and short courses are available in many larger cities. Fox also answered question by Tieden concerning validity of license of a cosmetologist who moves out of the state for a few years. A license can be placed on inactive status and when the individual returns to Iowa, they would be required to make up continuing education at the rate of 8 hours per each year of absence. to get the license reinstated.

Holden took the position that under the proposed rules, an electrologist would be required to take 16 hours of continuing education--8 hours for each area of cosmetology and electrolysis. Fox stated that a total of 8 hours was the requirement but the problem had been that some electrologists contended they were excluded from any continuing education. He was of the opinion the Department had the authority to require 16 hours but at this time, they merely wanted to clarify that 8-hour compliance must be met.

Holden suggested that available CE courses be structured to include some electrolysis training.
No formal action taken by the Committee.

Rescission of 156.110 was acceptable.

Niel Ver Hoef, Speech Pathology and Audiology Examiners Board, appeared for review of proposed Ch 157 re aides.
It was noted that §147.152(4) of the Code provides exemption from the licensing law.
Patchett wondered how the Board determined the maximum number of 3 aides for a speech pathologist or audiologist. [157.5]
Ver Hoef said they had reviewed rules of other states but conceded their version was not ideal and he asked for guidance.
Patchett could forsee problems with a rule of this nature which lacked any possible exception.
Ver Hoef pointed out aides are not licensed.
Holden maintained the Code does not authorize licensing or registration and objection should be placed on the rules.
Another suggestion was to seek an opinion of the Attorney General as to whether the Department has authority for the rules.

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Oakley indicated that in reviewing the rules with the Department, he had questioned whether there was statutory authority to impose a fee for registration of the aides. Intent of the legislature was to cover only licensees. If licensees want aides, they should bear the cost. Oakley suggested possible restructuring of the statute to raise licensure costs rather than attempting to charge a registration fee.
Department officials agreed to study the recommendations.

Amendment to 156.2(1)b was acceptable as published.

ENVIRONMENTAL QUALITY

The Water Quality Commission, Environmental Quality Department, was represented by Odell McGee, Hearing Officer, and Environmental Engineers, Ralph Turkle and Dennis Vaughn. The Department had published Notice of intent, IAB 6/27/79, to adopt policies on antidegradation and wasteload policies.

A policy on wasteload allocations under 17.8(2) which call for waste treatment more stringent that standard secondary treatment by municipalities would be implemented.

A policy on antidegradation--16.2(2)--would prohibit increases in waste loadings from dischargers affecting waters classified as high quality.

Oakley pointed out the proposals were more quality performance rather than design standards. Department officials said design standards are mandated by EPA.

Tieden commented that officials in his area believe the rules would restrict any further development by municipalities along the streams since no variance was provided. Bond agreed that this was essentially true. He added that the municipality would have to provide additional treatment of wastes or keep it at the same level.

Responding to question by Tieden as to what criteria was used to establish the 17 high-quality water standards, Bond said they were selected through a public participation process along with the state advisory committees.

Schroeder could foresee this rule prohibiting the addition of new homes. Bond noted an exception: existing facilties would be allowed to increase their load up to the designed capacity of the unit.
No action taken.

Recess

The meeting was recessed at 10:10 to move to Committee Room 22.

Reconvened: The meeting was reconvened at 10:20 a.m. with Schroeder in the Chair.

CIVIL RIGHTS Rules Delayed 5/21/79

Amendments to Rules of Civil Rights Commission which were delayed at the May 21 Rules Committee were scheduled for special review as follows: 1.1(7) to 1.1(9), 1.3(1), 1.8(2), 1.16, 1.17, 2.15(7) 3.9, 6.1, 6.2(6), chapter 7.

Persons in attendance included: Barbara Snethen, Ed Ditlie, William Stansbery, Hearing Officers, and Jon Clarkson, Advocacy Protection, all representing Civil Rights Commission; John Taylor, Director of Iowa Commission for the Blind; Paul E. Brown, President, James West, Attorney, Marilyn Janzen, Assistant Actuary, Iowa Life Association; Donald Hauser, Vice President, Kathleen Reimer, Attorney, Iowa Manufacturers Association; Dennis Drake, Attorney, Maytag Co., Newton; Edward Anson, Iowa Bankers Association Staff; Tim McCarthy, Executive Director, Iowa Catholic Conference, Des Moines and Sister Dolores McHugh, Supertintendent of Schools, Des Moines Diocese; Wilbur Miller, President, Betty J. Durden, Special Ass't for Equal Opportunity Programs, Drake University; David Henry, Ass't to President, Iowa State University; R. Wayne Richey and Roger Maxwell, Board of Regents; Jorna Garton, Iowa Deaf Services; Eloise Lietzow, Health Department, Deaf Service; Glenna Wells, Consumer Epilepsy Foundation of America; Don Westercard, Governor's Committee on Employment of the Handicapped; Jerry Caster, Des Moines Public Schools; Willis Wolff, College Aid Commission Director; David Dillon, Journalist, Des Moines; Casey Mahon, Assistant to President, University of Iowa.

Snethen commented briefly on the rules which were published in IAB 4/18/79 as adopted rules which were to become effective May 23, 1979. At its May 21 meeting, the Administrative Rules Review Committee voted to defer for seventy days the effective date (until August 1, 1979).

Chairman Schroeder reviewed the options available to the Committee as to disposition of the delayed rules: (1) Delay for 45 days into the next General Assembly or voting objections which would reverse the burden of proof.

Clark raised question as to an apparent redundancy in 1.1(7) which provided "The term 'terms and conditions of employment' ...shall include but is not limited to medical, ... vacations, and other terms, conditions and privileges of employment." Snethen said they were attempting to be very specific.

Schroeder asked Department officials to summarize all definiti before them and then he would allow time for questions.

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Snethen reviewed definitions as follows:
1.1(8)--retirement plan and benefit system--a necessary definition of which the first sentence coincides with Franklin position and the second sentence identifies a retirement plan will either be as a benefit to employees or a subterfuge aimed at evading the Act.

1.1(9)--injury. This term was used in §601A.15(8)a(8) so the Commission used the ordinary definition from Webster's Dictionary.

1.3(1) deals with amending a complaint. Iron Workers v. Hart realized that complaint was simply the starting point in the investigation, that they may well determine the action was discriminatory. Federal case law supports this type of amendment--a remedy should not be denied simply because of failure to choose the right basis for the discrimination.

1.8(2)--motions, ruling on--basically motions to dismiss; those to cross subpoenas that come sometimes prior to a public policy determination, other times afterwards but prior to the assignment of a case to a hearing officer. Someone had to rule on these motions Prior to this time, the compliance director had been ruling on them. Many times the compliance director who is head of the investigatory division would be involved with the complaint now has a position of probable cause hearing officer. The Commission believes this legally trained person would have expertise and it would be in conjunction with his duties.

1.16(601A)--Section 601A.54 requires the Commission to keep confidential the information gathered for an investigation except during the investigation they may release what is needed.

1.17(1)--motion to reopen. The question here dealt with whether the Commission was also under a 20-day limitation.

Schroeder asked Snethen to explain controversial items, two of which she had covered, being 1.1(8), 1.1(9), 6.1(1), 6.2(6) and Chapter 7.
Snethen continued:
3.9--from rules re sex discrimination in employment--used "terms and conditions of employment" instead of "fringe benefits", a change in terminology to avoid confusion with a retirement plan or benefit system.

Chapter 6--disability discrimination--redefined "handicapped person" and several other definitions were added which were modeled after Section 504 federal regulations and are intended to reflect a greater understanding of what disabilities mean.

6.1(6) defined "employer" for this rule only. They cover all who who are subject to disability provisions of §601A.6 and would be included each time the group term "employer" is used in this rule.

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6.2(6)--The Commission has always interpreted the disabilty provision in the CR Act to include reasonable accommodations because discrimination against persons with disabilities involved physical as well as mental barriers. They also have recognized that financial costs are involved. When the Commission rewrote the rule they specified what particular aspects would be considered and whether an accommodation is reasonable or unreasonable--no change from their previous position, simply more specific.

Chapter 7--discrimination in public accommodations. The language in the Act is quite broad and the Commission attempted to be more specific as to what is a public accommodation, first of all. Secondly, the question arose whether this would prevent affirmative action. The Weber decision which we now have says that affirmative action specific situations where there has been a determination that restrictions on protective classes have existed and a short-term method of making up for that possible discrimination is allowed, but that it must be narrowly defined to these particular circumstances The Weber decision was not under Title VII, yet it was without any specific statutory authority for affirmative action.
Snathen continued their position was that the same principle would be incorporated into the Iowa Act, if narrowly defined affirmative action were allowed.

Ditler asked to comment further on 1.1(9) as to the phrase "or an offense against a person's dignity." The question is whether that injury is within the definition of the CRC so that the word from the Commission could include compensating for an offense against a person's dignity and the Committee, at a previous hearing, was more or less informed that court cases on the question were almost without exception opposed to compensatory damages in a case like that. He researched the matter and found cases from the Federal district courts mentioned. One that was not mentioned was Amos v. Prong, Iowa Federal District Court, 1953 which was adopted as the law in Iowa as far as damages by the Iowa Supreme Court as recently as 1978. That case held that a black woman who was turned away from a dancing establishment might very well be entitled to up to $7,000 as was claimed in that case for exemplary damages and might be entitled to $3,000 compensatory damages although she wasn't hurt, injured, did not lose employment opportunities, etc. That case was also cited with approval by the Federal Dist. Ct. in Iowa as recently as 1972 as well as the Iowa Supreme Court in 1977 and 1978, so the proposition that the ICR Act will not allow damages for personal injuries to dignity without considering Amos v. Prong, is a one-sided view, in Ditler's opinion. Iron Workers v. Hart was cited, saying that damages of that sort could not be awarded. However, that case deals with one party--an employer--and another party--black worker who were refused admission and the case is cited as saying one party cannot seek compensatory damages for a third party. Ditler didn't think that was what they were talking about in these rules.

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Ditler added that the Hart case had been outdated by a couple of things. First, at that time the District Court reviewed the CRC decision de novo. The District and Supreme Court are limited quite a bit in their scope of review now. Ditler referred to cases in Minnesota and Illinois which have cases where one, in fact, would appear to them--$100 was awarded against the city of Minneapolis. That was a fairly specific statute--more than Iowa's. In Illinois, in 1974, in A.P. Green Services in which the state Fair Employment Practices Commission had a basically more general statute than Iowa held that compensatory damages could be awarded. It was stated that the cases are one-sided against the awarding of damages for the offense of personal dignity which is what those cases dealt with, Ditler said. He referred to 85 American Law Reports, Third Edition, 351-388 to offer balance to both sides of the law on compensable personal injury.

Brown addressed the Committe re 1.1(7) to 1.1(9). He indicated that Bankers Life Company, which is among the top ten pension writers in the country, were concerned as to the confusion the provisions can generate. The rule with respect to retirement plans uses the words "discontinuation of employment pursuant to retirement plans" and, of course, retirement plans are in effect during a person's active employment as well as after retirement. Also, the rule uses words where contributions are based upon the anticipated financial costs of the needs of the retiree. Brown thought this was unclear. He could find no statutory basis for either part of the rule. He referred to exemption in the CR law, discrimination division as being there because federal amendments to the pension law enacted in 1978 pre-empted state laws insofar as retirement plans are concerned. Brown referred to the interpretative bulletin issued May 25 by the Federal Department of Labor, in regard to age discrimination in employment and employee benefit plans. This bulletin recognizes certain exceptions to persons hired in older ages by freezing their retirement benefits at normal retirement age and the employer's right to reduce certain benefits at older ages. Such plan become unworkable if there are conflicting regulations between the state and federal agencies. Brown reiterated that since the federal agency is deeply involved in the subject, the Iowa rule only adds to the confusion.

Brown pointed out they had previously voiced objection to 1.1(7) and 3.9(2)c, when taken together, may create rather than prevent discrimination between the sexes. (See minutes of 5-21-79 for Iowa Life Assoc. comments).
Brown declared that the matter of benefit plans is also being resolved at the federal level, e.g. the April rule dealing with pregnancy. He urged that Iowa action be delayed until federal rules are finalized. He could foresee an impact on small employers, in particular.

Hauser concurred with the position taken by Iowa Life. He also referred to testimony which they had filed on a timely basis with

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the Commission dating back to January 5. (See minutes of 5/21/79) Hauser said that generally his organization, representing about one thousand manufacturing employers across the state have opposed the rules basically on the concept that CRC has exceeded its authority. He recalled, with respect to 1.1(9)--injury--that the GA specifically rejected an amendment that would allow awards for pain and suffering and he contended that rules dealing with personal dignity would fall under that same general category.

Richey addressed the Committee concerning areas of the rules which they found objectionable. Before he began, he pointed out that the Regents Board, had been committed to the principle of equal opportunity even prior to the enactment of many of the state and federal statutes. He spoke of difficulties to be encountered if there are inconsistencies in the state and federal rules to which they are subject.
Richey explained their opposition to 1.1(7) and 1.1(8) and submitted the following statement concerning their position on CR rules:

> I am grateful to the Legislative Rules Review Committee for permitting the Board of Regents to comment on proposed Chapters 6 and 7 of the Rules of the Iowa Civil Rights Commission.
>
> The Board of Regents wishes to begin by reiterating its commitment and the commitment of the universities and the schools for the blind and the deaf to the principle and practice of providing for equal opportunity to both present and prospective students, faculty and staff members. The University of Iowa was one of the first institutions of higher education in the United States to admit women to our professional schools; in recent years all Regents institutions have engaged in energetic efforts to broaden opportunities for minorities and handicapped students and staff at each institution. Much of this effort was undertaken voluntarily and in advance of federal or state requirements.
>
> We cite this very brief bit of history because we do not wish that our comments today be taken as an objection to the principles which underlie the regulations which the Commission is in the process of promulgating. Rather, we merely wish to point out a few ambiguities and problems with the rules as currently proposed. As you know, the Regents institutions, particularly the universities, are already subject to extensive regulation by the federal government with regard to discrimination in education based on race (Title VI), sex (Title IX), and disability (Section 503 and 504 of the Rehabilitation Act). Each of these statutes is interpreted in a set of guidelines adopted after the extensive review process which guides the government in its enforcement

activities. As The University of Iowa pointed out in its 1974 comments on the original Title IX regulations, the process of assuring equal opportunity is made difficult, if not impossible, if institutions of higher education are subject to varying and often conflicting sets of regulations issued by a variety of federal and state agencies.

With this in mind, let me make a few brief comments concerning specifics of the proposed rules.

The amendments to Chapter 1 pose a number of problems. Chapter 601A.12 of the Code exempts from the age and sex discrimination provisions of the statute any retirement plan and benefit system except where such a plan is a subterfuge to avoid the purposes of the act. A recent Iowa Supreme Court ruling has modified the original understanding of the statute to hold that "retirement" refers both to "plans" and to "benefit systems" in that the legislature did not intend to exempt other benefit systems such as life insurance, etc. from the age and sex provisions of the act. Consequently, the Commission is proposing this new set of rules in an attempt to reflect the revised understanding of the phrase "retirement plan and benefit system." It appears to us that they have gone beyond the intent of the court, or of the legislature, in the rules which they have proposed. This judgment of ours is confirmed by the provisions of Section 10 of House File 680 which was passed by the General Assembly in 1979.

Section 10 begins its amendments to Chapter 601A by adding a new unnumbered paragraph following the provision which exempts any "retirement plan or benefit system" from the age and sex discrimination provisions by saying,

> "However, a retirement plan or benefit system shall not require the involuntary retirement of a person under the age of 70 because of that person's age. This paragraph does not prohibit the following..."

The Amendment makes it clear that proposed rule 1.1(8) which interpreted the phrase "retirement plan and benefit system" only to apply to the question of discontinuation of employment cannot be appropriate. In other words, it seems clear that the legislature intended that the provision be read as its plain and common meaning would imply, that retirement plans which are based on actuarial tables which take into account age and sex are valid if not intended to subvert the purposes of the Act.

Proposed rule 1.1(7) creates similar concerns when it blankets in various insurance systems under the term "terms and conditions of employment." Again, in Section 10 of House File 680, the legislature clearly addressed the issue which is touched upon but not developed fully in 1.1(7). The third unnumbered paragraph in Section 10 reads,

> "An employee welfare plan may provide life, disability, or health insurance benefits which vary by age based on actuarial differences if the employer contributes equally for all the participating employees or may provide for employer contributions differing by age if the benefits for all the participating employees do not vary by age."

The federal government has just issued regulations dealing in great detail with the question of age as it impacts on employee benefit plans in a set of regulations interpreting the Age Discrimination in Employment Act. If the Commission must adopt further regulations explicating Section 10 of House File 680, we would recommend that they look to the federal regulations in this area.

It is perhaps appropriate to make one final comment. In the proposed rule 1.1(8), the Commission suggests that,

> "A retirement plan or benefit system shall be limited to those plans or systems where contributions are based upon the anticipated financial costs of the needs of the retiree."

The provisions of House File 680 would seem to render moot this suggested rule. If there is any inclination to continue to include it, however, we would point out the difficulty of determining "need" in this context. One would have to raise the question of whether or not the entire IPERS system would have to be revised if this provision were to be approved.

Chapter 6 of the proposed rules deals with disability discrimination in employment. As you know, as recipients of federal funds, we are guided by the provisions of Section 503 of the Rehabilitation Act. This provision prohibits discrimination against qualified handicapped persons. Section 503 of the Act further requires the universities to take affirmative action to employ qualified handicapped persons.

The federal agencies which administer these statutes have promulgated extensive regulations attempting to define and explain the requirements imposed by the statutes. These regulations were adopted in final form in May, 1977, after extensive consultations with higher education officials. Subsequently, the federal office of civil rights, in a joint effort with the American Council on Education and the National Association of College and University Business Officers, published a detailed guide to Section 504. Dean Kenneth Moll of The University of Iowa served on this joint task force.

The federal regulations, in essence, require the universities to create a comprehensive plan to assure equal opportunity for disabled students and staff and to make substantial

structural changes to allow ready access by the disabled to our programs. Finally, the universities are obligated to make "reasonable accommodations" to make it possible for disabled persons to perform job duties. However, if such accommodations would cause an undue hardship, the University is not obligated to make every conceivable change in its programs.

The Regents institutions believe that they are now in compliance with all the requirements of the federal law. Thanks to the generous support recommended by the Governor and provided by the General Assembly, we have made extensive structural changes, including the addition of elevators, ramps, curbcuts and the like, to make our institutions accessible to the physically disabled. More work needs to be done, but we have made substantial progress.

Similarly, we provide requested assistance to handicapped job applicants and staff members and have been willing to make reasonable accommodations in work duties to enable disabled employees to perform their jobs safely and efficiently. We have developed close working relationships with local alcoholism and mental illness treatment centers to assist employees in recovery so that they might return to the universities as productive staff members.

The rules proposed by the Civil Rights Commission are, in some respects, identical to the requirement of federal law and we are grateful for this. With a few unobjectionable exceptions, the definitional section (6.1) is taken directly from regulation interpreting Section 504 of the Rehabilitation Act.

Section 6.2 of the Iowa Commission's rules differ, in part, however, from federal requirements. It would be helpful if the Commission could clarify the meaning of several requirements dealing with "assessment and placement." If this were done, the universities would not be faced with problems in complying with conflicting and ambiguous federal and state requirements.

For example, Rule 6.2(1) provides that if examination or other assessment are required of prospective employees (as they invariably are), these examinations should be "directed towards" determining whether the applicant...

> "is professionally competent <u>or has the necessary skills or abilities to become professionally competent to perform the duties and responsibilities which are required by the job</u>."

We trust that this section, which has no federal parallel, would not require hiring of an individual merely because testing indicates that the individual has the ability to

become competent to do the job, even though not now competent. We trust that this provision would not require, in other words, on the job training of all applicants who show potential regardless of the University's needs for a competent person immediately.

Similarly, we are unsure of the meaning of Section 6.2(2) which requires examinations for assessments of potential employees to "consider the degree to which the person compensated for his limitations and the rehabilitation he has received."

Certainly, any sensible employer will look favorably on the efforts of a disabled individual to compensate for his or her disability. We are simply unsure as to the legal obligation imposed by this section. How can an employer determine what weight should be given to the rehabilitation received? As with all administrative regulations, we must assume that a rule of reasonableness will prevail in interpreting this section.

We are also somewhat concerned about the meaning of Section 602(3) which provides:

> "Physical standards will not be used to arbitrarily eliminate the disabled person from consideration."

This section has no parallel in the federal regulations, which prohibit discrimination against "otherwise qualified" handicapped persons. Recent court interpretations indicate that no unlawful discrimination occurs when a physical requirement of a job, in and of itself, eliminates some disabled person from consideration. Hence, sight is required of a bus driver and hearing is required of a surgical nurse. We believe that the Commission has recognized, in Section 6.7, that a physical or mental qualification may be a bona fide occupational qualification and that in a few instances, the disability itself may preclude safe performance of a job. Section 6.2(3) perhaps should be modified to eliminate any ambiguity in the rules when read as a whole.

Further, Section 6.3 requires that when a current employee becomes disabled, that an employer makes,

> "Every reasonable effort to continue the individual in the same position and to assist in his or her rehabilitation."

We support the concept behind this provision and, as mentioned previously, have been particularly successful in assisting and retaining employees suffering from alcoholism and similar disabilities. We should note, however, that as a state agency, our financial resources are limited. We trust that this provision would not be read to require employers to assume any and all costs of rehabilitation. We currently provide faculty and staff members with an excellent disability insurance program. This disability insurance program would not, however, cover all conceivable costs of rehabilitation. If the Commission's intent is to require employers to assume these costs, the Regents would need to look to the General Assembly for additional appropriations.

We also have serious concerns about the meaning of Section 6.4(3) and (4). These Sections provide:

> "It shall be an unfair employment practice for an employer to discriminate between persons who are disabled and those who are not, with regard to fringe benefits, unless there is a bona fide underwriting criteria...a condition of disability shall not constitute a bona fide underwriting criteria in and of itself."

We do not believe that this section has any parallel in the federal regulations governing employment and the handicapped. We are concerned because our current disability insurance program has a pre-existing condition clause. In other words, income is not protected when an employee must leave the University due to a disability which existed prior to employment with the University. We are unsure as to whether or not the language of the proposed regulation would prohibit this standard underwriting provision. If the proposed rule does, in fact, prohibit such a provision, it will be necessary for the Regents to seek substantial additional funding from the General Assembly to purchase disability coverage which would not contain such a provision. Moreover, we are unsure whether such coverage could even be purchased. It is likely that such insurance would not be available.

Finally, we have concerns about Section 6.6 which relates to recruiting and advertising. In brief, this proposed rule forbids pre-employment inquiries into mental or physical disability unless the inquiry is based on a bonafide occupational qualification.

This section is at variance with our obligation under Section 503 of the Rehabilitation Act. Section 503 requires universities, as federal contractors, to undertake affirmative action in the area of employment of the handicapped. It authorizes us to make pre-employment inquiries to determine if applicants have disabilities and to assist us in identifying those who may benefit from our affirmative action program. This information is requested on a voluntary basis only and such inquiries are permitted and encouraged by the federal regulations.

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Thus we would be grateful if the Commission would modify the rules relating to recruitment and advertisement to eliminate the conflict with our federal obligations.

All in all, we are pleased with the Commission's efforts to design reasonable rules relating to employment and the disabled. We are more than willing to work with the Commission to clarify the few matters I have mentioned previously so that we will not be subject to conflicting federal and state requirements.

With the Committee's permission, I would also like to make a few comments about Chapter 7 "Discrimination in public accomodations."

In its 1978 amendments to the Civil Rights Act, the General Assembly added a new paragraph to the definition of public accommodation. The amendment states that a public accommodation includes, among other entities,

> "Each state and local government unit which...offers services, facilities, benefits, grants, and goods to the public, gratuitously or otherwise."

In one sense, the Regents do offer services to the public - our concerts, our museums, some of our food operations, most of our campus and its building are available at one time or another to the public and a policy of non-discrimination is observed. However, in a major sense, our services are principally designed to benefit our students and are not available to the public in the sense in which the legislature and courts have invariably viewed "public accommodations." Thus, we have sex segregated residence halls and, in some instances, depending upon the activity, sex segregated Physical Education classes. Proven intellectual and technical ability is a prerequisite to admission in our academic program. None of these distinctions have ever been previously viewed as practices violative of statutes prohibiting discrimination in "public accommodations."

Indeed, it is our belief that the Iowa legislature acknowledged that "public accommodations" do not include educational institutions when those institutions are rendering services to student contemporaneous with the passage of the amendment defining state and local governments who deliver services to the public as units furnishing "public accommodation," the General Assembly also enacted separate Section 22 relating to sex discrimination in "educational institutions." This specific section bans sex discrimination in "educational institutions." Hence, under normal rules of statutory construction, educational institutions,

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having been covered by a specific rather than a general provision of the statute, could not be deemed "public accommodations" within the meaning of Chapter 7, at least with respect to educational programs.

Moreover, we believe that this interpretation is not only legally appropriate, but also wise from policy standpoint. The General Assembly was well aware of the extensive regulation and affirmative action requirements to which the Regents institutions are subject in the area of race, sex, color, creed, national origin, and disability. We believe that the Civil Rights Commission should amend the definition section of Chapter 7 to eliminate reference to "colleges and universities" from the broad definition of "public accommodations." We believe that the Commission's inclusion of the Regents institutions in brief and broad rules governing "public accommodation" is not consistent with legislative intent and, as a matter of public policy, a poor idea.

Finally, we would note that, if the Commission has jurisdiction to impose additional general requirements relating to sex and disability in higher education, it would be helpful if any such rules were developed in a manner consistent with federal requirements and in consultation with the Regents institutions.

We like to end our comments in the way we began - by restating our commitment to equal opportunity in education for all persons. Thank you for allowing us to speak to the Committee, Mr. Chairman.

Holden asked if the Commission agreed with the testimony that the rule was inconsistent with federal statute. Snethen could see no inconsistency--the nature of benefits might be so low that it would be plainly a subterfuge, for example, $10 a year would not meet the needs of a retiree.

Ditler took the position that the Labor bulletin mentioned by Brown contained rules with which Iowa's was consistent.

Holden observed that opponents and the Commission seemed to be "poles apart" and he found it to be troubling.

Reimers spoke of the federal interpretation of the law they allow exceptions in employment. For instance, an employee within the last five years of regular or normal retirement date of an employee retirement can be excepted. The only consideration of age in CR rules is when an employee retires. This is the type of inconsistency that will be difficult for employers. Reimers referred to ERISA regulations that require an employer to have a financially stable

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retirement plan. If an employer cannot consider age, this will unbalance funding requirements.

Oakley asked Commission representatives for their reaction to the ERISA portion of the regulations that already exist--were their exemptions the same as those of federal regulations.

Ditler responded that they were not and that some rules on employer benefits and retirement plans would be expanded based on the interpretative bulletin of the Labor Department for consistency.

Oakley questioned Snethen as to whether she saw a need to change either Item 1 or other rules within that category in order to conform with federal which according to Reimers are broader than your language. Snethen said the interpretation being put on their language is unduly narrow. They were concerned with a system that meets all of the other legal requirements--ERISA and all others, that where the type of benefits proposed are so small to the employee that they have to be adopted as subterfuge for discrimination and wanting to retire someone, not a voluntary retirement. As to whether they were confident with the federal interpretation as to use of the subterfuge, Snethen thought they had been asked to do something so there must have been a problem. She thought their standards would be higher.
Snethen thought the areas of noncompliance with Iowa rules by those who were in compliance with federal but be minimal.
Oakley asked her why it would not be preferable to leave this area to the federal government as long as it was so pervasive in its coverage. Snethen did not think they were inconsistent--simply covering a narrow spectrum of companies. She concluded the Commission is given the responsibility for interpreting the Act and with that provision that says that "except for the instances...subject to the Act means something and this is the definition the Commission believes is necessary.

Tieden thought the Commission was too stringent in their interpretation. It was his opinion they had authority in the Act to handle the situation without going this far.

Oakley asked if a memorandum had been submitted on the question of injury against a person's dignity and made observation that the Commission must be right within the scope and view of the court is narrow.

Ditler said that was true with regard to factual questions--the question of whether a balance of damage is a question of law is not decided by the court. He spoke of the different role of the court of late.

Clark declared there was no way that the society as a whole could afford to pay everyone who suffers an offense against his dignity and the legislature last session changed the law to provide damage payments for more concrete things.

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Motion — Clark moved to delay Item 1 forty-five days into the next General Assembly.
Discussion followed.

Holden took the position the GA could still take action, even if an objection were filed. A problem with the 45-day delay was that the time goes so quickly and the legislature might not have time to act.

Sub. Motion — Holden moved a substitute motion for the Clark motion that objection be placed on Item 1 of the rules and that the matter be called to the attention of the General Assembly.

Royce suggested that as a matter of procedure, it would be preferable to review the entire set of rules and then deal with motions separately at the end.

Defer — Holden was amenable and the motion was deferred.

In answer to Patchett, Schroeder said it would be appropriate to object to only a portion of Item 1 and leave 1.1(9) as is.

Clark preferred to include 1.1(9) in the objection.
Snethen pointed out that Chapter 4 of the Code states that where the legislature does not provide a legal definition that they intend the plain meaning of the words to apply and that was the reason they relied on Webster for their definition of "injury".

Holden thought the Commission ought to be on the defensive to defend their definition, if necessary.

College Aid Remarks — Willis Wolff read brief remarks in reference to 2.15(8), 2.15(9), 6.2(6), 7.2(1) and 7.3, copy of which is made a part of these minutes:

I am Willis Ann Wolff, Executive Director of the Iowa College Aid Commission, which administers programs of financial assistance to Iowa students as well as several other federal and state funded programs in support of postsecondary education in Iowa.

The rules proposed by the Iowa Civil Rights Commission, as published in the April 18, 1979 Iowa Administrative Bulletin, raise a number of questions which have a direct or indirect bearing on the programs administered by our agency. My comments and the sections or subsections of the proposed rules to which they relate are given below:

.. 2.15(8) The rule that mental disability shall not be considered a "limiting factor" in state programs of financial assistance is in direct conflict with the statute governing the State of Iowa Scholarship Program. The statute specifies that scholarships shall be based on "ability and need to deserving students of Iowa." Moreover, the rules promulgated by the Commission for the new Iowa Guaranteed Student Loan Program state that any student receiving a

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guaranteed loan must demonstrate the ability to benefit from the educational program for which the loan is to be used. The Iowa College Aid Commission under formal agreement with the commercial lending institutions guarantees all these student loans against default. Lender cooperation in this new program is likely to suffer if the lenders perceive any threat to their right to set their own policies and to make or refuse loans at their own discretion. I believe such a threat is implicit in Section 2.15(8).

This rule also would affect indirectly all the state funded financial aid programs, as students must be enrolled at an approved Iowa postsecondary school in order to receive state awards. Admission to a course of study at any reputable school is and rightfully should be based on whether the student has the capacity to complete the course of study or training with some measure of success. Otherwise, the school would be accepting payment for a benefit that it could not hope to deliver to the student. A mental disability, depending upon its severity, of course, would preclude successful completion of virtually all academic programs. In the case of many training programs, certain physical disabilities also would prohibit successful completion.

2.15(9) The requirement that all state agencies in the Executive Branch shall report annually to the Iowa Civil Rights Commission on their "internal activities and relationships with the public and with other state agencies" attempts to impose an unjustified burden on the agencies. I believe that such a requirement exceeds the authority of the Iowa Civil Rights Commission. Our agency is willing to cooperate fully with the Civil Rights Commission in any investigation of alleged discrimination. We also report on a regular basis to the Governor and the Legislature and the Iowa Civil Rights Commission may obtain a copy of these reports upon request.

6.2(6) In regard to "reasonable accommodations" for the handicapped, most state agencies have little or no control over their physical environment. The location and accessibility of state offices and the agencies' budgetary capacity to upgrade these accommodations are the responsibility of the General Services Division and the state legislature. The term "reasonable accommodations" would appear to be wide open to varying interpretations by the Iowa Civil Rights Commission.

7.2(1) This rule needs clarification. Are the privately supported colleges and universities, not under supervision of this state, to be categorized as public accommodations or are they excluded as "distinctly private in nature"?

7.3 This section also can be interpreted in a variety of ways. Subsections a, b and c appear to state that all members of the general public with the exception of protected classes are equally entitled to the same financial aid or other services and benefits regardless of whether they meet the criteria established for the delivery of such benefits. If this rule is to be taken literally, it implies that financial assistance based on need would constitute discrimination against the non-needy applicant. It implies that colleges which give the high academic achiever admission preference over the marginally literate are guilty of discrimination. This rule could even be construed to

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mean that it would be discriminatory to refuse a mentally retarded individual the enjoyment of a shooting gallery, to deny a paraplegic unattended access to a swimming pool, or to refuse to enroll a blind student in a welding class. I do not really believe that the Iowa Civil Rights Commission intended these extremes of interpretation, but that is what Subsection a, b and c seem to say.

On the other hand, Subsection d appears to give the "public accommodations" the authority to set "requirementsor conditions the individuals must meet" in order to be eligible for financial aid, services and other benefits. Which Subsection is correct?

Subsection e under 7.3 needs to be rewritten for clarity. I cannot even venture a guess as to what is meant by "denying an individual an opportunity to participate in a program through the provision of services."

In summary, I feel that the rules as proposed are unclear, subject to varying interpretation and, in some instances, go beyond the jurisdiction of the Iowa Civil Rights Commission.

Thank you for the opportunity to express my views on this very important issue.

Hauser asked that Dennis Drake be permitted to comment on 1.1(9). Drake noted that earlier the Commission cited a federal court decision--1954 in Federal District Court of Iowa--the proposition that the present CR Act would allow for under prior case law. The Federal court tried to examine Iowa law in that they could not say that, as a matter of law that CR Act would not allow exemplary damages--they didn't say it would, only that they could not say it would not.

Recess Reconvene

Chairman Schroeder recessed the meeting at 11:50 a.m. for lunch. Meeting was reconvened at 1:30 p.m. with Schroeder in the Chair. Five members were present.

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Wilbur Miller spoke on behalf of the 27 member colleges of the Iowa Association of Independent Colleges and Universities about their concern of the portion of rules dealing with discrimination in public accommodations. His prepared statement was as follows:

Ladies and Gentlemen, I am Dr. Wilbur C. Miller, President of Drake University. Today I am speaking on behalf of the 27 member colleges of Iowa Association of Independent Colleges and Universities to express our concern about the proposed rules of the Iowa Civil Rights Commission, especially the portion dealing with discrimination in public accommodations. I am expressing the point of view of the Association as well as my own. Dr. Wendell Q. Halverson, President of the Association, is out of state or he would be present also to discuss this matter with you.

The Association represents the independent higher education institutions of the State of Iowa. It is committed to public policy which maximizes freedom of action for all institutions, freedom of choice for all students, and the widest possible diversity of roles, missions,

perspectives, and programs in all of higher education. I served as Chairman of the Association during the academic year 1976-77.

Today we are strongly questioning the jurisdiction of the Iowa Civil Rights Commission over the internal functioning and administration of independent colleges and universities under an umbrella definition of them as public accommodations. The Commission certainly has jurisdiction over our employment practices. An extension of the coverage through a remarkably inclusive definition of the term "public accommodation" in the proposed rules is, in our opinion, contrary to the meaning and intent of the Act, either in its original form or in later amendments. The Commission implements the intent of the Legislature; it does not write new law.

The role of the independent college or university is becoming increasingly difficult. Administrators and faculty attempt to offer options, decide upon course offerings, determine what programs the school can provide and those it cannot. We manage in a world of declining enrollments and increasing costs. We make choices for and about people. We decide what applicants will be admitted and what courses they must take. We decide prerequisites for courses and criteria for successful completion of courses and ultimately for a degree. We try to know what we are and what we are not. Despite the inclusive definition in the proposed rules of the Iowa Civil Rights Commission, we are not a public accommodation.

To support my brief remarks you have received a statement giving the legal background for our opinion that the proposed rules are an improper extension of the jurisdiction of the Commission. The statement makes two main points. First, the proposed rules expand the definition of the statutorily defined term "public accommodation" without any corresponding change in Iowa law. Specific citations are given to document this claim.

The second basis for objection is a reference to the wording in Section 601A.9, Code of Iowa (1979) which forbids discrimination on the basis of sex in "any public school, or elementary, secondary or merged area school or area education agency or their governing boards."

We believe that the proposed agency rules are an unwarranted and possibly illegal extension of the Commission's authority. The ambiguous wording could allow the Commission to examine all of the practices of private colleges and universities.

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It is the position of the Iowa Association of Independent Colleges and Universities that this invasion into the programs and policies of the independent higher education institutions was not intended by the Legislature and is not authorized in the wording of the legislation.

We strongly urge that an objection be placed on the public accommodations section of the proposed rules or that the rules be delayed for review by the Legislature.

Miller also distributed the following statement giving the legal background for their opinion that the objectionable areas are an improper extension of the jurisdiction of the Commission:

It was recently brought to the attention of Iowa's independent colleges and universities that certain rules currently before your consideration are confusing, misleading and in excess of the implementing agency's statutory authority. The rules proposed by the Iowa Civil Rights Commission [ICRC] and published as ARC 0192 in the Iowa Administrative Bulletin, Volume 1, No. 23, were delayed by your committee for 70 days in view of the objections of a number of concerned citizens. In your further review of these rules, please note and consider the objection of the Iowa Association of Independent Colleges and Universities to Item 9 of ARC 0192 dealing with public accommodation.

Our objections to Item 9, Section 240-7.1 (601A), are twofold.

First, the proposed rules expand the definition of the statutorily defined term "public accommodation" without any corresponding change in Iowa law. Since the addition of the "public accommodation" sections to the Iowa Civil Rights Act in 1965, and up to April 18, 1979, the date of these proposed rules, the ICRC has been content to state in their rules that the definition for "public accommodation" shall be the same as that specifically stated in Chapter 601A. Section 240-1.1 (601A) I.A.C. During this period of time three major changes have been made in the public accommodation law: 1) the protected class of "sex" was added in 1970, 2) "disability" was added as a protected class in 1972, and 3) in 1978, "to clarify the existing definition so as to clearly cover all state and local government agencies dispensing goods, services, funds, or facilities to the public" the definition was supplemented to add "state and local government unit or tax-supported districts". See H.F. 2390, 67 General Assembly (1978).

Over this period of time, there has never been an amendment to add academies, colleges and universities to the definition of a "public accommodation", yet the ICRC has by rule attempted to add those institutions. It is further apparent from the wording of the proposed regulations that private academies, colleges and universities are considered by the ICRC as within the term "public accommodation", since the rule adds as an entirely separate category for "all educational institutions under the supervision of this state." ARC 0192, 240-7.2(1).

Historically, Iowa has had a statute entitling persons "to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, retaurants, chophouses, eating houses, lunch counters, and all other places where refreshments are served, public conveyances, barber shops, bathhouses, theaters, and all other places of amusements"; the statute also provided misdemeanor penalties for its violation. Iowa Code 1897, Section 5008; reprinted as Section 735.1-2, Code of Iowa (1946).

One of Iowa's first Supreme Court case on the subject of free access to public accommodations was Humburd v. Crawford, 128 Iowa 74?, 105 N.W. 330 (1905). In the Humburd case, the Court clearly set forth the standard for judging a facility as a "public accommodation" or a private one when a Polk County juror was denied the right to eat in a restaurant with other jurors solely because of his race. The Court in

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Humburd determined that eating houses are public in nature and stated: "If meals were served only in pursuance of previous arrangements, and therefore to particular individuals, rather than to any who might apply, it was a private boarding house only." 128 Iowa at 744. It was this limitation through the individual application for services of the business that distinguished a private from a public institution. Similarly, private educational institutions do not and are not required to serve any member of the public who presents himself. Their admissions are limited to the selection of a small number of the total applicants, and their academic and athletic programs are limited to certain of those students admitted and are not open to the public in general.

In Brown v. Bell Company, 146 Iowa 89, 97, 123 N.W. 231 (1909), the Iowa Supreme Court again reviewed the historic "public accommodations" law and found it evident that the Legislature did not attempt to cover all kinds of business. The Court further held that it was doubtful that a public access law could be made to apply to purely private businesses. 146 Iowa at 97.

Although the statutory language of the Iowa public accommodations law was broadened when it was incorporated into the Iowa Civil Rights Act in 1965 [61 G.A., Ch. 121, § 2 and § 6], the expanded definition of "public accommodation" clearly maintained the distinction between public facilities and private ones. "Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the general public for fee or charge or gratuitously, it shall be deemed a public accommodation during such period. Section § 105A.2, Code of Iowa (1966); reprinted in Section 601A.2(10), Code of Iowa (1979).

Statutes on public accommodation were not intended to encompass private educational institutions. It is a well accepted principle that "owners of private educational institutions may, in the absence of statutes imposing a general public duty to admit as students any and all citizens, select those whom they will receive into the institution as students and discriminate for any reason they see fit; their relationship to their pupils is based upon contract and not on public rights." 15 AmJur2d Civil Rights, § 82, citing Booker v. Grand Rapids Medical College, 156 Mich 95, 120 N.W. 589. "A private school has been held not to be a place of public accommodation or amusement within the terms of a state civil rights statute forbidding discrimination in such places and neither expressly including or expressly excluding private schools from its coverage." 15 AmJur2d Civil Rights, § 83; citing Reed v. Hollywood Professional School, Inc., 167 NYS 33.

The Iowa Attorney General, in an opinion issued on February 2, 1972, discussed the "public accommodations" required under the Iowa Civil Rights Act in conjunction with a state licensing agency's attempt to deny a liquor license to a private club, who restricted membership to Caucasians. In a conciliation agreement, the Iowa Beer and Liquor Commission made as a condition for licensure the admission of noncaucasians. The Attorney General stated:

> "Clearly, the conciliation agreement has attempted to amend the statutory definition of 'public accommodation' to include private clubs which the legislature expressly excluded from the definition. Such amendment is beyond the power of either commission and that provision of the agreement was void from its inception. Even the Federal Civil Rights Act excludes private clubs from the definition of public accommodation. Title 42 U.S.C.A. § 2000a.(e).
>
> "Neither Congress nor any state legislature has, to my knowledge, attempted to regulate racial prejudice in such non-economic personal and social relationships and associations, as selection of a spouse, choice of friends or party guests, or membership in private clubs, nor have they for further example, prohibited private schools from discriminating on the basis of religion in admitting students. In my opinion such regulation, even by those legislative bodies, would be unconstitutional. 56 Iowa Law Review 473, 511, 526. It is unthinkable that the executive branch of government would so enter the social thicket by such use of its licensing power." 72 Op. Att'y Gen 343 (Iowa 1972).

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While it is true that several federal laws prohibit discrimination in certain policies of private colleges and universities, no such prohibition is contained in Iowa law. For example, the federal statute, 42 U.S.C. § 1981, has been held to prohibit private schools from refusing to contract with the parents of black children solely on account of their race. Runyon v. McCrary, 427 U.S. 160, 49 L.Ed.2d 415, 96 S.Ct. 2586 (1976). Another limitation on the practices of private vocational, professional, and graduate higher educational institutions who receive federal financial assistance is contained in Title IX of the Education Amendments of 1972. This federal law prohibits and forbids discrimination on account of sex in admissions policies, and educational programs and activities. 20 U.S.C. § 1681.

This brings us to the second basis for objection to the ICRC's extension of the interpretation of "public accommodations" to private colleges and universities. In the 1978 Iowa Legislative Session, a senate study committee, after discussions with the Department of Public Instruction and the ICRC, proposed Study Bill 307, denominating it a "mini-Title IX" bill, prohibiting sex discrimination in public schools and area schools and using provisions similar to those of the federal law. It appears that Study Bill 307, a copy of which is attached, did not get out of this legislative committee. However, one portion of that bill did survive and was placed by amendment in the major revision of the Iowa Civil Rights Act, H.F. 2390, and is now known as Section 601A.9, Code of Iowa (1979).

The Iowa Civil Rights Commission did get authority to police discriminatory practices in educational institutions to a limited extent. Section 601A.9 now forbids discrimination, on account of sex, in educational programs and activities. However, this section of the law is strictly limited to "any public preschool, or elementary, secondary or merged area school or area education agency and their governing boards." Section 601A.9, Code of Iowa (1979). It is clear from the Iowa Legislature's adoption of this provision that they did not believe or intend these same schools to be covered under the public accommodation sections already in the civil rights law. Not only are the provisions governing educational institutions limited to public facilities, they are also limited to sex discrimination. For the ICRC to interpret the public accommodation section of the current Iowa law as covering educational institutions generally in areas of race, creed, color, sex, national origin, religion or disability, the Commission would have to accuse the Iowa Legislature of redundancy and duplication in passing a law in an area already covered by another section of the same act.

It is clear that the Iowa Legislature did not intend to add educational institutions, whether they be public or private, to the general prohibitions of the public accommodation law. Had the Legislature even intended to cover sex discrimination in private institutions' programs or activities it would have and could have done so in Section 601A.9 by specifically defining "education institutions" as both private and public institutions. Yet looking at the Legislature's actions in Section 601A.9, that body carefully limited the Iowa Civil Rights law to exclude even public colleges and universities from the prohibitions against sex discrimination.

The fact that the ICRC is attempting to implement, by rule, a proposed statute that was not adopted by the Iowa Legislature is abundantly clear when the most recently proposed rules of the ICRC, "Chapter 8 - Discrimination in Schools", are reviewed (a copy of which is attached). It is not by odd happenstance that these rules are proposed as interpretations of the public accommodation section of the law rather than that most closely related to their purported topic, Section 601A.9, Unfair or Discriminatory Practices - Education. If the ICRC is going to regulate education, it should do so under the proper statutory authority.

The ICRC's attempt to bootstrap the law's partial regulation of the practices of public schools into a full blown examination of the admissions, housing, counseling, financial assistance, athletic scholarships, employment of students and athletic programs of "any public agency and private institution" is clearly an usurpation of legislative authority. See proposed regulation 240-8.2(1) (601A). The limitations of an agency's authority to promulgate rules are oft repeated and frequently cited.

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The Iowa Legislature has limited the Commission's power to adopt or amend its regulations to only those regulations "consistent with and necessary for the enforcement of this chapter." Section 601A.5(10) (Emphasis supplied.) Rules cannot be adopted at variance with statutory provisions, or that amend or nullify legislative intent. See Bruce Motor Freight, Inc. v. Lauterbach, 247 Iowa 956, 961, 77 N.W.2d 613, 616 (1956). "The plain provisions of a statute cannot be altered by an administrative rule or regulation. . ." Iowa Department of Revenue v. Iowa Merit Employment Commission, 243 N.W.2d 610, at 615 (Iowa 1976).

It is to this committee that we appeal and seek your objection to Item 9 of ARC 0192 as an action in excess of the ICRC's authority.

Sincerely,
The Iowa Association of Independent Colleges and Universities
Dr. Wendell O. Halverson, President

Miller summarized the two points made in their statement. First, the definition of "public accommodation" was expanded without any corresponding change in Iowa law. Secondly, their basis for objection is the reference to the wording in §601A.9 of the Code, which forbids discrimination on the basis of sex and he quoted: "any public school or elementary, secondary, or merged area school or area education agency and their governing boards." The agency rules are an unwarranted and possibly illegal extension of the Commission's authority. Miller concluded that it was legislative intent for this invasion into the programs and policies of the independent higher education institutions.

In response to question by Patchett, Miller did not mean to imply they were exempt from the statute [§601A.6 or 601A.2(5)] defining "employer" but contend they were not included.

Miller noted there was no mention of private schools, to his knowledge, when public accommodation was defined.

Patchett: Assuming the definition of "public accommodation" is correct, are there any additional impositions substantively on private colleges and schools over and above the ones under federal law?

Miller agreed they are covered under federal law. He was not sure of the impact the Iowa rules would have but it had been their experience when two or more agencies are involved whether or not they have the same guidelines, it becomes confusing as to where jurisdiction would belong.

Oakley asked Miller what responsibilities they had at this time as far as federal law was concerned re public accommodations. Reimers respond. to the question saying that:

"The federal law that Dr. Miller was talking about is the Title IX sex discrimination sections which regulate the internal programs of private colleges and universities and 504, handicapped. And what the Civil Rights redefinition of "public accommodation" would do would be to add the additional categories of race and national origin and handicap and those other sections. They would make the general categories protected categories of the entire Civil Rights Act apply to private colleges and universities and to your question about the specific exemption for private colleges and universities the definition of public accommodation does specifically exempt institutions and facilities of a private nature and that is really the question that Dr. Miller is speaking to and that is in the definition itself it has an exemption for private institutions."

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Patchett asked Reimers if she were contending they could discriminate on the basis of race under federal law and she answered "no" that she was responding as to what is coverage under federal law. She referred to the right to contract [1981 federal law] and a cause of action for race discrimination covered by the federal law, but as to internal programs, Title VII, is employment and as to internal educational programs--the two laws that Dr. Miller cited are the limitations in the federal program. She continued that under this redefinition of public accommodation, all of the protected categories of the CR Act would apply if the Commission were successful in the redefinition to this broad category of institutions regardless of their public or private nature. She concluded that is not what the historic background of the public accommodation law has meant.

Snethen spoke to the multiplicity of agencies and said they had operated under the deferral system in their employment complaints and assumed the same policy would apply to complaints under public accommodations. They recognize their limited resources and do not anticipate multiplicity of investigations.

Miller was opposed to the expanded definition also.

Royce questioned Reimers: "Under the federal provisions 1981-83, how did an aggrieved individual under those laws get remedy? What are enforcement rights? Reimers said it would be by federal lawsuit. Reimers continued in response to Royce: "Others who are to respond to the public accommodation section and the application to educational institutions can respond to the investigative processes. One point that Barb Snethen made on the deferral agency - under Title VII, there are 607 or 700 agencies that are specific deferral agencies. A lot of the other regulatory bodies - HEW, they do an independent investigation, so I don't think you could automatically say that there is going to be a deferral and that everybody is going to depend on the Iowa Civil Rights Commission for the investigations, but I think you made your point of Dr. Miller's discussion was the private nature of private colleges and universities.

Patchett: "Let me preface my remarks by saying it's a different role for me in this committee than it is on the floor of the House because on the floor you know you make policy decisions and judgments and here at least I have been trying to limit myself to not so much questions of policy whether or not I like the policy decision, but whether or not the rule is within the policy decision that has been made by the legislature, either implicitly or explicitly, and I am going to find myself later on today going against my feelings on policy in maybe raising some objections to some of their later rules but going ahead and raising those objections because I think they are beyond the statutory scope. O.K. now that aside.

It seems to me that you are in a difficult position trying to argue whether the legislature went through an explicit thought process and affirmatively said we intend to include private colleges under the definition of public accommodation, it seems to me that you can at least generate a pretty strong argument looking at the broad language under that definition and the court cases, in effect the general thrust of construing Civil Rights Act language broadly. You seem to be basing your exemption on the language that says "public accommodation shall not mean any bona fide private club or other place, establishment or facility which is by its nature distinctly private" and in light of, for example, Runyan v. McCrary, where the Supreme

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Court sets out how private schools go about advertising publicly for students, soliciting publicly, etc., it seems to me that's a tough case for you to make that you're a 'distinctly private' institution and, therefore, not covered by the public accommodation definition."

Patchett referred to the Runyan case which, in essence, bypassed any requirement for state action and said that under 1981 racial discrimination would not be allowed even for private schools.

Reimers thought the law on public accommodations was basically limited to establishments offering their services to the public at large--those who do not go through an application process with elimination based on certain criteria. She noted there are institutions here that admit people for religious purpose. She urged careful review of upcoming rules of the Commission which are intended to regulate schools under the public accommodation section. [Ch 8 CR rules]. The legislature, in major revision of the CR Act, specifically regulated education but only public schools from high school down.

Patchett thought the religious question was a separate issue. From his knowlege there is no religious discrimination in independent colleges. Schroeder added that seminaries probably would be the exception.

Reimers thought more was involved than exclusion from admission--it is any other preferential basis. Many colleges may not discriminate re admissions but may take those factors into consideration for scholarships and other areas.

Patchett observed that Reimers seemed to be equating Drake, Grinnell with an organization such as Elks--distinctly private.
Reimers reiterated that she was contending that the way public accommodation has been interpreted under Iowa case law, it means holding yourself out to the public at large, not a selective process of administration to a few.

Snethen recognized that §601A.7(2) is a specific exemption for bona fide religious institutions--and they would not say the rule is contrary to that law.

Ditler called attention to a ruling by the statutorially created hearing officer for deciding no probable cause question who found that the religion-based hiring practices of private schools do not come within the jurisdiction of the Commission.

Patchett commented: "Assuming for argument's sale their definition is valid and then look at 7.3 which prohibits discrimination..." He asked for examples of operations in independent colleges that fall under that rule.

Reimers: Getting back to the second set of rules that we are going to be seeing here shortly, they may not just be these rules. It, primarily, is the six and five girl basketball rules that's the publicity part of those rules, but there are a lot of those rules that would require public accommodations to spend an equal amount of money for females in an institution and males regardless of the number of females and males who actually participate in athletics. It's the redefinition of the public accommodation section and in the later application of that redefinition that is really going to make the changes in the private institutions.

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Patchett: So you are more concerned then with the impact of the redefinition in light of these later rules they're bringing forward than you are with this itself?

Reimers: Well, the concern is that the redefinition of public accommodations, there has been no change in the law that would require that redefinition. They haven't changed any substantial portion of the public accommodations law which would require a redefinition to add "academies, colleges and universities."

Patchett: Let me ask this. You aren't contending are you that if someone were to bring an action irrespective of these rules and argued that Drake comes under the public accommodation definition in the statute that a court couldn't agree with that argument in the absence of these rules, are you?

Reimers: I think that's up to the court to interpret the statute and I think there's a good argument that they wouldn't find private institutions as a public accommodation for the very reasons and for the case citation that I think you'll find within the annotations under this section.

Patchett: We have a memo up here where there are a number of cases cited that would be supportive of that, too. Neither memo is from the Civil Rights Commission.

Reimers: And I think you saw in Dr. Miller's written statement some citations to cases that find that unless a statute specifically says that private colleges or universities are public accommodations they are not generally held to be so. But, you have really got to look at the law under the Iowa Code and I think the weight of that law deals with public accommodations as those that open their doors to the general public.

Patchett: Do you admit that this is more or less of a judgment call here. I mean it's an open question, right? It's arguable both ways.

Reimers: I think the weight of the law is in support of private institutions are not public accommodations.

Patchett: But your greater concern right now is with these rules they have coming before us next month.

Reimers: No. I think both of them ought to be of concern to this committee because I think the first step is that the Commission have regulations that are within its statutory power to do so and make interpretations that comport with the intent of the legislature in passing this section of the law and to pass a section on schools under public accommodation law when a brand new chapter was enacted two sessions ago, on education specifically, is a misinterpretation of the Iowa legislature's intent.

Patchett commented that it was his opinion "Iowa's mini Title IX" was legislative intent to "highlight a specific problem."

Holden took the Chair.

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Oakley: I think one of the problems that we have in this area is that in the first place an agency does not initially have to promulgate in, its rules occupy the entire sphere of its legislative mandate. For the argument that, well, they haven't done it before doesn't necessarily preclude them from doing it now and this occurs with a number of agencies. I think the next question is whether or not the court's interpretation of the statutory language, historical interpretation of that, would be changed by reason of the Civil Rights Commission now more completely occupying the field of its perceived legislative mandate and what effect that would have in changing what little case law there is in this area in the state, understanding that the rules of construction in deference to the expertise and the knowledge of an agency in interpreting its own statute and particularly in view of the fact that the legislature has not legislated in that area. I think that without necessarily agreeing or disagreeing we have a number of principles of statutory construction. Interpretation creates a great grey area. My only observation would be is I think that it's an area that ought to have a considerable amount of definition by agency rule or by the legislature, if at all possible. But I think that's the problem we are faced with and whether or not a court would find this to be ultra vires on the part of the commission irrespective of whether it's good public policy at this point in time. It might very well be, but the Committee would decide that it may be within your possible legislative mandate, but we don't think that's a policy you should pursue now, which I think is an argument and an alternative that the liberal construction of your mandate as the Rules Review Committee would allow you to do.

Patchett: You did not cite any cases and you talk about the weight of authority on the definition of public accommodation. There aren't any cases cited since the Iowa statutory definition of public accommodation has been changed. Those were all old cases under the former laundry list.

Reimers: That's right. It was all changed two years ago but the change in the Iowa statute public accommodations was only to make sure that state institutions and state financed institutions would come within this definition and it really didn't have anything to do with public or private or other institutions.

Discussion as to when "public accommodation" was first defined. Reimers thought it was 1966. In answer to Patchett, she said there had been some civil rights cases with respect to pool halls and other strictly public places that offer their services to the general public.

Schroeder took the Chair.

Snethen wanted to make it very clear that the Commission's position was that the rule is not a redefinition. This is the first time they have complicated regulations and the rule is to clarify who would come under "public accommodation."

Mahon spoke of the Regents not only because of the jurisdictional aspect but because they are currently heavily regulated by the federal government. They support the principle of equal opportunity but will have problems with Iowa rules which are in substantial variance with federal law. She cited the area of disability in higher education as being regulated by federal CR office and American Council on Education.

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McCarthy expressed the position of those he represented. He had listened with attention to Dr. Miller and concurred with the statement he made. McCarthy said there were approximately 50,000 children in secondary and elementary Catholic schools in Iowa. Their superintendents, basically, prize the privacy of the systems but try not to violate any of the Christian aspects of fairness to minorities. His interpretation of 601A.2(10) that it would not apply to private colleges and schools. He was curious as to where the Commission had got the words "schools and universities" in their definition of accommodations. He was concerned that CR had used the accommodations section of the Code rather than 601A.9 for Chapter 8 of their rules re discrimination in schools.

Snethen announced that Chapter 8 was under public notice with 3 scheduled public hearings throughout the state. She urged interested persons to make comments during that process.

Patchett asked for Commission interpretation as to the impact of 7.3 on affirmative action programs because on the face, it appears to bar them.

Snethen said they have reviewed the Weber case on affirmative action in employment and the federal interpreted Title VII, even without specific statutory authority for affirmative action, that when a particular institution determines that its policies have created a discriminatory effect, they may take action to overcome that past discriminatory effect if the action taken is carefully measured to counteract the past hurt and is of comparatively short duration. She thought the same kind of consideration goes under public accommodation and probably to place it in affirmative action in public accommodations would be of most concern to educational institutions as opposed to stores, for example. They have begun to address, in Chapter 8, affirmative action in education but did not see that in other public accommodations affirmative action was the concept. The fact that they have adopted the rules would not preclude affirmative action under the Weber analysis, in her opinion.

Patchett noted that 7.3 was quite specific about there not being differing kinds of treatment.

Snethen said they could add a specific subrule allowing affirmative action.

Mahon reiterated concern for the rules which have the force and effect of law. She stressed the importance of definitive rules to aid them in their decisions on disability and ability in their programs.

Henry comments: One of the basic premises that we all somewhat alluded to is that these rules governing accommodations, as well as those developed in case law over the last 100 years, concerning accommodations, simply do not fit the educational institutions, that what we are talking about here is discrimination, discriminatory conduct as it is modified in some respects by the affirmative action programs, voluntarily or involuntarily adopted, and for us voluntarily adopted. We are talking about discrimination, not accommodation and any person deprived of civil rights because of discriminatory conduct has a right of action. There are many ways in which a person can raise those

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issues without going to court. We are struggling here with whether these institutions are public accommodations that fit with pool halls and hotels. The point we are trying to make is that we have never been and still do not consider ourselves public accommodations.

Tieden made a general statement that the rule creates a tremendous problem. He was of the opinion that more rules were probably unnecessary since there seemed to be ample federal regulation now. He continued that laws are passed to fill a void and the rules which are promulgated should facilitate the filling of that void. He could see no void but did recognize that the law is very broad.

Snethen referred to §601A.9 which applies only to sex discrimination in education. It does not relate to race, creed, color, religion, disability or public accommodations.
Tieden responded that the federal laws do. Snethen then said this does not preclude the states from legislating in this area and in 1965 Iowa chose to do so.

Patchett suggested these comments should probably be addressed to the legislature. It was his opinion that the area of handicapped discrimination was one to be addressed since the statute is so broad. He recited the role of the Committee as being to determine whether an agency has kept within the statutory authority when writing rules.

Schroeder reminded the group that the Committee could provide a safeguard by deferring action until the next GA, if they feel the legislature made an error.

Ditler pointed out that prior to 1970 the CRC had almost no rules. At that time, the Iowa Supreme Court said the CRC has an obligation to make persons aware of what the law means in individual situations and not just rely on chapter 601A.

Schroeder called for discussion on Item 2--1.3(1).
Hauser summarized their interpretation of Item 2. It would allow a liberal amendment to a CR complaint at any time. It does not limit the amendment provision to preconciliation or prhearing amendments but allows amendment by the Commission at any time with the possibility that a respondent may get a discretionary extension of time granted by the Commission's hearing officer, if the officer deems it appropriate. Problems with the liberal interpretation are twofold: First, as the federal courts have held under Title VII, the respondent should be able to reasonably estimate what records and information are necessary to defend a particular charge. A second problem created by the Civil Rights Commission allowing amendments to the complaint at any time is the potential failure of them to make a reasonable attempt to conciliate all claims made prior to a hearing on the matter as required by §601A.14. Finally, their concern was summarized in this statement: An amendment being allowed to a complaint at any time rune the unnecessary risk of denial of due process to a respondent and primarily our responsibility is to the respondent.

Snethern could recall no instance when a respondent had been denied more time.
Schroeder thought IMA was concerned that the CRC would not limit themselves to the issue before them.

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Snethen told of a particular case the Commission had decided. The complainant brought the case under what she thought was sex discrimination and the complaint was later amended to include age as the basis. An older woman had thought she was victim of sex discrimination when, in fact, she was the victim of age discrimination under the same set of acts and the same policy so she was not adding anything that had no been said previously.

Patchett questioned Snethen as to procedure if the complaint could not be amended and a case had gone 16 months, for example, and then the complaint was withdrawn. Would the alternative be to start the whole process again?
Snethen: There is a possibility that since this was the newly discovered basis of discrimination that 180 days might not begin to run until such time as they become aware of it and then it would be a new complaint, a new investigation, new process of cinciliation.
Patchett reasoned that it might be more time consuming by not allowing amendment.

Holden observed that no member of the Civil Rights Commission was present--only three hearing officers and an investigator. It troubled him somewhat that hearing officers were advocates for the rules. He thought someone with Commission authority should also be in attendance.

Snethen reported that the executive director was attending the International Association of Human Rights Organizations convention out of the state.

Holden asked the hearing officers how they saw their role in this regard Snethen responded, "It has been the agency position that this does not conflict with our duties as hearing officers because we do interpret the law on specific facts. I know that we are the only agency that has hearing officers representing the agency before the Rules Review Committee.
Holden wondered how they could be objective in the hearing process if they have been the ones who have advocated the rules.

Ditler recalled that at a recent law seminar, Professor Arthur Bonfield addressed that issue and said that anyone who is with an agency or with the state or federal government that is involved with that area of law is probably going to have certain attitudes toward the law that is supposed to be enforced and so long as the person hasn't any preconceived attitudes on the case there won't be a fariness problem or a problem with the APA.

Schroeder was concerned that the Executive Director was not present since he was aware of the controversial nature of the rules. It was his opinion, the absence may have been to avoid responsibility.
Patchett thought the policymakers--commissioners--should have been there

Dennis made a final comment on the amendment issue. He favored built-in safeguards for respondents, to guarantee due process and the ability to appear at a new time to answer a new charge that they were unaware of previously. It seemed senseless to pass regulations that are known to be subject to possible abuse.

Recess

Chair recessed the meeting for five minutes at 2:45 p.m. Reconvened at 3:00 p.m.

CONSERVATION
Records

Chapter 63, rules of the Conservation Commission, were taken up. The rules dealing with examination and copying of public records published under Notice in IAB 6/27/79 as ARC 0344.
Stanley Kuhn represented the Department.

Oakley recommended that 63.2(5) be amended by inserting "of Iowa" following "citizen".
Oakley asked if charge for assistance in 63.2(3) included free copy assistance.
Kuhn said they were trying to avoid the expense of billing for the occasional nickel and dime jobs. They don't anticipate lengthy searches and large number of copies to be made.
Re 63.2(5), Oakley wondered why not require cash payment when the record is picked up.
Kuhn explained that some requests are made by mail and it is easier to bill later on those.
Oakley could foresee a problem with bookkeeping and a great deal of additional work. He favored advance payment.
Kuhn indicated they wanted to avoid becoming too bureaucratic.
Oakley noted that the Health Department charges an advance fee of $2.00 for a birth certificate.
Kuhn would take that under consideration.
Patchett took the position it would be "farfetched" that you could deny a citizen the right to examine a public record because they owed some money for making copies.
Kuhn recognized this area as being potentially controversial.
Patchett referred to the public records law and doubted that 63.2 would be legal in requiring that "Charges for examination or copying of public records shall be assessed to the citizen..."
It was noted that §68A.3 authorized charging a fee.
Kuhn agreed to review the suggestions offered.

TRANSPORTATION DEPT.

[06,A] Ch 1

Darrel Campbell, Highway Engineer, represented the Department of Transportation for proposed [06,A] Chapter 1, pertaining to rural railroad-highway grade crossings, published IAB 6/13/79 as ARC 0302.

Schroeder wondered if any segment of the industry was concerned with the rules.
Richard Barr, Iowa Railway Association, distributed a copy of comments for consideration by the Department.
Upon request by Tieden, Barr agreed to mail copies of these to Committee members, also.
No action taken by Committee.

CIVIL RIGHTS
Resumed

Schroeder called for discussion or further comments on Item 7. [6.1]
Hauser referred to documents he had submitted previously, copies of which are reproduced in minutes of this Committee, 5/21/79.

Patchett, when reading Items 7 and 8 together, it seemed as if you couldn't discriminate on the basis of a mental disability in an educational institution, for example, in admissions.

Snethen didn't think this was the case. They state the qualifications and because one has a mental disorder or disability, they

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would not necessarily be precluded from going to a particular educational institution. Certainly there could be admission qualifications, tests, etc., so long as these accurately predict the applicant's ability to perform in the institution.

In response to Patchett, Snethen said when they use the term "disability", it includes both mental and physical.

Regarding scholarship programs and financial aid services, Henry pointed out that epilepsy might be considered a disability but refusing to consider epileptics for scholarships could be a violation of the rule.
Henry restated the Regents position that they are not selling services to the public and in their view accommodation was not discrimination.

Schroeder called for comments on Item 8--6.2(6)--reasonable accommodation.

Dillon made the following statement:

> Iowa's blind community can only applaud and endorse the efforts of Civil Rights Commission Director Tom Mann and his staff to propose refinements of rules which will require employers to make reasonable accommodations to the needs of qualified, productive disabled employees and job candidates.
>
> In the past two decades, Iowa has implemented a new philosophy in regard to its disabled citizens. This Copernican revolution has led to a massive shift from institutional custodialism, dependency, and second class citizenship to the full integration of the disabled into every privilege and responsibility of our society. Disabled people today are becoming taxpayers rather than tax users. They are working in farms, factories, laboratories, and universities side by side with their physically able colleagues, on a basis of equality. They are being recognized for their abilities rather than their disabilities. They are departing forever the twilight zone of isolation and marginalization, and entering the wide uplands of a larger life. They are on pilgrimage, on the march to a better tomorrow. The progress disabled citizens are making is a yardstick by which Iowans can measure their allegiance to the belief that every man, woman, and child is unique and precious in the sight of God and neighbor.
>
> But the pilgrimage is not yet over: the journey has not yet ended. Handicapped citizens still fall victim to economic disenfranchisement and secondary status in a society where access to decent income is the key to self-esteem and provides the ability to attain other civil and human rights. There are still too many employers in the state who apply the civil rights statute not in a positive spirit of hope and magnanimity, but in a narrow, stunted adherence to the letter which kills.

CIVIL RIGHTS Cont'd Dillon Remarks

In a brazen pursuit of private interests to the detriment of the public good, the Iowa Manufacturers Association and other advocates of privilege seek to reduce the expenses of doing business at the price of additional suffering for those who have already been victims in this society. This new wave of reaction flies in the face of recent public policy.

If Iowans have learned anything in the past generation, they have come to understand that investing in the integration of disabled persons brings a manifold return in worker productivity and in the quality of the civilization which we all must share. Only through interdependence can we secure independence: "No man is an island unto himself, but each is part of the main."

I heartily urge the adoption of the proposed guidelines to assure reasonable accommodations to disabled employees, and welcome the implementation of this new "Iowa idea": the entry of the disabled into the mainstream of life as brothers, sisters, and partners.

Mahon pointed out that the Commission has omitted parts of the federal regulations of which they are already subject to and it would be helpful if the Commission would consider adding more rules in line with those of federal.

Taylor Remarks

Taylor addressed the rule dealing with reasonable accommodations as follows: "I think the history of the past score of years has taught us much about the role that people with disabilities can play in a productive way in our society. It has also taught us that we have a good way to go yet. This morning, Mrs. Wolff, called attention to what she regarded as a situation that would be unreasonable and that would be a blind person enrolling in a machinist kind of program. Well, let me say here that this illustrates the major problem which confronts us. We train people all the time in machinist kinds of programs and they should not be denied the opportunity to enroll in those programs and to seek employment after training in Iowa's business and industry as machinists and there needs to be a system which would look a problems when they arise and work out a reasonable accommodation which will help to overcome and override some of the traditional stereotyped notions about what people with disabilities cannot do. The history of the success of people with disabilities tells us that there are people engaging in many walks of life that a decade or two ago, it was almost universally agreed they could not engage in. This provision added to the rules of the Civil Rights Commission provides an enforcement vehicle for working out the reasonable accommodations that are needed. In the case of a blind person, it may be for a machinist using micrometers or other measuring devices that can be touch-read and are somewhat different although they achieve the same result from those that are used by individuals who possess normal eyesight. In a variety of other programs, as in a computer programmer's position, for example, we have a number of blind person's who work as computer programmers. A computer programmer is expected to read,

CIVIL RIGHTS Cont'd

Taylor

even the ink print copy from a printer or to read the cathode ray tube which is similar to a television camera. We have equipment and devices which enable a blind person to read by nonvisual means the information which is displayed on such screens. Because of the problems in overcoming misunderstanding and ignorance about the capability of people with disabilities, I believe we need and I endorse this provision which provides for reasonable accommodations and also point out that these provisions are very similar to those in the Federal statute which applies to some of the entities in Iowa, but not to all, and their inclusion in the Iowa Civil Rights Commission administrative rules would provide for more uniform and more universal application of these principles within the state."

Clell Hemphill, Executive Director of the Governors State Planning Council on Developmental Disabilities. Speaking to the cost aspect of social concern. Historically in this state, we look upon social concern as a public responsibility. It, in fact, is not a public responsibility. In fact, it is a responsibility that these be shared by the private sector as well as the public . What I am trying to do is capsulate a few pertinent points in the handout. (Follow printed handout)

The Governor's State Planning Council is specifically in support of the section on reasonable accommodations of these Civil Rights rules before you today.

One out of eleven Iowans are handicapped. Out of the adult population of non-handicapped versus handicapped--17% greater unemployment exists for the handicapped. Handicapped male workers are earning almost 30% less than non-handicapped males.

Of the 55,000 Special Education children now enrolled, 36,000 to 40,000 will be potential workers. Institutional costs range from $5,000 to $20,000 per year while a life income could generate from $250,000 to $450,000.

CIVIL RIGHTS OUTLINE FOR A.R. 240

1. Special History - my 12 years in industry
   - o Many corporations have done it - minor modifications
     - Sometimes aids, sometimes some extra employee training
     - Benefits - proven employee benefit savings, better safety, capital investments - tax returns.
2. Accommodations
   - o What are they really -
     - Some possible ramps - OSHA would support in lieu of steps
     - Bathrooms and special holders needed, may be tax deductible
     - Any special adaptable devices needed - either V.R. or Blind Commission would assist.

CIVIL R
RIGHTS
Cont'd
Hemphill

3. No current coverage - the 1964 CRA did not cover, nor are they protected by EEOC

   - o Yet today both blacks and women have come a long way with opportunities --now it's an opportunity to open some doors for the disabled.
   - o A recent study of 34 businesses showed 1¢ per square foot paid for ramps and grab-bars.
     - While the average business spends 13¢ per square foot to keep up their linoleum.

In summary, after 12 years in the private sector, I have observed many businesses are interested in veterans, blacks, women, elderly and the disabled. A set of employees who happen to be disabled is certainly worth 1¢ per square foot versus their 13¢ expense for flooring maintenance. Plus tax deductions and government support items - capital outlay is minimal. Things like adjustments to work schedules and modified job descriptions are very weak trade-offs for proven better attendance records and safety records. LET US IN IOWA UTILIZE THE ABILITIES OF INDIVIDUALS FOR BETTER BUSINESS - BY PASSING THESE RULES.

Drake reiterated that the appropriate place for the attention of this subject should be before the legislature.

Snethen repeated that the Commission has consistently interpreted the Act as requiring a reasonable accommodation--that the rule was not new but simply a refinement of the existing rules. They are setting out guidelines ahead of time so that lawyers know when they determine their own situation whether they are required to accommodate a particular individual or not. She continued that in the course of their investigation of a complaint, if there is a probable cause determination, there is always the conciliation process where the Commission meets with the respondent and at that time,determines whether there is a workable solution prior to going to public hearing. So there are opportunities to work out these reasonable accommodations built into the Act.

Patchett thought remarks made today were persuasive but agreed they would be better made before the legislature. He trusted that no one disputed reasonable accommodation as it relates to facility modifications--building accessibility, restroom accessibility for handicapped, etc. He had no doubt that CR had statutory authority to require this -- clearly in a public building.

Schroeder pointed out that all new buildings are required to provide ramps and rails for the handicapped.

Patchett referred to the statute on what is discrimination against a handicapped individual. You cannot discriminate if the handicap is unrelated to the ability to perform the job so if you have a handicapped employee whose handicap is not related to his ability to perform a particular job you would have to make the building or rest-room or whatever accessible. He wondered though where CR thinks

CIVIL RIGHTS Cont'd

they have authority to require job restructuring, part-time or modified work schedules, acquisition or modification of equipment devices, readers and interpreters, etc., from job restructuring when the statute specifically says 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..

Snethen: May I speak to a couple of examples which we believe are discrimination which would require and would not be unreasonable to ask an employer, say a person who has a mobility disability and there is some amount of limited transportation available to them to go to and from the job. Looking to a state work situation where there is a half-hour lunch break and two fifteen minute coffee breaks, if that employee because of the limited transportation available to that employee could only get transportation that would put them on the job for 7 1/2 hours, would it not be reasonable to allow that person to take their lunch break at the end of the day so that they could perform for 7 1/2 hours to accommodate that person's disability They could still perform the job, work for 7 1/2 hours, but yet it is a modification of the work schedule because of that person's disability and access to transportation.

Schroeder doubted OSHA regulations would permit a person to forfeit a lunch break. Snethen was not aware of such a rule. She added that could be a bona fide reason for not modifying the work schedule. Schroeder noted that "flex-time" has been implemented and allows varying schedules.
Snethen agreed this would not be a problem for state employees but the rule would apply to private employers, as well.

Discussion of the term "occupation." Snethen took the position this would be a field as opposed to a particular job.

Patchett interpreted the rule as potentially requiring substantial job modification and discrimination would be involved if not done.

Snethen said there are situations when it would not be a reasonable accommodation. Patchett asked for their discretionary authority.
Snethen: I think it goes down to what is discrimination in the area of disabilities. It's not, as I said way back this morning, that there are physical barriers and there are mental barriers. We talked about race, we talked about sex discrimination, we are talking about mental barriers but when you are talking about disabilities you are talking about physical barriers. Now, if the physical barrier is getting between a particular desk in a wheel chair and that's the physical barrier and that desk can be moved without affecting the operation of the business, that there is room to move that desk so that the person can get to and from, I think that the law requires that because to not require that would be arbitrary.

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Patchett: Let me restate my question. Let's assume for a moment you have that authority, okay, and let's ignore the language in the Code that talks about unless it's unrelated to the ability to perform, where is your authority to say it's okay to discriminate if you are a small employer and maybe it's too expensive to make the accommodation?

Snethen: I think it's the business necessity argument that, again, it's likened to the Title VII business necessity argument that came out of Griggs v. Student Power where there was no legislation, it was a judicially mandated provision that says if it's not in the Act the court said that this business necessity had to exist in order to make the Act workable, and I think that same argument and I think we recognize that same type of business necessity concept is operating in disability and though it's not stated in the law.

Oakley: One point that has troubled me all the way through is that undue hardship problem which I don't know how that can be resolved because it does seem to me that the rule in and of itself discriminates depending upon the balance sheet of the employer. Whether they are large or small, there are very large businesses that lose money. I suppose that they could come in and it would be an absolute defense if they could show that they had lost money in the last two quarters. I don't mean that in any light sense. I think some creative lawyer would raise that argument, but my question beyond that has to do with the impact of the Davis case. How do you assess that case as it relates to these rules?

Snethen: I think the Davis case went down basically to whether she was otherwise qualified and that's what the court was addressing. They said that she could consider physical abilities in determining whether a person was capable of doing a job or not and they considered her auditory capabilities in determining whether or not she could ever perform as a registered nurse and whether she could safely participate in the clinical program and I think that that Davis case at that point is limited to the initial determination of whether under our Act the equivalent would be but unrelated to such person's ability to engage in a particular occupation. That's the equivalent section of our law that the Davis case dealt with.

Oakley: Okay, without necessarily agreeing with that, but the last question that I'd want to know is what is the area of employers that these rules would cover that are not already covered, say under 504?

Hauser indicated that §504 deals with moneys that are not under federal contract and the federal contracts are under §503 of the Act. Snethen concurred the application would be great--affecting basically all of Iowa employers who meet with the definition of employer.

Oakley inquired as to whether §601A.6 was the basis for the rule as Snethen had cited in an explanatory memo to Royce on June 26 wherein reference was made to reasonable accommodation disability.

CIVIL RIGHTS Cont'd Dillon

Dillon spoke of the difficulties in penetrating legalities to get to the "heart and soul of this issue. He shared a personal experience where he had been a victim of job discrimination because of partial blindness. He urged that all concerned remember that they are dealing with human beings.

Clark responded that it is difficult, as a legislator, to deal with legalities, of necessity, when they are very much concerned about personal aspects, as well. With respect to training for blind machinists, Clark spoke in defense of Wolff who had questioned training programs for blind machinists. Clark thought the Commission for the Blind would be the best place for this.
Another area of concern to her was the mentally handicapped who were more difficult to work with than the physically handicapped. She wondered how far the mental limitations would go now that they had been included in the restructuring.

Snethen cited an example of a top scholar whose mental disorder did not preclude her from achieving academically. There are certain qualifications, competency and ability to do a job and there are mental qualifications, as well as physical qualifications, she added.

Clark reasoned that the one thing that cannot be done by rule or law is create the kind of bosses who can deal with this problem. She pointed out that many handicaps are not obvious to the public. It was her opinion that the job restructuring could create real problems.

Snethen interprets the rules as requiring that you look at each individual and his or her ability.

Clark was inclined to think the Commission was in an area attempting to develop rules for something that must be an educational process.

Snethen said the rules are implementing the law which is already there.

Royce queried, "If reasonable accommodation is part of the law, why then is it not contained in the Civil Rights Act?
Snethen: Because I think our law is patterned after the federal laws and that reasonable accommodation was a judicial interpretation of acts similar to this one and certainly the legislature could write it in, but we think it's implied in the particular areas if it doesn't mean that changes that can easily be made must be made because before when we were in a society prior to the Act where and I think Mr. Dillon made the point that, first of all it was virtual exclusion from society and then the second class citizenship that we structure the society in a particular way to accommodate those of us in the mainstream, that these simple changes could be made, if they can't be made then ,.. that has to be discrimination. If it isn't, what is discrimination?

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Oakley: Of course, I think the point has been made before that reasonable accommodation is a remedy which would be used in the event discrimination is found, but I was struck in reading this language again that this must have come out of a public sector - statements out of a public sector rules or statutes - is that right? When you wrote them?

Snether: They were from the federal regulations - HEW - 504

Oakley: Because I point out to you a couple of places that you might think about changing them in the event they are not otherwise substantially changed and are passed and that is in 6.2(6) the use of the word "program" - an undue hardship on the operation of its program - is public sector language, and, also, over in sub b "size of budget" is going to create more confusion in the private sector than I think you'd want. If you think about it, I don't think you would want determinations to be made on whether or not in some corporate board room it was decided what the budget for a particular sector of the business might be. It strikes me as not being very understanding, but is probably neither here nor there. You might think about that.

Ditler: I don't think that reasonable accommodation is always simply a remedy under discrimination.. The question may be: could reasonable accommodation have been made in this case? and I think that was part of the question in the nurse case that just came up and was decided. The question was could she have been a nurse if reasonable accommodation had been made? That was part of the test whether she was qualified for the occupation and it's the same with a blind machinist, is he or is she qualified for the occupation — maybe not without reasonable accommodation, maybe so with reasonable accommodation. I think that's part of the whole test. The employability test or whatever that's right in the Code, so I don't think it's just a remedy for proving discrimination.

Patchett: I want to go back to a couple of people have said let's not get wrapped up in the legalities and lose sight of what we're talking about. The heart of the issue, if you are talking about whether or not reasonable accommodation ought to be made by job restructuring, that's the heart of the issue before the legislature. This Committee is just talking about one rule, in one area, but it seems to me the heart of the issue goes far - we are talking about a very basic principle here and that is whether the legislature makes policy decisions or whether a bureaucracy makes them outside of the statutory authority that the legislature has granted and that has far broader implications than just this set of rules before us today. And that's why we have the whole Administrative Procedures Act and that's why this Committee was created and it seems to me that's still the basic question before this Committee today. The point was brought out that reasonable accommodation is not in our statute yet there is an exception that's quite specific

CIVIL RIGHTS Cont'd

that is in our statute and that is the language "but is unrelated to such person's ability to engage in a particular occupation" and I would like the Commission's interpretation of just what that means.

Shethen: I think an occupation is a broad field such as lawyer or accountant and the job is a more particularized situation within a particular work setting. A set of tasks that one particular person is expected to perform is a job. Now, a person might be trained for a particular occupation or have the skills to do a particular occupation and they go for a specific job. Now this job may incidentally have other aspects that are unrelated to the nature of the occupation as a whole.

Clarkson maintained that the whole term of reasonable accommodations boils down to one word--reasonable.

Discussion of the problem of the state rules, while patterned after federal rules, being minus important qualifiers.

Maxwell recalled difficulties he had encountered over the years because of being black. He was anxious to work with the Commission to strengthen the rules and advised that a meeting of the different factions would be helpful.

Recess: Chairman Schroeder called for a ten minute recess at 4:15. Reconvened at 4:25.

Discussion of memo from the Commission to Royce regarding their position on the rules.

Oakley pointed out that it will be necessary to redraft Executive Order 15.

CIVIL RIGHTS Cont'd

James West, Attorney for Iowa Life Insurance Association, commented on 2.15(7). He quoted from §601A.15(8)b(1) "...the finding of discrimination is binding on the licensing agency. If a certification is made pursuant to this subsection, the licensing agency may initiate licensee disciplinary procedures." It was his interpretation that what is binding upon the agency is finding of discrimination and not the final decision. The attempted "expansion of the law in the rules simply clouds the issue," in his opinion.

Holden reiterated it was his belief the rule could be clarified.

Chairman Schroeder offered Department officials an opportunity for closing remarks. Snethen indicated she planned to contact their executive director and apprise him of comments made at this meeting. She requested permission to return to the Committee tomorrow to review the matter again before formal action was taken.

Patchett urged that the Committee take action to avoid "complete loss of control of the rules if modifications are not made." He was curious as to whether the Governor had considered exercising his veto authority. Oakley responded that although there were no vetoes of the rules, events which have transpired since May 16, when opportunity for veto passed, make it advantageous to have an opportunity to review them again.

Action Deferred

Committee concurred that the Civil Rights Commission should be afforded opportunity to appear at this meeting on Wednesday and Chairman Schroeder scheduled them for 1:30 p.m. See P. 927

SOCIAL SERVICES

The following rules of Social Services were before the Committee with representatives: Sue Tipton, Program Co-ordinator of Adoptions, Jim Krogman, Field & Program Consultant, John Stralow, Foster Care Program Co-ordinator, all from Bureau of Children's Services, and Judith Welp, Act Unit; Nancy King:

SOCIAL SERVICES[770]

Community based corrections, 25.1(17), 25.2(1), 25.4(6,8-10), 25.5(2), 25.8(4,7,8,16)	ARC 0328	F		6/27/79 /546
Aid to dependent children, 41.5(2)	ARC 0329	F		6/27/79 /546
Medical assistance, 75.4	ARC 0330	F		6/27/79 /547
Intermediate care facilities, 81.6(11)"h"	ARC 0331	F		6/27/79 /547
Family-life homes, 111.3(7)	ARC 0332	F		6/27/79 /547
Services, eligibility, 130.3(1)"b", filed emergency after Notice	ARC 0318	F		6/27/79 /531

SOCIAL SERVICES[770]

Riverview release center, visiting, 21.2(1)	ARC 0333	N		6/27/79 /515
Aid to dependent children, foster care, 44.1(5), 44.3, 44.4	ARC 0334	N		6/27/79 /516
Medical assistance, optometrists and opticians, lenses, 78.6(11)"a", 78.7(5)	ARC 0342	N		6/27/79 /516
State juvenile home, 101.1(3), 101.2, 101.3(5), 101.4, 101.5, 101.7(5-7), 101.9-101.18	ARC 0335	N		6/27/79 /517
Mitchellville training school, 102.1(1,3), 102.2, 102.3(4-6), 102.4-102.18	ARC 0336	N		6/27/79 /519
Eldora training school, 103.1(1,3), 103.2(3-5,8,9), 103.3(2,5,6), 103.4-103.18	ARC 0337	N		6/27/79 /522
Foster care services, 136.1(1,5,7), 136.4(1,5), 136.6(3), 136.7	ARC 0338	N		6/27/79 /524
Adoption services, ch 139	ARC 0340	N		6/27/79 /525
Children in need of assistance or children found to have committed a delinquent act, ch 141	ARC 0339	N		6/27/79 /527
Interstate compact on the placement of children, 142.3-142.8	ARC 0341	N		6/27/79 /5[illegible]

SOCIAL SERVICES Cont'd

The filed rules were acceptable as published.

No questions raised re proposed amendments to Chapters 21, 44 and 78

Schroeder and Clark took the position that 101.2(8) was too restrictive in that supervision must be the resident's parent. . They were concerned that foster parents and guardians would be eliminated. Schroeder suggested substituting "responsible person".
Clark was opposed to "a hard and fast rule which left no flexibility". As to the reason for the rule, Tieden was informed that past policy is merely being set out in rule form.
Patchett referred to §244.3 of the Code which defines the categories of children who would be residents in the juvenile home. It was noted this would not include "adjudicated children" but that most children confined to the institution require a fairly structured lifestyle. Committee members favored some method of allowing special privileges as incentive for better behavior.

Schroeder raised question concerning conflict between 101.4(1) and 101.4(3). They preferred that 101.4(3) be revised to provide: "Correspondence must include a return name and address on the envelope before it will be delivered to the resident. Any correspondence containing contraband as defined in subrule 101.1(3) shall be confiscated and turned over to the appropriate authorities for further action."

Oakley defended the subrules in question and stated the importance of relying on personnel with expertise to implement them.

Schroeder wondered why 101.2(7) had been revised to provide that "Persons other than immediate family who wish to visit a resident must obtain prior approval from the superintendent or designee before visiting." Krogram pointed out that no limitation was intended--just prior approval.
Clark reasoned that rules governing Toledo, Mitchellville and Eldora were so similar but theoritcally residents differed greatly, for example, Eldora as opposed to Toledo. Krogram said the rules were to provide a general base for operation of the institutions.

Discussion of amendments to foster care services rules.
Schroeder raised question in 136.4(5) as to need for a continual assessment process and asked why annual or semiannual basis would not be sufficient. Welp responded that the documented case plan for the child must be updated every six months. The assessment process is not so much paper work but a record of the child's progress where daily notes are made.

Responding to question by Tieden as to availability of foster parents Stralow said that there has been a tendency for children to become more aggressive and it is very difficult to find foster parents

SOCIAL SERVICES Cont'd

who are willing to assume the responsibility. He added that residential treatment has been on the rise.

Re 139.3, Clark wondered if the exception set out in 139.2 should be included. Department officials did not consider this a problem.

Oakley offered suggestions for certain areas: In 139.2, substitute "preference" for "priority". 139.4(2)b, line 4 "employee" should be substituted for "employer". Both "willfully" and "knowingly" were probably unnecessary in 139.4(4d). Finally, 139.7(3) should be clarified by inserting a specific age in lieu of "older child".

Clark commended the Department for utilizing an existing report in 139.7(2).

King brought up the matter of qualificatinns for adoption investigators and explained that references to "foster care" in 139.4(2) paragraph "a", (1), (2) and (4) should be deleted. The process for certifying a foster home differs greatly from that of an adoptive home and the Department wanted to ensure quality service for adoption proceedings. Although, foster care work would be an asset to an adoption investigator, they were fearful that under the language of the rules as drafted inexperienced persons might be certified.

Tieden wondered if the limitation would create a shortage of investigators. Tipton said that 30 qualified investigators are available in concentrated areas and King pointed out they can travel to more remote areas.

Amendments to Chapter 141 were intended to implement the juvenile justice Act and were acceptable as published.

Discussion of Chapter 142. Oakley recommended that 142.5(3)a be amended to substitute the words "whose principal place of business" for "located". He expressed objection to 142.6(1) which provided: "A child may be placed in Iowa preliminary to adoptinn only when it is legally available for adoption at the time of placement as attested by by the sending state's compact designee submitting the certified legal documents issued according to the sta statutes of the sending state and citation of the statutes of that state which are applicable." He argued this was not in line with the law and would force children from out of state to be relegated to foster care when they should be allowed to go to their prospective adoptive home.

The meeting was recessed at 5:40 p.m.

Reconvened: 7-11-79

Chairman Schroeder reconvened the meeting at 9:15 a.m. in Committee Room 22. All members present. Oakley and Royce also present.

PUBLIC INSTRUCTION 3.5

Amendment to Chapter 3 of rules of the Department of Public Instruction, being 3.5 relating to educational programs, was acceptable as published in IAB 6/13/79.

PUBLIC SAFETY

Ted Becker, Assistant Attorney General, and Connie White, represented the Department of Public Safety for review of their filed amendments to chapters 1 to 4, 6 to 15, published in IAB 6/27/79.

Becker reported that grammatical changes were made in the rules as suggested by this Committee.

Re Chapter 6, Schroeder asked if significant changes were made with respect to towing of cars off the highways. Becker said under the revision, owners would be given more advanced notice before their vehicles would be removed.

Re 6.2(3), Patchett asked if that would be probable cause. Royce advised that it was doubtful this could be established by rule.

Patchett expressed concern as to partiality being shown in summoning towing service--6.4(1). Holden agreed this could present problems. Schroeder was inclined to consider the service a public courtesy, at least in his area.
White said they had a divisional regulation on instruction to highway patrol on the matter of towing.
It was the consensus of this Committee that this information should be incorporated in Departmental rules .
Priebe noted that a similar situation exists with funeral homes.
No formal action taken.

REAL ESTATE COMMISSION

Ken Smith, Administrative Officer, Real Estate Commission, appeared for review of filed amendments to their rules, being 1.3, 1.13 and 2.2, published in IAB 6/27/79.

Patchett and Priebe were doubtful the agency had statutory authority to require applicants for licensure to supply a credit bureau report--2.2(2). This unique requirement was not imposed by other licensing boards, bar examiners included.
Holden was inclined to agree but he cited from §117.16 of the Code, third paragraph which states "The commission shall prepare and furnish written application blanks for salesperson's license and for apprentice salesperson's license, to contain request for such information as the commission may require...."
He posed a more basic question--why did the commission reverse

REAL ESTATE Cont'd

the procedure. Holden pointed out that qualifications are clearly set out in §117.15 of the Code and provide that if an applicant passes the test, he shall be issued a license. It was his judgment that with this reverse procedure, the commis- has "lost control completely."

Smith commented that the Attorney General has said they have no authority to prevent anyone from taking the examination. Royce advised of the importance in construing all sections.

9:45 a.m. Tieden excused to attend a Fair Board meeting, a commitment made before this date was set for a continued rules meeting.

OBJECTION Holden moved objection to 2.2, particularly 2.2(2) on the basis that it is beyond the authority of the statute. Carried with 5 ayes. Tieden absent and not voting.
The following is a reproduction of the objection drafted by Royce to the Real Estate Commission:

The Iowa Real Estate Commission
Capitol Complex
L O C A L

Dear Commission Members:

At its July 11th meeting the administrative rules review committee voted the following objection:

> The committee objects to ARC 0319, rule 2.2, appearing in 1 IAB 28 (6-27-79) and relating to application for licensure as a real estate broker or sales person, on the grounds these provisions exceed the authority of the department. This objection is based upon the principle that the plain provisions of a statute may not be altered by administrative rule. Rule 2.2 in essence provides that a person must first pass the appropriate examination before applying for licensure. This procedure is the reverse of the procedure established by §117.15, the Code, which specifically provides that a 'qualified applicant' may take the examination. This term requires the commission to evaluate an application to determine if the applicant is qualified prior to taking the examination.
>
> The committee also objects to subrule 2.2(2), requiring the applicant to provide a credit bureau report, on the grounds this requirement is unreasonable. The committee notes that the board of accountancy and the board of bar examiners do not impose such a requirement, even though the need to carefully screen applicants for these professions is just as crutial as for the real estate commission. If the commission feels compelled to investigate the credit rating of a particular applicant, it should obtain the report itself.

Certified as a true and correct copy of the committee action this 17th day of July, 1979, by.

Laverne W. Schroeder

(Laverne W. Schroeder) by R
Chairman

REAL ESTATE Cont'd

Smith took the position that "qualified" was the key word in 117.15, 4th paragraph.

Committee urged the department to review the matter carefully and consider returning to the former practice or seek legislation to authorize the new procedure.

JOB SERVICE

Representing the Job Service Department were Ed Longnecker, IPERS Director, Joe Berard, ASO Legal Counsel, Paul Moran, U.I. Administrator and James Hunsaker, Administrative Officer. The following rules were before the Committee:

EMPLOYMENT SECURITY[370]

Disclosure of official records and information, 1.7(1)"c" and "e", 1.7(2)....ARC 0353....N.... 6/27/79 1506
Employer's contribution and charges, 3.4(1-5), 3.42, 3.43(2)"a", 3.43(8), 3.43(8)"a,b,e,f", 3.43(11)"a", 3.43(15), 3.73(3)....ARC 0355.... 6/27/79 1506
Claims and benefits, 4.2(1,2), 4.8(1), 4.13(1,2) 4.16(3), 4.18, 4.22(1,4), 4.24, 4.24(2,15), 4.26(15), 4.27(1), 4.28(1,2), 4.31, 4.31(2,5,6), 4.32(1,2)....ARC 0354....N.... 6/27/79 1508
IPERS, 8.4(3), 8.5(1), 8.6(5), 8.8(4), 8.11(3-6), 8.13(2,3,6,7), 8.15, 8.18(1), 8.19(4,5)....ARC 0316....N.... 6/13/79 1477
Federal social security, 9.2, 9.3, 9.4(2,3), 9.5(1), 9.6(1-6), 9.7(2,3)....ARC 0317....N.... 6/13/79 1476

Moran reminded the Committee that the 7/11/79 IAB would show changes from those published in the 6/27 issue. These amendments were filed on an emergency basis and supersede certain items before the Committee today which are published under Notice. This process was necessary in order to implement S.F. 373, 68GA. It was noted there would be opportunity to review the revisions when they have been incorporated in Noticed rules and published as adopted rules.

Patchett posed questions re unemployment benefits--(1) if a person began collecting prior to July 1, will those benefits be reduced under the new Act? Moran responded the benefits would remain the same if the claim had been established prior to July 1. (2) re an issue involving alleged misconduct, for example, if the appeal was filed before July 1 but the decision was not rendered until after July 1, what penalties will be imposed? Will it be those in effect at the time the appeal was filed or under the new law?

Berard explained they use the Needham Packing Case 6-16-63 An example: If, in May, a person was disqualified for misconduct and through the appeal process was before the board in August--at that point, the current law says if you are discharged for misconduct, you are disqualififed until you are requalified. They would change the disqualification to ten times the weekly benefit amount after July 1.
Patchett asked about the employer who looses round 1 and the employee collects benefits and then the employer appeals and wins after July 1--what would his benefits be? Berard replied that prior to July 1 he would qualify for six consecutive weeks; after July 1 it would ten times the weekly benefit--the benefit would be computed under current law.
Discussion of the Needham case application. Royce pointed out the saving clause in §4.13 of the Code.

JOB SERVICE Cont'd

Berard responded that the Supreme Court has said the first presumption is a matter of legislative intent but with the intent of the legislature to apply retrospectively and prospectively then it shall be so applied and they incorporated that section into those decisions so it is merely a matter of first and foremost the intent of the legislature. There have been several cases considering the section in question.

In answer to Schroeder as to the number of persons involved in the transition, Department officials said it could be several thousand. Committee members were inclined to believe decisions should be based on the time the case was initiated. Department officials indicated this had been the practice prior to Needham.
Patchett asked for clarification of 4.13(1)g as to whether the department was attempting to include amendment to 96.5(5) as well as 96.5(7) and Moran said they were not.

Clark pointed out confusing language in 3.43(8)e and suggested possible redrafting.

Department officials were willing to apprise Committee members, if they find areas which will need change.

Longnecker advised the Committee that IPERS rules are being amended to reflect age changes and new forms being implemented.

Re unemployment, Patchett thought it important for affected persons to be notified of their options under the new law with respect to repeals.

REVENUE

Elliott Hibbs, Deputy Director of Revenue, was present for review of the following:

REVENUE DEPARTMENT[730]
Briefs and pleadings, copies, 7.5(4,5), 7.8, 7.12, 7.17(4) ... ARC 0314 ... 6/13/79 1488
Assessor education commission, chs 122 to 125 ... ARC 0315 ... 6/13/79 1488
Record and transcript, 7.19 ... ARC 0349 ... 6/27/79 1515
Forms, real estate transfer—declaration of value, 8.1(7), filed emergency ... ARC 0351 ... 6/27/79 1529
Beverage container deposits, 17.17, filed emergency ... ARC 0350 ... 6/27/79 1530
1978 income tax rebate, 43.5, filed emergency ... ARC 0357 ... 6/27/79 1530

At the suggestion of Schroeder, Hibbs agreed to clarify 122.2 as to the duties of the chairperson.

Patchett challenged the last sentence of proposed 7.19 re availability of transcripts or oral hearings. Hibbs explained they wanted to avoid being in a position of transcribing all appeals. He agreed to rewrite the provision to read: "A transcription will be made of that portion..." Hibbs also said it was important to read the first sentence in conjunction with the last sentence.

There was general discussion as to the appropriateness of the insert which accompanies income tax rebates this year.

REVENUE Cont'd

Hibbs agreed to pursue the matter and the Comptroller would be requested to appear at the afternoon session of this meeting to explain the practice.

COMMERCE

The following filed rules of the Commerce Commission were before the Committee: Amendments pertaining to gas and electric utilities customer relations, being 19.4(2,10,15,16), 20.4(3,11,17,18), published in IAB 6/27/79. Also, the Commission was requested to appear to explain their procedure for installation of demand meters. Those appearing in behalf of the Commission were: Fred Moore, Chairman, Diane McIntire, Legal Counsel, John Insuler, Executive Secretary and Bob Osborn, Utility Analyst.

The filed rules were acceptable as published.

Osborn distributed copies of information pertinent to demand meters which included factors affecting rate structure which is included as a part of these minutes and an electric utility company schematic diagram. He brought with him a demand meter and spoke briefly of its design and function. Osborn then used a blackboard to illustrate points set out in the written materials.

Priebe cited problems in his area where there was lack of capacity and diversity to supply enough energy to supply all needs if all should be turned on during the same period of time.

Schroeder wondered how widespread abuse was from those utilities that are not regulated. It was noted there is no jurisdiction over municipals and REC's, only on the independents.

Holden posed a question as to billing procedure for a customer with a 3,000 demand meter who used only 1,000. Osborn said the residential customers are billed the same procedure as demand customers. The residential customers have about 3% load factor whereas, the industrial customer has 50%. The residential rate is designed upon demand rate.

Priebe asked Commission authorities to cite statutory authority for use of demand meters. They could not point to a specific section. Priebe objected to the fact that the "demand" was not really available and customers are not receiving service for which they are paying.

Schroeder asked if power companies are monitored with respect to low voltage and Osborn said they are monitored at the substation at delivery point but low voltage is at the end of distributor feeder circuits.

Holden defended use of demand meters and referred to grain drying as an example and pointed out that some procedure must be available to pay for this service.

COMMERCE Cont'd.

Priebe recalled a problem at his county fairgrounds where demand meters were installed and demand increased to the point where the bill was $5,000 and previously it had been $600 per year.

Osborn remarked that demand metering can mean two types of service, those with low load factors who you would penalize and those with high load who should be rewarded--low load factors increase cost, hig load decreases it.

Schroeder requested the agency to explore possible legislation to allow nonregulated groups to petition for rate review.

PREPARED STATEMENT BY AGENCY

FACTORS AFFECTING RATE STRUCTURE

The cost of serving any particular customer is different from the cost of serving another, for the service lines are of different length, the time of peak demand is different and the amount of investment is different. This could imply a different rate for each customer, if we try to allocate costs very precisely. For this reason utility rates are based upon averages with in classes of customers with the assumption that customers within this class are average customers. The advantages of treating customers alike and of simplifying the billing argue for applying a single rate schedule to everyone within the same class. However, if customers are within a class have widely varying load characteristics, the need for demand metering is indicated.

It should be noted that having a demand charge in a rate is most likely to be important when loads to which the rate will apply are large or may have widely varying ratios of energy use to peak demand i.e.(load factor or hours of use). Load factor is a measurement of the maximum demand to the average demand for a particular period. One of a manager's most important responsibilities is to identify and maintain factors which enhance the utility systems load factor.

Also, there is little need for having a demand charge in a rate that applies to a class of loads for which the law of average will function within a relative narrow range of demands. That is, when the group or class of customers as a whole has quite definite and dependable load characteristics.

COMMERCE
Cont'd

If the residential rate, for example, were to include a demand charge there would be a closely predictable relationship between the amounts that could be collected as demand charges and the amounts collected as energy charges. Therefore it is a better practice to simplify the residential rate by using larger energy charges and skipping the demand charges. The larger energy charges are determined on the basis of load factor allocations. For instance, one of the attached handouts illustrate an industrial and residential customer. The residential customer is being charged 1.9¢/kWh and at a 30 percent load factor the residential customer uses 648 kWh per month. This produces an average cents per kWh of 4.01¢ or 2.1¢ for demand. The mechanics of that calculation are contained on that exhibit. Consequently, the customer who is not being directly charged a demand rate is still paying a demand charge which is built in to the basic energy blocks of the residential rate schedule.

Demand charges are dictated when loads are very large and have different load factors. Demand charges are unpopular and they complicate the metering and billing of a customer. Therefore, as a practical matter there usually is no demand meter set on residential installations.

A demand matter can cost from 4 to 6 times a comparable standard watt/hour meter. Therefore, the use of demand meters can increase a utility's cost significantly.

The basic purpose of using demand meters and charges is to result in a lower price per kWh to customers with good load factors or to penalize customers with poor load factors.

DEMAND RATES FOR WHAT SIZE LOADS?

At what load size should a utility make the transition from an energy step rate to a demand type rate?

A utility should avoid demand metering, with its extra cost, complications, and possible customer dissatisfactions for any group of customers who are numerous enough and individually small enough so that they can afford to let their load characteristics average out. The utility should be willing to do without a demand billing for larger customers than might seem appropriate a few years ago because the average loads and demands of all customers has grown significantly.

During the 1940's and early 1950's most farm homes had a 5 kW transformer. It was a rare occurence when a farmer required a 10 or 25 kW transformer, to serve his loads. Today most farms are probably served by a 25 kW transformer or larger.

A large majority of a utility companies customers are residential. The percentage of residential to total customers will vary by utility. For a rural electric probably 90% of the customers are residential. And this 90% is probably served with a 25 kW transformer. Therefore, possibly 10% of rural electric customers have demands greater than 25 kW.

It is a judgement factor; however, it is probably not fair to all customers to ignore differences in load factor when demands are as high as 50 kW. Iowa Power's customers begin to obtain a discount at 50 kW. The Algona rate schedule recognizes differences in load factors at 20 kW. The threshold at which demands and load factors should be considered is relative to the demands and loads of the entire group of customers and a utility manager should look for the averages, and those customers who are beyond the range of averages. To state it in statistical terms, loads should be viewed from a bill frequency analysis of demands and those demands beyond one standard deviation should be prime candidates for demand metering.

It may or may not be critical to ignore load factor differences among those customers with demands of 40 kW and 30 kW or 20 kW depending upon how many of such customers a utility serves and how large a part of these customers bills the demand costs would be.

RATE APPLICATION

Suppose a utility decides to apply a demand type rate to all customers with demands over 50 kW. In order to obtain the demand readings for them, the utility must install demand meters for about twice as many customers in order to determine which customers have loads in excess of 50 kW. This is true because a utility cannot predict from a kWh meter reading exactly which customers have demands of 50 kW or more.

If a utility should make that decision, the utility would probably install demand meters for all loads over 6,000 to 7,000 kWh's per month.

COMMERCE
Cont'd
Demand Meters

At this level the utility may miss a few customers with less energy use but more than 50 kW demand. Therefore, an alternative would be to apply a demand type rate not when the demand exceeds 50 kW, but when the energy use exceeds x kWh or approximately 10,000 kWh's per month.

Demand charges are in reality a capacity charges covering the cost of being ready to serve a customer at any time the customer desires. The primary source of demand is the power consuming equipment of the customers; therefore, demand is synonymous with the frequently used word of electrical load.

A knowledgeable utility manager realizes that the objective is to improve load factor which is to make a kW of equipment capacity yield more kWh's of energy.

CONSERVATION Ch 48 — Filed rules before the Committee were: Chapter 48, pertaining to sale of nursery stock to the public, IAB 6/27/79 ARC 345 and Chapter 106 setting out 1979 deer hunting rules. Chapter 48 was acceptable as published.

Ch 106 — Kenneth Kakac, Law Enforcement Superintendent, explained a change from last year's deer hunting rules, being an increase in the number of nonsex licenses.

Discussion of bow and arrow hunting and fees. Bow hunters can hunt for 60 days and then be eligible to hunt with a gun for a $30 fee. Holden called attention to the "either or" concept. He recalled that in Colorado a hunter must choose between a gun license or a bow license. Iowa allows both weapons but if you get a deer with a gun, you would not be allowed to take one with your bow even though you had paid for both licenses. Priebe favored the "either or" process.

Tieden indicated that muzzleloading enthusiasts have asked him if they could be co-ordinated with the bow and arrow season. Department officials responded that it is difficult to permit a special season for a special group since this opens up the door to endless requests.

Recess Reconvened — Chairman Schroeder recessed the meeting at 11:55 a.m. for lunch. Meeting reconvened at 1:30 p.m. All members present.

CIVIL RIGHTS — Barbara Snethen, Ed Ditlie and William Stansbery, Civil Rights Hearing Officers, returned to continue review of rules of the Commission which are under delay until August 1.

CIVIL RIGHTS

Snethen indicated the Commission did not want to change the rules at this time. However, they will be reviewed again, taking into consideration all comments and objections.

Oakley indicated he would be communicating with all factions concerned with the issues. He added that it was his judgment some good information had been generated at yesterday's meeting. He continued that in fairness to the process--Commission and Committee, even though many of the people who appeared yesterday did not attend the public hearing conducted by the agency, this should not preclude consideration of "eleventh hour comments."

Schroeder repeated the two options available to the Committee--objection or delay into the General Assembly. He sought advise of Oakley as to which course would be desirable.

Oakley responded that as a matter of policy he would not advise the Committee.

Patchett believed there were persons who were ready to initiate an action.

Oakley pointed out that the delay process would be "cleaner" and tend to create a desire to renotice. On the other hand, an objection places a "cloud" over the rules and invites extensive and expensive litigation.

Patchett doubted the GA could act within the 45-day time period. Oakley doubted that proponents would want to risk the extensive amendments of the Civl Rights Act in not only these but other areas, as well and would prefer the notice route. Finally, he felt sure opponents would not want litigation as the option.
There was brief discussion as to the advantage of reviewing Chapter 7 and Noticed Chapter 8 (IAB 7/25) together.

Motion called up

Holden called up his motion to object to 1.1(8) and 1.1(9). He thought the Committee would prefer that objectionable rules be withdrawn and new drafts submitted.but if a formal objection is not filed now, they would lose the opportunity to do so at a later time. He urged objection now and that the Secretary of the Senate and Speaker of the House be apprised of the matter so it can be referred to the appropriate standing committees.

Discussion of possible special meeting of the Committee before the rules go into effect. Schroeder asked when the next Commission meeting was scheduled and Stansbery said it would held Thursday, July 19.

Patchett commented that the effect of either objection or delay would be nullified if the rules were withdrawn.

CIVIL RIGHTS Cont'd

Priebe favored the 45-day delay to let the entire legislature speak.

Clark pointed out the legislature might never have an opportunity to act because of some "sway" in a committee.

In answer to question by Priebe, Stansbery said the Commission, at its last meeting, voted 6 to 0 to endorse the rules as published.

Motion

Schroeder called for a vote on the Holden motion to object to 1.1(8) as being beyond the statutory authority of §601A.13 and to 1.1(9) as being arbitrary. Voice vote showed 6 ayes. Motion carried. The following is excerpted from the objection which was filed with the Code Editor:

> The committee objects to ARC 0192, item 1, appearing in 1 IAB 23 (4-18-79), relating to the definition of terms, on the grounds these provisions are beyond the authority of the commission and unreasonable. Specifically, the committee is concerned with subrule 1.1(8) and 1.1(9) appearing under item 1. Subrule 1.1(8) provides:
>
> > The term "retirement plan and benefit system" as used in Chapter 601A.12 of the Code relates only to the discontinuation of employment pursuant to the provisions of such retirement plan or system. A retirement plan or benefit system shall be limited to those plans or systems where contributions are limited to those plans or systems where contributions are based upon anticipated financial costs of the needs of the retiree.
>
> It is the opinion of the committee this subrule exceeds the authority of the commission in that it is an overbroad interpretation of §601A.13, the Code. That section in essence exempts from the provisions of the Act retirement plans or benefit systems which discriminate on the basis of age or sex, unless the plan is a "mere subterfuge". The exemption does not appear limited to plans or systems "relating only to the discontinuation of employment" or those "where contributions are based upon the anticipated financial costs of the retiree" as the subrule provides. Under the subrule, a plan or system which fails to meet either of the above criteria it would apparently automatically be considered unfair discrimination. If the General Assembly had intended this result it would have so provided within the Act.
>
> It is further the opinion of the committee subrule 1.1(9) defining as "injury", for which damages may be awarded, an offense against a persons dignity, is unreasonable in that it provides no ascertainable standard to determine what damage the offended party has suffered. Under the provisions of §601A.15(8)a(8) the commission clearly has the authority to award damages for an injury. The committee believes this term to mean that the party has been harmed in some way that damage received can be measured, and appropriate recompence awarded for that damage. Dignity, like beauty, is in the eye of the beholder. Absent a showing that physiological or psychological damage has resulted from an "offense against a person's dignity", it appears impossibile to accurately measure the financial equivalent of such an injury or to award appropriate damages.

Motion

Clark moved to object to 6.2(6)a(2).

Tieden offered a substitute motion to include all of 6.2(6)--Item 8--on the basis that it is beyond the authority.

Royce advised that an objection to all of Item 8, would in effect, be objecting to the concept of reasonable accommodation.

Schroeder suggested objection to all but indicating special emphasis on certain portions of it.

Tieden, referring to 6.2(6)b (1), failed to see "size of budget" as being relevant. However, he withdrew his motion.

Carried

The Clark motion carried unanimously.

Motion

Tieden moved to object to 6.2(6)b, subparagraphs 1 to 3 as being arbitrary and capricious.

CIVIL RIGHTS Cont'd

Patchett cautioned that the objection by Tieden might weaken the other one.

Holden requested short form on the motion. Carried with 5 ayes, Patchett "pass". The filed objection reads:

> The committee objects to ARC 0192, item 7,* subparagraph 6.2(6)a(2), relating to reasonable accomodation, on the grounds the provisions are beyond the authority of the commission. Subrule 6.2(6) requires that employers make "reasonable accomodation 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 accomodation may include:
>
> > Job restructuring, part-time or modified work schedules, acquisition or modifications of equipment or devises, the provision of readers or interpreters, and other similar actions.
>
> It is the opinion of the committee this definition of reasonable accomodation far exceeds that which may 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 discrimination on the grounds of disability only if either of the following criteria are 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 Assemply clearly has the authority to ban any or all discrimination against disabled persons, or to require employers to make the type of "reasonable accomodation" mandated by subrule 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 accomodation would, in the case of a 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 accomodation 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 transfering of law making power to administrative agencies.
>
> The committee also objects to paragraph 6.2(6) b in entirety, on the grounds it is unreasonable. The paragraph lists the criteria to be used in determining whether an employer must make any reasonable accomodation at all. Under the provisions of paragraph 6.2(6)a(1), employers must make the job site accessible to and usable by handicapped persons. If this type of accomodation 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.

* 8 intended

CIVIL RIGHTS Cont'd

Discussion of Chapter 7. Patchett took the position there probably was insufficient grounds for objection and that the legislature should narrow the definition in the law. He added that denial of affirmative action could be a possible basis for objection.

Priebe was concerned as to the impact of 7.2(1) on school buses, particularly, in rural areas, if modification was mandated to provide reasonable accommodation to the handicapped.
Ditler responded that not every bus would have to be specially equipped. Patchett referred to funding provisions for the "weighted child."
Tieden saw the need for uniform treatment of all children.

Motion 7.2(1)

Clark moved to delay 7.2(1) forty-five days into the next General Assembly. Short form requested. Motion carried unanimously.

Motion 7.3

Patchett moved to delay 7.3 forty-five days into the next General Assembly. Short form requested. Motion carried.

Objections to GA

Schroeder pointed out that it was his understanding that all objections by the Committee would also be referred to the General Assembly. Members concurred.

West referred to statement made previously concerning 3.9(2)c as being "in line with federal rules" and wondered if this is later proven contrary, would the matter be reviewed by the Committee.
Patchett reiterated his suggestion to review Chapters 7 and 8 together in revised form.
Tieden observed there is a tendency for agencies to draft rules as they would like the law to be.

Priebe took the Chair.

Tax Rebate Memo

Ronald F. Mosher, State Comptroller, was present to discuss the insert which accompanied the Iowa income tax rebate check.

Patchett commented that the procedure seemed inappropriate and a purely explanatory note would have been preferable.
Mosher defended the action and stated that all correspondence from his office is submitted on stationery which includes Governor Ray's name. The purpose of the warrant-size, two-fold letter to the recipient was intended to be explanatory rather than political.

Tax Memo Cont'd — Holden and Tieden felt opportunity was there for the matter to be even more political.

Fiscal Year funds — There was brief discussion of what Priebe tabbed as "shifting of funds" at the end of the fiscal year.

The following agencies were not requested to send a representative for their rules:

COMPTROLLER, STATE[270]
Employee payroll deductions "Charitable organizations", ch 3 ..... ARC 0299 ..... N 6/13/79 1472

DENTAL EXAMINERS, BOARD OF[320] ARC 0327
Auxiliary personnel, dental laboratory technician and rules relating to dental advertising, chs 20 and 21 ..... N 6/27/79 1565
Advertising, chs 26 to 28 rescinded, filed emergency .... ARC 0326 ..... 6/27/79

LABOR, BUREAU OF[530]
Discrimination against employees, 8.5, 8.16, filed emergency ..... ARC 0352 ..... N 6/27/79 1529

MERIT EMPLOYMENT[570]
Eligible lists, 6.1, 6.3, 6.5, 6.6(1,3-9), 6.7, 6.8 ARC 0311 ..... N 6/13/79 1480
Olympic competition leave, 14.17 ..... ARC 0312 ..... N 6/13/79 1482

PLANNING AND PROGRAMMING[630]
EDA 304 Program, ch 16 ..... ARC 0322 ..... N 6/27/79 1512

PLANNING AND PROGRAMMING[630]
Developmental disabilities, 10.1, 10.2(2,3) ..... ARC 0310 ..... F 6/13/79 1486

REGENTS, BOARD OF[720]
Iowa state university, 2.25 to 2.28 ..... ARC 0324 ..... N 6/27/79 151

REGENTS, BOARD OF[720]
University of Iowa, residency requirements, 2.2(4) ..... ARC 0325 ..... F 6/27/79 1545

PHARMACY EXAMINERS[620]
Drugs in emergency medical vehicles, ch 11 .... ARC 0309 ..... F 6/13/79 1485

BLIND, COMMISSION FOR[160]
Generally, ch 1, 2.6, 3.2, 3.3, 4.1(3), chs 6 and 9 .... ARC 0313 ..... N 6/13/79 1467

Schroeder called attention to the denial by DOT of his request for revision of Rule (08,G)1.4. It was decided that a DOT representative would be asked to appear before the Committee at a future time to review the matter.

Priebe brought up the matter of state-owned vehicles and what he recalled was a directive from the Governor that all drivers of those vehicles take advantage of self-service gas, thus providing savings to the State. He reported that he had encountered an indignant state employee who was receiving "full service" recently and thought this fact should be called to the attention of Governor Ray.

Re Merit amendments, Clark noted that an "s" added to "eligible" in 6.8 would make it grammatically correct.

Publications to GA

Holden brought up the matter of "in-house publications" which are furnished in great numbers to legislative members by agenci He was unsure of the purpose of them and doubted that the cost involved could be justified.
Clark concurred that this was a matter which should be evaluate

Minutes

Oakley asked that the following corrections be made to minutes of the June meeting: Page 862, Holden motion, third line, change "in" to "if"; page 869, line 13, add "not" to "can". The secretary also asked that page 857, line 25, date be changed from "1/1/79" to "2/21/79".
Priebe moved approval of the minutes when corrected.
Carried viva voce.

IAB Publication

Oakley addressed the Committee briefly concerning an informal meeting wherein he, Joe Royce and Phyllis Barry had pooled their thoughts on possible ways to improve the format and method of publishing the Iowa Administrative Bulletin.

Suggestions for consideration:

1. The 19-day advance time needed to complete the editing, printing and mailing steps necessary to produce the Bulletin should be shortened.

2. Additional material which might be helpful if published:

a. Names, addresses and telephone numbers of Committee members and other personnel involved with the rules process, including the Attorney General.

b. A narrative describing the functions of the above-mentioned.

c. Include a special section listing all scheduled public hearings.

3. Devote at least part of one page monthly for use of the Committee and Staff, Co-ordinator and Editors to communicate information such as upcoming administrative law seminars, special public hearings, technical assistance in the area of questions and answers, all this being labeled as coming from a particular office.

4. Rulemaking Primer to supplement the style and form pages published in Volume I of the IAC under General Information.

5. A highlight page summarizing rules of greater interest.

6. Publish minutes.

7. Subscription rates and availability information for all of Iowa's legal publications, including the Code of Iowa, Administrative Code, IAB, Supreme Court Supplements.

IAB Publication Cont'd — There was brief discussion of the proposals and Priebe comments on his interpretation of legislative intent as to the function of the Administrative Co-ordinator. Members were willing to consider the proposals and possibly take some affirmative action at a future time.

Engineering — At the request of Norman Van Sickle, an Iowa surveyor, the Committee agreed to allot 30 to 45 minutes for consideration of his comments. Included in this time would be time for rebuttal from the Board of Engineering Examiners at the August meeting.

It was the consensus of the members that two days would be required for the August meeting and Schroeder announced the dates 14 and 15.

Suggestion was made that Girls and Boys Athletic Association members hould be invited to attend the meeting when the "basketball" rules of the Civil Rights Commission are reviewed.

Per Diem Intermim Trip — Patchett brought up the question of whether per diem would be paid to Rules members while in attendance at the NCSL meeting in San Francisco. Members who had attended similar conventions, concurred that it had always been a policy to pay per diem. Patchett added that some travel time is allowed, as well.

ADJOURNMENT — Priebe moved adjournment at 4:10 p.m. Carried. Next meeting to be held Tuesday and Wednesday, August 14 and 15.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary

APPROVED

Laverne Schroeder PB

Chairman

DATE 8/15/79