

MINUTES OF THE SPECIAL MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Monday and Tuesday, December 3 and 4, 1984,  
9:30 a.m.  
Place of Meeting: Senate Committee Room 22, State Capitol, Des  
Moines, Iowa.

Members Present: Senator Berl Priebe, Chairman; Representative  
James D. O'Kane, Vice Chairman; Senators Donald  
V. Doyle and Dale L. Tieden; Representatives Ed-  
ward G. Parker and Laverne W. Schroeder. Also  
present: Joseph Royce, Committee Counsel;  
Phyllis Barry, Deputy Code Editor, and Vivian  
Haag, Executive Administrator.

Meeting Convened The meeting was convened by Vice Chairman O'Kane.  
Housing Finance Priebe noted that the law requires publication of  
Authority the annual policy statement of the Housing Finance  
Motion Authority and he moved that the Iowa Administrative  
Code Editor be authorized to publish the information  
in the Iowa Administrative Bulletin pursuant to  
Iowa Code section 17A.6(1)c. After brief discussion,  
it was Committee consensus that the reduced size for-  
mat exhibited by Barry should be used to cut print-  
ing expenses. Priebe motion carried.

Vote

CONSERVATION  
COMMISSION

Richard Bishop and Bob Fagerland represented the  
Conservation Commission for review of:

CONSERVATION COMMISSION[290]  
Endangered or threatened plants and animals, 19.1, 19.2 ARC 5119 .F..... 11/21/84  
Boating, special events, ch 35 ARC 5120 .....F..... 11/21/84  
Wild turkey spring hunting regulations, 111.1, 111.2(1), 111.2(2), 111.2(2)"m," 111.4 ARC 5121 ..... 11/21/84  
Economic impact statement, migratory game birds (steel shot), 105.3(3) — subrule published IAB 2/29/84 as ARC 4490 .. 11/7/84

Also present: Beryl Coulson, Ankeny.

19.1, 19.2

At the Vice Chair's request, Bishop reviewed  
changes made in 19.1 and 19.2 since they were under  
Notice. There was brief discussion of the lists of  
endangered animals and plants. Tieden questioned  
the logic of keeping Higgin's eye Perly Mussel on  
the list since it was prevalent in his area.

Bishop referenced some of the decisions that were  
necessary and resulting complications in the system  
of checks and balances. Two species of violets  
were not included. O'Kane inquired as to location  
of the violets around the state but Bishop was un-  
sure. Schroeder questioned the advisability of in-  
cluding any milkweed in an endangered species list.  
Bishop ensured him that buttonweed and prairie  
meadowsweet were not the common types. The lists  
were prepared by personnel upon whom the Depart-  
ment relies.

CONSERVATION Tieden brought up the matter of prairie rattlesnakes in  
COMMISSION captivity. Bishop responded that the reptiles can be  
Continued kept as long as they are not sold or transported out of  
the state. He indicated that rattlesnakes and Black  
Bears were covered under the same rule. Written permis-  
sion from Conservation Commission is required to transport  
endangered animal species.

ch 35 Fagerland presented chapter 35 and no recommendations  
were offered.

ch 111 In re 111.1(1), Tieden questioned whether the last sen-  
tence would preclude issuance of a fall license. Bishop  
thought the point was well taken and agreed to review  
the matter. O'Kane was told that "special turkey hunting  
licenses" referenced in 111.4(3) meant "turkey permit."  
A small game hunting license, a habitat stamp, and a  
special turkey hunting license are required. The March 16  
deadline in 111.4(3) is needed to allow completion of all  
paperwork before the season opens. O'Kane viewed the four  
sets of dates as being confusing. Bishop admitted they  
were and explained the process. There was discussion of  
hunting on one's own land.

Bishop agreed to apprise the Conservation Commission of  
Tieden's suggestion to substitute "per season" for "per  
year" in 111.1(1).

Economic There was review of the updated Economic Impact Statement  
Impact re steel shot for waterfowl hunting. The cost and avail-  
Steel Shot ability of the shot were discussed at length. Bishop in-  
dicated he had no way of knowing where reloading compo-  
nents for steel shot could be purchased. Schroeder sug-  
gested that the Department, in mailings to sporting goods  
dealers, request them to supply source of the components.  
Bishop said they do not make that type of mailing.  
O'Kane had noticed that steel shot had become more plen-  
tiful and that the price had dropped.

In response to Tieden, Bishop described the methods of  
loading steel and lead shot. With steel shot, light  
plastic wads are pushed through the barrels and can  
cause scarring. Most new steel shells have heavy plastic  
wad including the reloading kits. Bishop suspected that  
hard steel shot was being purchased from companies which  
do not sell the same plastic wad that is available here.  
Tieden observed that the impact statement contained lit-  
tle mention of the somewhat controversial Louisiana Study  
which indicated there were more cripples with steel shot.

Bishop referred to page 727 [11/7/84 IAB, question 10]  
and responded that the summary, professionally, was as  
much comment as the Department wished to make on the  
Study.

Lacassine Re the Lacassine study, Bishop commented that in their wild-  
Study life research and in plant breeding, etc. there is seldom

CONSERVATION  
COMMISSION  
Continued  
  
Steel shot

a battery or research test where results are the same. Human variance is very large. The Lacassine Study though, in their minds, does not show anything different--it is the way they interpret that information. Bishop noted that the second author [Hebert] had been their "stat man. He has degrees, ability, character beyond reproach" and had personally told Bishop that Louisiana was a different situation. Results would not be the same if tests were run in Iowa. In Louisiana, birds fall in saw grass and cannot be retrieved. Tieden suggested that would be the same whether or not it was lead or steel shot. Bishop responded, "Steel is smaller pack; birds shot with lead do not show any visible signs of being hit." Hunters involved in the tests are "John Doe" type.

Tieden wondered why states where ducks and geese winter were not advocating steel shot since these areas have the greatest potential for abuse. Bishop knew of many states that had demanded the U. S. Fish and Wildlife Service to go to steel shot immediately. He stated that Louisiana, Mississippi and Alabama have never been concerned about resource issues because they would be the last to have a shortage. He saw the whole issue as being political. Bishop continued that, in 1985, Nebraska and Montana will go with steel shot statewide; Wyoming is phasing in; Kansas and Minnesota will phase in, in 1987; Wisconsin, Michigan and states in the Atlantic Flyway are pushing to go flyway-wide with steel shot. Iowa is one of the leaders in the matter.

O'Kane reasoned that the best testimony in favor of steel shot was the National Fish and Wildlife Service movie. However, a representative of the group was in Des Moines last summer and recommended that the state not use steel shot. Bishop said, "that was most inopportune." O'Kane agreed.

Coulson took exception to the economic impact statement. He took the position that the film was biased and unrealistic in that not one cripple was shown. He contended that the individual who made the film was fired from the Wildlife Service and was now promoting steel shot even though a "journalist" and not a "ballistics expert."

Coulson referred to exclusions from the steel shot requirement in subrule 105.3(3). He argued that few people could judge accurately a "25-feet-in-width stream" or a pond under two acres in size. He declared the rule would cause "tremendous problems." Coulson added that the rule would preclude hunting ducks and pheasants on the same day since the hunter cannot have "lead shot in your possession." He could foresee a large loss of habitat revenue with adoption of the rule since many will choose not to hunt with steel shot and will not purchase duck stamps. He disagreed with the Department's estimate that only 1.5 percent would have to acquire different guns.

12/3/84

CONSERVATION  
COMMISSION  
Continued

He contended that most of the guns sold in the last quarter century were full choke--common for duck hunting but steel shot would damage the barrels of these guns. Coulson saw reloading as a problem that will cause serious personal injury. He recalled that ten states had "dumped steel shot rules in the last five years because of gun-barrel damage." Coulson spoke of the limited source for reloading material and he maintained that the Department officials were biased toward steel shot. Coulson recalled his frustration at the public hearing he had attended regarding the rule. He thanked the Committee for its time.

Royce reviewed Committee options when the rule has been adopted. He clarified that today's review was limited to the Impact Statement. Bishop emphasized that the Commission was attempting to develop a reasonable plan that will solve a problem that sportsmen cannot afford to ignore. The rule will be adopted as Noticed but the Commission will be flexible in amending it later.

In response to Coulson, Bishop stated that steel shot would be an adequate load to shoot pheasants. Tieden commented that the Department has been concerned about delays but that Coulson expresses very adequately those impressions from people in his area--opposition to steel shot is fierce and strong; steel shot is costly.

Bishop stressed that the rule does not require the hunter to buy new equipment. Regarding the movie, Bishop said Tom Rositer was not fired. He was on contract to do a certain job and then moved on to other things. Bishop also recognized problems with the movie which "was not a finished product" but it did show that the Department does not encourage long-range shooting. Also, steel shot is effective. In response to O'Kane, Bishop did not anticipate amendment relative to the 25-foot or the farm ponds. The Commission wants to address the situation when the hunter comes to a small pond where mallards are out. They want to prevent lead from being deposited in the big ponds where decoys are set. Bishop said the two-acre pond was an arbitrary size--most farm ponds are not over that size. He stressed that hunters know the areas that are questionable.

Bishop stated that duck stamp sales were used in relation to 1979 impact statement. Hunters under 16 were required to buy duck stamps at that time; after that they were not. Sales have fallen over last year and duck populations are down. The Conservation Commission has received much favorable correspondence on steel shot. Bishop cautioned that failure of hunters to be responsible in their resource will ultimately lead to the courts' intervention. He cited poisoning of our national birds, e.g., the bald eagles, as a disturbing problem. Tieden suggested a possible reason for fewer ducks could be attributed to the dry conditions and Bishop agreed, adding that fewer mal-

12/3/84

CONSERVATION lards have come south than at any time in his life.  
COMMISSION Re conversion of the guns for steel shot use, Bishop  
Concluded noted the necessary components were available through  
Steel Shot many sporting goods stores. He admitted that reloading  
machines will need readjustment. He could not respond  
to the statement that 10 states had "dumped" steel shot  
rules. He was aware that Illinois and Louisiana had re-  
stricted use of steel shot but Louisiana has the highest  
amount of lead poisoning in the states. Chairman O'Kane  
asked him to provide information as to action of other  
states. Bishop said that three flyways were set to go  
flyway-wide in 1987--they are committed to steel shot.  
Re the Lacassine study, Bishop said it had been consid-  
ered by the Commission and he didn't think "emotions  
were involved." He added there is disagreement in the  
wildlife profession as to the way it was evaluated. "If  
that means all of us are wrong, I guess we will stand  
corrected, but we felt that, according to all testings,  
it wasn't all that great a difference." Studies showed  
crippling loss in 1 out of 5 ducks shot with lead; with  
steel shot, crippling decreased to about 1 in 31 or 24.

Schroeder observed that the Conservation Commission had  
provided information in good faith and thought the rule  
should be filed.

Royce advised that no motion was needed to approve an  
Economic Impact Statement. No formal action taken.

ATTORNEY  
GENERAL

The following rules of the Attorney General were taken  
out of sequence:

ATTORNEY GENERAL[120]

General provisions, ch 1 ARC 5074 ..N..... 11/7/84

Earl Willits, Deputy, and Elizabeth Osenbaugh were in  
attendance. Willits said the rules were of a general  
nature and descriptive of office functions and mirror  
current practice.

1.5(1)

1.5(4)

Schroeder raised question re opinions in 1.5(1) and  
1.5(4). He was not sure there should be a means by  
which the Attorney General could refuse to answer a  
question because it may be "hot or somewhat partisan."  
O'Kane suggested inclusion of provision for declaratory  
rulings and other administrative processes and Willits  
responded there would be subsequent rules on declaratory  
rulings. Willits emphasized it was not their intent to  
limit questions of county attorneys. However, they en-  
courage county attorneys to answer first. Frequently,  
CA requests are funneled through legislators.

Willits said they often write a letter of advice to the  
requester. Particularly, in the case of state offices,  
where the AG serves as their lawyer.

Discussion of 1.5(1) which, according to Osenbaugh,  
tracks the statute--13.2(4). An opinion holds that,  
by custom, the legislature means individual legislators

ATTORNEY  
GENERAL  
Continued

and that state officers include department heads listed in the Official Register. Doyle was advised that the AG's office responds to requests from the Citizen's Aide. Wil-lits said that the Fiscal and Service Bureaus are representatives of an independent branch of government and the AG is sensitive to that and cooperates with them. A large number of requests come from legislators. However, questions not of general public interest, obviously drafted by a private citizen or attorney but signed by a legislator, are generally declined.

BOARD OF  
MEDICAL  
EXAMINERS

James Krusor appeared for Board of Medical Examiners for the following:

BOARD OF MEDICAL EXAMINERS  
Medical examiners, peer review committees, 135.206 to 135.208 ARC 5072 ..F..... 11/7/84  
Physicians' assistants, 136.3(2)"a" ARC 5073 ....F..... 11/7/84

135.206 There was discussion of Peer Review Committees which will be established on an as-needed basis. Peer review was authorized at the inception of Code Chapter 258A. However, the Board has accepted only one peer review recommendation. Krusor said the Board has expertise to determine merits of a particular case but they cannot advise and judge also-- that would be a conflict.

In response to Parker, Krusor said no compromise had been reached. There was discussion of the fact that physicians' assistants do not serve on the Board. Krusor called attention to the fact that EMTs and others are not represented on the Board. He mentioned disparity in numbers between PAs, about 163, and Paramedics and EMTs--2900. Tieden suspected that the Board would be willing to eliminate peer review. Krusor responded in the negative but added that prior to this rule, the Peer Review Committee was nonproductive.

136.3 Krusor cited rule 136.3(2)a which allows temporary approval for PAs who meet certain criteria. O'Kane was told that the test is administered once a year. [See page 3237 for 70-day delay.]

PUBLIC  
INSTRUC-  
TION  
DEPT.

Those present for review of the following were Larry Bartlett and Orrin Nearhoof for the Department; William P. Angrick II, state Citizen's Aide, and his assistant, Doneen Willard:

PUBLIC INSTRUCTION DEPARTMENT[670]  
Approvals, 16.25, 16.29 to 16.31 ARC 5127 .....F..... 11/21/84  
Coaching authorization, ch 65 ARC 5128 .....N..... 11/21/84  
Appeals process timely filing

ch 65

According to Nearhoof, 1984 Acts, SF 2215, provided coaching authorization and the proposed rules address the approval of courses, validity and expiration, fees, suspension, and revocation of the authorization. Copies were sent to schools, AEAs, Community College Administrators, etc. A public hearing was scheduled for December 11 and they had received several requests to change the contact hours from 10 to 15. However, ten hours was set out in the Code. One other comment received was relative to the Department retaining ability to review the preparation rather than having it done by institutions, private colleges or AEAs.

12/3/84

PUBLIC  
INSTRUCTION  
DEPARTMENT  
65.7

Responding to Tieden re 65.7, Nearhoof indicated the legislation required the Board of Educational Examiners to adopt rules under 17A including suspension and revocation of authorization. He added the Professional Teaching Practices Commission may want to promulgate separate rules on coaching. At Schroeder's suggestion, Nearhoof agreed to advise the Board to include an amount for the equivalency assessment fee in 65.4.

65.4

ch 16

Nearhoof pointed out that the Department had worked with special education personnel in drafting the amendments to chapter 16. Recent legislation substituted "behavior disorders" for "emotionally maladjusted" and necessitated an amendment to 16.25. O'Kane requested that the preamble of future amendments implementing new legislation contain reference to the Act.

In response to Tieden's question re 16.29, Nearhoof said the teachers would have elementary or secondary authorization.

Filing of  
Appeals

In a special review, the Committee considered the issue of "timely filing" in an appeals process and whether a statutory definition is needed.

Royce explained that in September the state's Ombudsman had issued a critical report on the Department of Public Instruction, copies of which were distributed to ARRC members.

Willard summarized the case which prompted the report. A citizen, aggrieved with a May 7, 1984, decision of local school board of directors, appealed to the state Board of Public Instruction through the process provided in Iowa Code section 290.1. Although the appeal was submitted within the 30-day time frame, it was not received in the Superintendent's office until four days later and was excluded as "untimely" by the Superintendent. Since the state Board of Public Instruction is the only avenue of recourse, other than the courts, that a citizen has when taking issue with the decision of local school boards, the Ombudsman made an effort to have the Superintendent reconsider his decision. When that attempt failed, the critical report was issued.

Willard continued that it is unclear whether "filed" means mailed or date received since it is not defined by rule. The issue is accessibility of a state agency, when it is the citizen's only avenue of recourse. Bartlett informed Schroeder that the DPI would not and has not in the past honored a postmark as a deadline.

Royce commented that administrative procedure allows filing by mail but there is no uniform definition--a problem being there is no guarantee of mail delivery in any specific time.

PUBLIC  
INSTRUCTION  
Continued

12/3/84

In response to Tieden, Royce thought a statutory definition would resolve the matter. Bartlett would have no objection to that but he wanted to acknowledge there was a distinction between a statutory phrase and a rule in terms of filing subsequent documents. He wanted to clarify, in terms of court filings, that the initial filing must be stamped in the clerk of court's office. Bartlett said, "We have been looking at this as jurisdictional in terms of if it is not in our hands within 30 days, we can't hear it."

Tieden saw that as "acceptable for every county which has a clerk of court office, but not for the Superintendent of Public Instruction, located 200 miles from my community." Bartlett concurred for practical purposes, but in terms of a legal question, he was unsure there would be a difference. Bartlett stated they had requested an AG opinion on the issue.

Willard had no knowledge of the substance of the request. She added that their concern was not so much whether it should be date postmarked or date received, but that the state DPI make rules or procedures known to the general public. Tieden concurred.

Bartlett explained questions posed to the AG; (1) They set out basic facts of the involvement and asked if the Department could accept mailing as filing; and (2) could the Department adopt a rule that would, by definition, accept mailings as filings.

Schroeder suggested that Royce draft a proposal for an ARRC bill stating in administrative matters with a 30-day time frame, the postmark would be considered as timely filed. Also, include the matter of week-ends. Bartlett suggested they might want to review all of the other filings which may be more or less than this. Schroeder saw the number of days as immaterial--if it is postmarked within the time frame, that would constitute "timely filing."

The Committee was reluctant to mandate certified mail for appeals under chapter 17A. Bartlett pointed out that many times postmarks are illegible and the trend is away from using them. He preferred another solution. He recommended consistency within agency rules, filing of motions and briefs, deadlines, etc. O'Kane thought an amendment to chapter 17A would be appropriate. No further discussion.

BEER &  
LIQUOR  
CONTROL

William Armstrong appeared on behalf of the Beer & Liquor Control Department to consider license and permit division, native wines, hours of sale, 5.1(3), ARC 5111, Filed, IAB 11/21/84. Sunday hours for native wineries will be between 10:00 a.m. and midnight.

No action taken.



12/3/84

COMMERCE  
COMMISSION

Dan Hanson and Cindy Dilley represented Commerce Commission for the following:

COMMERCE COMMISSION[250]

Practice and procedure, responsive filings, 7.8(2)"c" ARC 5134 ...F..... 11/21/84  
Customer deposits for gas and electric service, 19.4(2)"a" and "d," 19.4(6), 20.4(3)"a" and "d," 20.4(7) ARC 5089 ..... 11/7/84  
Directory assistance charges, 22.3(10) ARC 5091 F..... 11/7/84  
Pipeline residential customer refund, 19.10(5)"a" and "b" ARC 5089 .N..... 11/7/84

7.8

Dilley gave a brief overview of 7.8(2)c and informed the Committee that all written comments had been favorable. Dilley said three changes had been made in amendments to chapters 19 and 20 since they were under Notice. Schroeder was interested in knowing if there would be a loophole re deposits. O'Kane thought intent was clear in the preamble but not in the rules. Dilley said modification provided third parties who make a deposit would receive reimbursement.

Parker saw the key language as "less any unpaid utility bill of the customer" in 19.4(6) and 20.4(7). O'Kane asked about the status of Docket #RMU-84-21 relative to customer deposits for telephones. Dilley was unfamiliar with it but would seek an answer.

Parker brought up HF 312 ['83 Acts] which provided that a public utility's delayed payment charge on a customer's account could not exceed 18 percent per month of the past due amount. A late charge cannot be applied if the payment is made within 20 days of the billing date. Parker was interested in the rules on this issue which had been before the Committee earlier this year.

Royce and the Committee recalled the lengthy discussion and the enormous complexity of the issue. O'Kane asked that the Department apprise the Committee of the current status. Minutes of the ARRC meeting on the rules in question were to be provided for Parker.

22.3

Dilley explained amendment to 22.3(10) intended to implement HF 2338, 1984 Acts, which required residential customers to be provided a record of day and time of each directory assistance call made from the residence. At the request of United Telephone Company of Iowa, modification was made to clarify that the Act applies to applications filed on or after July 1, 1984.

19.10(5)

Proposed amendment to 19.10(5)a and b will enable utilities to have more efficient refund distribution. Schroeder raised question re "consolidation" of refunds as being costly. Tieden pointed out use of "may" in the subrule. No further discussion.

INSURANCE  
DEPARTMENT

The following joint rules of Insurance and Health were before the Committee:

INSURANCE DEPARTMENT[510]

Health maintenance organization, 40.5(11)"b" ARC 5133 ...N..... 11/21/84

Denise Horner was present for Insurance Department and John Buckley represented Health Department.

12/3/84

INSURANCE-  
HEALTH  
DEPTS.  
HMOs

Also present; Jim Carney, Attorney, Health Maintenance Organizations.

Horner clarified that HMO rules are published under Insurance Department in the Iowa Administrative Code. However, responsibility is divided: Quality of care falls within Health Department purview and regulation concerning financial condition is under Insurance Department purview.

Buckley reviewed the "housekeeping" amendments to the rules which were adopted some eight or nine years ago. He mentioned a question which is being considered separately is whether or not the external review by the professional review organization should be mandatory. O'Kane pointed out that "biannually" in paragraph "b" should read "biennially."

Horner advised Schroeder that a group "designated by the Commissioner of Health" was an external peer review group who evaluates HMO internal peer review process. In response to Parker question re change from annual to biennial, Buckley said it had been very controversial whether or not the review was mandatory by the professional review organization. One Board member thought biennial review was sufficient.

Carney stated that HMOs basically agree with what is being done. They had been concerned about "biannually." Each change was brought to the Department by HMOs petition for rulemaking, according to Carney, and the sixty-day time limit to respond was up. HMOs had agreed to an extension of time. Carney continued that the main concern was to inform ARRC that the rule does not remove previous opposition to the rules nor is it an adequate response to their petition for rulemaking. Although Carney's clients were not in opposition to the proposal, it seemed to be a duplication of effort. O'Kane asked the Department to respond.

Buckley said the rule changes were approved by the Board of Health at its January 1984 meeting which preceded the petition from HMOs. O'Kane was curious as to the delay in submitting the amendment. Buckley reiterated that the matter had been a controversy for over a year but they decided "to go ahead with it--more or less to clean up the battlefield." Horner interjected the reason for the delay was because Kathryn Graf, the Governor's Rules Coordinator, had directed all interested parties to enter into an extension of time. She felt the Commissioner of Health could not respond to the petition, that it would be the Board's responsibility, and the Board of Health had no meeting scheduled within that period. Schroeder reasoned that the Chairman of the Board should have called a meeting.

12/3/84

INSURANCE-  
HEALTH  
DEPTS.  
Concluded

O'Kane expressed the fact that it was unfortunate Graf was not present because of her very special interest in this matter. It was Committee consensus to review the matter at the January meeting and O'Kane asked that it be placed on the January agenda. Buckley said the Board of Health would be meeting January 9.

Recess  
Reconvened

The meeting was recessed at 12:25 p.m. for lunch. Meeting was reconvened at 1:30 p.m. with O'Kane in the chair. A quorum was present.

HEALTH  
DEPARTMENT

The following rules were considered:

HEALTH DEPARTMENT[470]

Physical and occupational therapy examiners. 137.2(6), 137.5(1), 137.5(2), 138.101, 138.201(4), 138.210(17) to 138.210(19), 138.207(7), 138.207(8) ARC 5126 .F..... 11/21/84  
Chiropractic examiners. 141.11(1), 141.11(2), 141.11(3)"a." 141.13(6) ARC 5068 .F..... 11/7/84  
Chiropractic examiners. 141.11(1), 141.11(2), 141.11(3)"a." 141.13(6), 141.24(29), 141.63(3) ARC 5067 .N..... 11/7/84  
Outpatient diabetes education programs. ch 8 ARC 5076 .N..... 11/7/84  
Speech pathology and audiology examiners. 155.3(2) ARC 5107 .N..... 11/21/84

Those in attendance on behalf of the Health Department were Ron Marvelli, Jon Kelly, Barbara Thiede, R.N., David Fries, Irene Howard and Harriett Miller, Chiropractic Examiners. Also present: Ed Hertko, M.D., Central Iowa Distributive Education Center; Joseph B. Brown, M. D. Iowa City; Dr. Hegstrom, Internal Medicine, Ames; Vicki L. Kraus, R. N., Iowa City; Jeanine Freeman, Legal Counsel, Iowa Hospital Association; Kay Myers, Iowa Nurses Association; Brice Oakley, Senior Associate Counsel, Blue Cross/Blue Shield.

Chs 137,  
138  
141

No questions re amendments to chapters 137 and 138.

Miller reported changes in chapter 141 were in response to requests from ARRC. Schroeder questioned meaning of "successor" in 141.13(6). Miller was unsure but noted it was not new language. Schroeder thought that "successor" should be identified. He wondered if it would include all chiropractic schools in the nation. General discussion. [See page 3224]

ch 8

No recommendations were offered for 155.3(2).

Kelly said that chapter 8 was drafted in cooperation with the American Diabetes Association, Iowa Affiliate, as instructed by law and was based on a National Standard developed by the American Diabetes Association. A public hearing was held November 27, 1984, and the record will remain open until December 5, 1984. They attempted to address comments received, e.g., the Iowa Hospital Association was concerned in the area of addressing need in similar fashion to certificate of need and that will be reworded. IHA was also concerned about a certification process and lack of reference to chapter 17A. This will also be addressed. Other areas of comment dealt with hours and flexibility; qualifications of program staff. He introduced members of the Ad Hoc Committee.

12/3/84

HEALTH  
DEPARTMENT  
Continued

Discussion of 8.9(4). Schroeder suggested that the Department review the provisions as to whether the appointive board should have authority to cancel the program. Doyle wondered if deficiencies could be corrected in 30 days and suggested that 50 might be preferable.

Kelly posed the question, "Would it be acceptable to utilize the Ad Hoc Committee that drafted the rules to make recommendations?" He called attention to the fact that Iowa was a pioneer in this endeavor and the proposed standards were minimum. Some members of the Ad Hoc Committee wanted more stringent provisions. Kelly recognized the possible need for more flexibility.

Freeman stated they had met with the Department to voice their concerns which became a part of the formal record. She discussed SF 2262 [84 Acts] on which the rules were based and took the position that programs for diabetics, in order to be effective, should be authored in the diabetic's own community and be flexible. Freeman questioned whether or not specialized training was available in the state and suggested less burdensome requirements. She supported provisions for personnel who do not meet specialized education requirements at the outset of the program, but who would acquire them over a period of time. Freeman suspected that only a select number of trained personnel would be available. Smaller rural hospitals could not meet the standards and would be precluded from reimbursement for the program.

Doyle asked if the IHA had submitted written alternatives to the Department's proposal and response was in the negative. He was concerned for the impact on smaller institutions. According to Kelly, nurses, nutritionists and doctors were also involved in developing the rules.

Oakley observed this was an area where ARRC could certainly determine whether or not the rules fall within the mandate of the legislature. He reasoned that access restriction would not be in the best interests of the industry or professionals. Oakley declared, however, that it was not realistic to expect that all medical care is equally available throughout the state. Smaller hospitals cannot and do not attempt to provide many services gained at second and third level facilities. He concluded that the rules would provide good programs which BC/BS would be comfortable in offering and that accessibility was adequate.

Dr. Hertko, a practicing physician in Iowa for 25 years, limited to diabetes, spoke of his interest and involvement in the Diabetic Association in the state and the Children's Camp. He was founder of the Central Iowa Diabetes Education Center, a prototype of self-management diabetes educational program, referenced in the bill.

12/3/84

HEALTH  
DEPARTMENT  
Continued

He emphasized the importance of educating diabetics to better control the disease, eliminate suffering and reduce costs. He cited phases to consider: Initial education at time of diagnosis; later, in-depth, intensive education is provided which is self-management. He discussed the program for self-management. Hertko considered his 35-hour contact program to be a minimum. He was confident that educational requirements could be easily met in a year. Hertko urged that qualifications for instructors not be diluted.

Dr. Brown supported Dr. Hertko's position and voiced strong support for minimum standards. Dr. Hegstrom, Ames, had been involved in the program and supported statements by Hertko. He reviewed the history of diabetes and was willing to answer any questions.

Tieden took the position that accessible programs were important and was hopeful that passage of the Act would accomplish this. Hertko pointed out that his program is unrelated to hospitals but with CE, they could be a part of it. He found it difficult to foresee 130 programs in the state. He used heart surgery as an analogy and reasoned that programs would be geographically located and nothing can be accomplished without expertise. Tieden disagreed with the analogy and reiterated importance of accessibility.

Freeman took the position that few programs could meet the qualification requirements. Oakley urged acceptance of the rules which are favored by many. He saw the issue as not availability of the program but whether insurance carriers were going to pay for coverage. Oakley suggested a sunset clause on the rules to allow revision as experience dictates.

O'Kane was of the opinion that less rigorous standards would probably not comply with the statute. Royce advised Tieden that the statute was broad and clearly, the rules were within its authority.

ch 141

Schroeder called for further discussion of amendments to rules of the Chiropractic Examiners--141.11 and 141.13. It was decided that Royce should contact the Department with a recommendation to delete the words "or successor" and to modify the date certain to be consistent with the latest revision.

SUBSTANCE  
ABUSE  
DEPARTMENT

ch 3

Dean Austin represented the Department of Substance Abuse for the following:

SUBSTANCE ABUSE. IOWA DEPARTMENT OF[805]

Standards for a residential/intermediate care substance abuse program admitting juveniles. 3.25. 3.35 ARC 5082 .F.... 11.7/84

Austin reviewed changes from the Notice which included a suggestion of the ARRC relative to firearms and ammunition on the premises--3.25(1)e. Royce advised that the changes were noncontroversial and renote would be unnecessary.

12/3/84

AGING  
COMMISSION

Ron Beane appeared for the Aging Commission to review:

AGING, COMMISSION ON THE[20]

Miscellaneous amendments. 2.1(2), 2.5(4)"u," 6.9(1)"g," 6.9(2), 7.3(1)"n," 8.42(2), 9.22(2) ARC 5083.F..... 11/7/84

2.5(4)

Beane pointed out changes made since their Notice. Schroeder noted lack of a date certain in 2.5(4) and Royce informed Beane that the Commission should amend rules each year with a new date referencing changes made by the Federal Government. O'Kane added that many agencies also cite the federal publication and provide a date certain.

Schroeder suggested a delay to allow for study of the statutory authority to determine if the Executive Director has authority to establish these procedures and also use the Iowa Aging Directive. Royce viewed that as a difficult question. He continued that power is theoretically vested in the Commission on Aging, but the amendment was "basic paper shuffling" and actual decisions are made by the COA.

Beane noted their general rules state that the Executive Director will issue procedures, etc. and separates duties of the Commissioners and Executive Director. Responding to Royce, Beane said two AEAs had problems in terms of the reporting which is now less than 30 days because of the federal requirement. The Commission, in turn, must report within 30 days. Reporting requirements must be met in order to receive federal funds. Beane told Schroeder that 70 days was deleted from 2.5(4) since the annual signed contract specifies the number of days--it is not open-ended.

There was discussion of ramifications of a possible delay. Beane saw no problem.

Delay  
2.1(2)  
et al

Schroeder moved that a 70-day delay be imposed on the amendments listed on the December agenda for further study. The matter would be placed on the January ARRC agenda. Motion carried viva voce.

EMPLOYMENT  
SECURITY  
(Job  
Service)  
ch 4

Jim Hunsaker III, Administrator of Staff Services, and Paul Moran, Job Insurance Administrator, were present to review:

EMPLOYMENT SECURITY[370]

Claims and benefits, 4.1(48), 4.1(107), 4.2(1)"e," 4.7(1)"b" ARC 5125 .....N..... 11/21/84

Moran said the amendments were intended to improve kind and quality of information needed for better adjudication on protested claims. Job Service receives about 150,000 each year from employers. One major problem is the fact that either employer or claimant fails to appear for interview. Both parties to a fact-finding will have a choice for in-person or telephone interview. If an employer fails to appear on a claim, the Department works with the evidence they have--it is not a default. O'Kane opined that the entire process mirrored the statute pretty closely and wondered if they had researched statutory authority to make a change.

12/3/84

EMPLOYMENT  
SECURITY  
(Job Service)  
continued

Moran assured the Committee that they have rulemaking authority. Hearings officers have authority for telephone interviews. Moran emphasized that their hearings are not testimony-type. Hearings are held regionally. No telephone hearings are held at the first level. Forty-five full-time staff work in 70 locations.

In a matter not before the Committee, Doyle raised question as to whether severance pay for telephone employees would be taxable and also deductible. Moran said that current law states that it is deductible and the Department made a ruling on that. It is the employer's responsibility to notify Job Service of the weekly amount of severance pay. The entire amount is applied to unemployment in the week in which it is paid. Moran was willing to work with Doyle when all the facts surrounding the particular situation were available. Doyle was told that Northwestern Bell would be contacted when a claim is filed. There was discussion of instances when overpayment of benefits was not fraudulent and the recipient could not repay the money. Moran said that, under the law, the Department must attempt to collect the overpayment or charge it against future benefits for at least 10 years. Hunsaker informed O'Kane that a Code amendment would be needed to change that procedure.

TRANSPORTA-  
TION DEPT

Dennis Ehlert, Director, Operating Authority; Carol Willard, Fuel Tax Supervisor; Carol Padgett and Ruth Skluzacek, Vehicle Registration, appeared on behalf of the Department of Transportation. The following agenda was reviewed:

TRANSPORTATION, DEPARTMENT OF [820]  
Motor vehicle inspections. [07.C] 14.4(6)"b." [07.D] 2.2, 2.2(5)"d." [07.E] ch 21 ARC 5122... *N* ..... 11/21/84  
Vehicle registration and certificate of title. [07.D] 11.1(3), 11.1(8), 11.2(8), 11.3(12)"a." 11.5(3), 11.6(18)"a." 11.6(19),  
11.10 to 11.12, 11.13(4)"c" and "f." 11.16(2)"d"(5), 11.17(4)"d." 11.19, 11.21(3)"a" and "b." 11.25, 11.27(4)"c."  
11.27(5), 11.26, 11.30, 11.42(2), 11.46(2) ARC 5123 ..... *N* ..... 11/21/84  
Safety standards for motor vehicle equipment. [07.E] 1.1 ARC 5124 ..... *N* ..... 11/21/84  
Interstate motor vehicle permits. [07.F] 7.1(7), 7.3(4)"a." 7.3(8), 7.4(8)"a." 7.4(9), 7.5(6)"b"(3), 7.5(6)"c." 7.7 ARC 5109 ..... 11/21/84

[07,C]2.2

Skluzacek gave a brief explanation of ARC 5122. She was willing to provide Schroeder dollar figures for implementation of [07,C]2.2. Doyle asked about vehicles that are abandoned in alleys or parking lots. Padgett said police have authority to pick up a vehicle and sell it but their expenses would be reimbursed only for vehicles abandoned on public highways.

[07,C]14.4(6)  
b(2)

In re [07,C]14.4(6)b(2), Doyle was informed that "owner" was the "seller." Consensus was that "seller" should be "owner."

ch 11

Skluzacek gave brief overview of amendments to [07,D] ch 11 and concurred with Doyle that a date was needed in 11.1(8)c. She explained that new language in 11.3(12)e will allow registration credit for one or two vehicles toward one replacement vehicle. Problems associated with this are being addressed in a bill proposal.

12/3/84

TRANSPORTATION  
DEPARTMENT  
Continued  
11.12

Review of 11.12. Doyle pointed out that new legislation had substituted the words "personal representative" for "administrator." He was advised that short form probate was not affected by the rule. Two types of short form would be accepted. Schroeder questioned 11.19 and 11.25 which seemed to conflict. Padgett indicated Code corrections would be requested--until then, the Department will not administer penalty sooner than the 15 days.

Tieden was informed that an out-of-state resident who moved to Iowa is required to register a vehicle immediately.

11.30

In 11.30, Doyle inquired about vehicle registration requirements for corporations. Department officials said that corporations doing business in Iowa would need Iowa registration regardless of where the vehicle was purchased. Nonresident plates are not issued. An in-transit plate allows 30 days for a nonresident to obtain regular plates.

[07,E]1.1

Federal motor vehicle safety standards will be adopted under [07,E]1.1. Schroeder thought the rule should have a date certain. In 1.1(1), Padgett said that remanufacturers of an item such as starters are required to recertify the equipment. This subrule pertains to new vehicle equipment products, not rebuilt or refabricated.

[07,E]ch 7

Ehlert offered amendments to [07,F]chapter 7, intended to implement 1984 Acts, HF 508. He said that an advisory group representing the trucking industry saw no problem with the rules. Ehlert was willing to substitute a more commonly used word for "carbon" in 7.5(6).

Letter to  
Commissioner

O'Kane referenced a letter he and Doyle had written to Commissioner Warren Dunham relative to a project and design phase and they would appreciate an answer. Ehlert would convey the message.

CREDIT UNION  
DEPARTMENT

Betty Minor and Jim Brody were present for Credit Union. The agenda was as follows:

CREDIT UNION DEPARTMENT(295)  
Contested case proceedings, ch 14 ARC 5088 ..... F ..... 11/7/84  
Maximum real estate terms, 10.4 ARC 5086 ..... N ..... 11/7/84  
Foreign credit union branch offices, ch 15 ARC 5087 ..... N ..... 11/7/84

Chapter 14 was unchanged from the Notice. No comments were received. Tieden was told the Department had no appeals. There was informal discussion of prerequisite for forming a Credit Union. O'Kane stated that since July 1, Credit Unions can accept public money from school boards, etc. Since they are not technically members, he pondered how that was accomplished legally.



12/3/84

CREDIT UNION  
DEPARTMENT  
Concluded

Minor pointed out that a statutory change now allows Credit Unions to accept public funds--the public entity would not be a credit union member and funds are insured.

10.4

Minor explained that a number of credit unions are making real estate loans and selling them on the secondary market. The 10.4 allows time for final paperwork and also increases the maximum loan from 90 to 95 percent. Brody added that the change will allow individual businesses discretion on the percentage.

ch 15

In reviewing chapter 15, Schroeder saw potential problem in requiring 60 days prior notice to change location of a branch office--15.8. He cited example of bankruptcy. Minor agreed that temporary moves should be allowed. She called attention to 15.6(1) where the date should be February 1.

Minor reported that since the law [SF 2220] became effective in July, inquiries have come in for three credit unions. Discussion by Doyle of credit union involvement with escheat laws. Minor saw one problem area in that "old-time members" deposit an amount to serve as life insurance. Discussion of possible legislation to cover this aspect. No formal action.

No Agency  
Representa-  
tives

No agency representatives were requested to appear for the following:

BANKING DEPARTMENT[140]  
Approved rating services, 8.8, filed emergency ARC 5097...FE..... 11/21/84  
FAIR BOARD[430]  
Race horse barns, 7.22 ARC 5065...N..... 11/7/84  
MEDICAL EXAMINER, STATE[566]  
Autopsy reimbursement, ch 1 ARC 5110...F..... 11/21/84  
REFUGEE SERVICE CENTER, IOWA[715]  
General organization and administration, services, eligibility and application for service, confidentiality, rulemaking,  
declaratory rulings, chs 1, 2, 3, 5, 7, 8 ARC 5071...F..... 11/7/84  
TRANSPORTATION, DEPARTMENT OF[820]  
Highway division, contracts set aside for disadvantaged business enterprises, [06.G] ch 2 ARC 5093...F..... 11/21/84  
Public transit, contracts set aside for disadvantaged business enterprises, [09.A] ch 1 ARC 5094...F..... 11/21/84  
NURSING, BOARD OF[590]  
License to practice, R.N., LPN and ARNP, fees, 3.1(6)"j," 7.1(11)"e" ARC 5070...F..... 11/7/84

Recess

The Committee was recessed at 3:50 p.m. to be reconvened Tuesday, December 4, 1984.

12/4/84

Meeting  
Reconvened

The meeting was reconvened, Tuesday, December 4, 1984 at 8:40 a.m. in Senate Committee Room 22 by Chairman Priebe with a quorum present. Also present: Royce, Barry and Haag.

PHARMACY BOARD

The following Pharmacy Board agenda was considered with Norman Johnson in attendance:

PHARMACY EXAMINERS, BOARD OF[620]  
Automated patient record systems, 6.13 ARC 5112 .N..... 11/21/84  
Legal status of prescriptions, selective review, 6.12.....IAC

6.13

According to Johnson, 6.13 was designed to provide guidance to pharmacies for storage and retrieval of prescription information. The Board was of the opinion that audits would detect any wrongdoing.

6.12

In selective review of rule 6.12, Johnson read from a letter received from the FDA Office of National Center for Drugs relative to physician-patient relationship. Once that is broken, a patient should seek out a new physician to obtain prescriptions. States will have regulatory overview of such transactions. Schroeder expressed opposition, contending that some medicines are taken for a lifetime. He favored allowing one refill and then the pharmacist could use judgment to ensure the patient gets medication needed. Johnson was amenable to discussing the matter with the Board but cautioned that every medicine on prescription is strong and has inherent problems. The fact that a medication is taken for years does not necessarily mean it is safe. Johnson would refer the matter to the Board.

No recommendations were offered for the following:

NURSING HOME  
ADMINISTRATORS  
BOARD OF EX-  
AMINERS

Requirements for licensure, 2.6(2)c, ARC 5081.....11/7/84

Irene Howard was present.

REVENUE  
DEPARTMENT

Carl Castelda, Clair Cramer and Mike Cox were present for Revenue to review:

REVENUE DEPARTMENT[730]

Taxes, penalties, 12.10(4), 12.11, 30.10(1), 44.3(2) to 44.3(5), 44.8, 46.5, 52.6(4), 52.6(5), 52.6(13), 58.6(4), 58.6(5), 58.6(13), 63.8, 63.9, 75.2, 81.8 to 81.10, 81.15, 86.2(19), 89.6(1), 89.6(3) to 89.6(5), 89.6(7), 104.8(2), 104.8(3), 104.9 ARC 5075 .F..... 11/7/84  
Sales and use tax on services, 26.24 ARC 5129 .F..... 11/21/84  
Motor fuel, special fuel, 63.14, 64.8, 65.21 ARC 5130 .F..... 11/21/84  
Interest, calendar year 1985, 10.2(4) ARC 5077 .N..... 11/7/84  
Examination and certification of assessors and deputy assessors, 72.1(1), 72.1(3), 72.2(3), 72.2(6), 72.2(7), 72.2(8), 72.10, 72.18(1) ARC 5131 .N..... 11/21/84  
Property tax credits and exemptions, 80.1(4)"a," 80.2(2)"e" and "m," 80.2(3)"b," 80.3(1), 80.3(4), 80.3(6), 80.3(7), 80.4, 80.5(1), 80.8 ARC 5078 .N..... 11/7/84  
Inheritance tax, 86.8(3), 86.8(4)"a" and "d," 86.8(7)"d" ARC 5132 .N..... 11/21/84

No recommendations were offered for amendments to rules pertaining to tax penalties. According to Cramer, an example was included in 26.24 to make a distinction between taxable and nontaxable services of commercial recreation.

12/4/84

REVENUE  
DEPARTMENT  
Continued

Amendments to 63.14, 64.8, and 65.21 will provide more efficient administration of motor fuel tax statutes and were not changed from the Notice. Castelda told Schroeder that, under present law, political subdivisions must apply for any refund. The tax is paid at the time of the fuel purchase.

There was brief discussion of card access pumps, use of which Castelda believed was on the increase. This concept is being monitored. Subrule 10.2(4) was added to comply with the statute relative to interest on unpaid taxes after January 1, 1985. Approximately \$89 million is owed to the state--\$40 to \$50 million is in litigation.

Discussion of proposed amendments to chapter 72 relative to guidelines for examination and certification of assessors and deputy assessors.

Schroeder recalled that in the past, the deputy assessor records were not opened to the public. Cramer said that previous rules indicated that when application was made, the record would not be available for public inspection. Now, applications filed on or after effective date of the rules will be open record. This decision was made as a result of the City of Dubuque vs Telegraph, Inc. case which was an interpretation of chapter 68A.

Doyle asked how often an assessor had to take the test. He had heard they were so frequent that many older people would quit taking them. Cox responded that the examination is taken once in two years; once an assessor is appointed, they don't have to take the state examination again. However, continuing education is required. Cox noted a state test for county assessor was given about a month ago. Cox said that anybody can take the test and upon passing it, would be eligible for appointment anywhere in the state. Doyle asked, "Do they only have to take that once?" Cox replied, "Once they are appointed, they don't have to take that state test, they go for CE program." [Following the meeting, it was clarified that if an assessor wants to be reassigned, it would be necessary to take another examination to remain on the roster.]

In response to Tieden, Cox said the Department thought ground rules should be spelled out in "black and white." No other questions.

Cramer summarized amendments to chapter 80. Minor revisions included clarification of conveyance of homestead property. A new rule 80.8 is an attempt to implement Iowa Code chapter 404 to provide guidelines for administration of the urban revitalization partial property tax exemption. Tieden was interested in the Department's policy on postmarks and Cramer said they rely on Code chapter 622, an evidentiary rule.

REVENUE  
DEPARTMENT  
Continued  
80.5(1)

12/4/84

O'Kane questioned new language "or any other local official" in 80.5(1). Cox said it would be a county auditor since they are responsible for applying additional personal property tax credit. O'Kane reasoned that "auditor" should be inserted. Cox was reluctant to restrict it to two officials. O'Kane wondered if the inclusion of the broad term "local official" would have an impact on city assessors. No formal action.

Ch 86

Amendments to chapter 86 address special use legislation and the Economic Recovery Tax Act (ERTA) in the method of valuing certain qualified property for determining gross estate value for inheritance tax purposes. Priebe referred to new language in 86.8(3) and noted inclusion of "federal estate tax return form 706." He asked that a date certain be added. Cramer said the form would be filed for returns on or after a particular date.

Doyle reported complaints from lawyers as to a "slow-down" in obtaining acquittances from taxes and a slow-down on joint property matters from the Revenue Department. Castelda indicated the standard processing time is a maximum of four weeks. He attributed delays to changes in personnel and "walk-in" attorneys who want immediate service. The relationship to other tax liabilities has impact and must be perused in some situations.

REVENUE  
DEPARTMENT  
Continued

Doyle recalled discussion at a recent assessor's meeting of an Ames case where gasoline storage tanks are now taxed as personal property but previously had been considered real property. Castelda was not aware of that situation.

Doyle continued that assessors are quite confused. Royce interjected that in the Ames case, above-ground fuel storage tanks are now treated as personal property. Cox recalled there was a district court case and that the Revenue Property Tax Division has been reviewing whether or not the tanks should be real or personal property; whether above-ground or below-ground installation or size makes a difference. To his knowledge, there was nothing specific either way.

Doyle indicated that the assessors are concerned as to whether or not there will be rules on that subject to provide some uniformity.

Priebe said it is argued that if the gas tanks above ground are personal property, then a Harvestore tank would be personal, also. Castelda admitted that this general area has caused concern for the agency for a number of years--just what is the basic difference between real property and tangible. The Department had to set guidelines for the property tax rules, sales and use tax rules, and tried to apply standards. Priebe was sure that Harvestores were taxed as real property. He pointed out the only difference between the two tanks would be one

12/4/84

REVENUE  
DEPARTMENT  
Continued

held silage or corn and the other, gas. He concurred with the assessors who felt that the Revenue Department was totally inconsistent on the subject.

Cox declared that part of the problem is with the statute and criteria--whether or not the type of property is ordinarily moved when the owner changes locations. In this regard, the supreme court held that a 2000-foot TV tower was personal property. After further discussion, Doyle asked Cox if he thought the law should be changed. Cox replied in the affirmative.

PUBLIC  
SAFETY  
DEPARTMENT

Carroll Bidler, Wilbur R. Johnson, Mike Rehberg and Connie White were present for review of:

PUBLIC SAFETY DEPARTMENT[680]	
Private investigation and private security businesses, ch 2 ARC 5117 .E	11/21/84
Devices and methods to test blood for alcohol or drug content, 7.2 to 7.6 ARC 5116 .E	11/21/84
Private detective business or profession, ch 2 ARC 5118 .N	11/21/84
Fire marshal, liquefied natural gas, 5.275 ARC 5114 .N	11/21/84
Disposition of ammunition and firearms, ch 18 ARC 5115 .N	11/21/84

ch 2

Bidler recalled that SF 449 [84 Acts], effective January 1, 1985, rewrote the private detective statutes. According to Bidler, the bill sets up two separate businesses--private security and private investigative. In addition to requiring businesses to be licensed, it requires Public Safety to issue ID cards for employees. A number of security businesses in Iowa are national corporations and will also be subject to the rules. Several changes were made as a result of the October 2 hearing.

Schroeder was inclined to move a 70-day delay on the rules when he thought of the number of people providing security in Iowa. He queried, "Can you legally require corporate officers and wives of officers to be fingerprinted?" Bidler assured him that it was statutory. He said that application for renewal of license was due December 1 and most corporations had filed. Bidler clarified that there are no physical fitness requirements but applicants must pass a written examination. Another public hearing was scheduled for December 12.

Parker viewed the rules as "far-reaching." Bidler emphasized that regulation of private detectives was not new but a change under new legislation impacts both licensees and employees. Bidler said an original draft of the bill was prepared by the Department three or four years ago and O'Kane mentioned that it had been perused by the Professional and Occupational Regulation Commission.

Doyle asked if the Department planned to offer corrective legislation to the Act which he had opposed. Bidler cited problem areas which include bonding of both licensees and employees and, apparently, all records will be public which will result in vulnerability of detectives.

PUBLIC  
SAFETY  
Continued  
Motion to  
Refer to  
Legis-  
lature

Royce expressed his opinion that "good moral character" was complex and not easily defined.

Doyle moved referral of the rules to the appropriate legislative standing committees stating the problem with the law. Motion carried unanimously. It was Committee consensus that a delay would be out of order and it would essentially void the legislation.

ch 7

Rehberg was present for review of 7.2 to 7.6. He assured Doyle the new law relative to measuring a subject's breath alcohol concentration was "clear as crystal." Twenty-five states use the same terminology. Federal DOT standards were discussed and Rehberg offered to visit with Doyle at length on the subject of the "Vampire Act." He suggested the legislature might wish to provide for certain tissue samples if it is impossible to obtain a primary sample.

In response to Schroeder, Rehberg knew of no problems with specimen bottles being rinsed--this would affect the outcome of a test.

ch 18

There was brief discussion of disposition of ammunition and firearms--200 to 500 being confiscated each year with 50 percent being handguns--submitted to the criminalistics laboratory. According to Rehberg, they are required to keep, for one calendar year, anything that is turned in. In January, items submitted from the previous year are reviewed and evaluated as to what should go in the reference file. Other states and crime labs are notified that these items are available for forensic science. Amendment by 1984 Acts, H.F. 573 allows for disposition of certain firearms and ammunition by public auction. No committee action.

Fire  
Marshal

Wilbur Johnson explained proposed amendment to 5.275 to satisfy federal requirements. Fees are collected by the Federal Government.

In a matter not officially before the Committee, Priebe was informed that eight-foot corridors for hospitals was a request of the Health Department. He cited a situation in Algona where hospital officials understood they would have to remodel their facility to comply with the eight-foot requirement.

Johnson assured Priebe that the existing hospitals are not affected unless they receive Title XVIII funds. In that event, Johnson would seek a waiver through the Kansas City office.

Ch 2  
resumed

O'Kane recognized Keith Luchtel who commented on proposed Chapter 2 rules of Public Safety. Luchtel had been involved briefly with drafting of the bill [SF 449] and the Brinks Company had asked him to present their observations.

PUBLIC  
SAFETY  
Continued  
ch 2

Luchtel said that Brinks has approximately 40 employees operating an armored car business in Iowa and, for the first time, will have to license their security operation. Under previous law, they only obtained gun permits for drivers and guards.

Luchtel displayed lengthy application forms which had precipitated the call from Brinks. It was their interpretation that "applicant" included each employee and, if a corporation, every officer, director, and every person owning 10 percent or more of that corporation, would have to file with the Department, including fingerprinting and "mugshots." Brinks had no problem with requiring local drivers and guards to comply. Luchtel continued that Brinks was a New York company and, under the rules, New York based corporate officers and directors would have to comply. The rules would also apply to subsidiaries of a parent corporation--an unnecessarily complex chain of reaction.

Luchtel quoted from the Act, section 4(2) and contended that although it was not reflected in the rules, the onerous burden of filling out forms, being "mugged and fingerprinted" [section 4(1)] should apply only to officers and directors who own more than 10 percent. Luchtel pointed out testing is mandated in the rules [2.4], although it is not provided for in the Act. However, the type of efficiency expected is not set out. He learned, informally from the Department, that examinees will be tested on their knowledge of S.F. 449, the rules, criminal Code, powers of arrest, and use of deadly force. He was doubtful that January 1 compliance would be possible. Luchtel offered simplified language as follows: "An application must be completed by the chief executive officer and shall list names, addresses, social security numbers, etc. of each officer and director." In the case of a foreign corporation, the local manager would fill out the application. Without this change, an unnecessary "burden will be placed on those who know nothing of a day-to-day operation in Iowa."

Bidler and Luchtel disagreed on the interpretation of section 4 of the Act. After some discussion, it was Committee consensus that deletion of "each" in 2.4(3)a would resolve some problems. Bidler was amenable to filing an emergency amendment to accomplish this. See page 3233 for referral to the General Assembly.

IOWA DE-  
VELOPMENT  
COMM.

James Chupp appeared for review of:

IOWA DEVELOPMENT COMMISSION[520]  
Speculative building loans, 4.2(1), 4.2(7), 4.3(3), 4.3(4), 4.4(7) ARC 5069 ..N..... 11/7/84

The amendments will provide an improved procedure for solicitation of applications for speculative building loans. Chupp referenced sale of a building in Estherville and inherent problems.

O'Kane asked if the Development Commission maintained an inventory of available buildings and response was in the affirmative. Selected buildings are published in the

IOWA DEVELOPMENT  
COMMISSION

digest. O'Kane wondered about more aggressive promotion. Chupp saw merit in the idea but cited lack of funds. Two buildings had been financed. No other questions.

ENERGY  
POLICY  
COUNCIL

Ronna Bury and Sue Downey appeared for Energy Policy Council to review:

ENERGY POLICY COUNCIL[380]

Solar energy and energy conservation bank, ch 16 ARC 5096, also filed emergency ARC 5095 ~~N.Y.F.E.~~ 778. 11/21/84

According to Bury, the program had been expanded to include nonprofit commercial organizations and solar energy systems. In addition to energy conservation measures, for which the Council has provided funding, \$780,000 will be distributed before March 1 in order to avoid "recapture of the funds." A major change eliminated the 7-year payback for energy conservation measures. General discussion as to whether or not farmers would qualify for drying systems. Bury said that the matter had been referred to federal authorities in Washington. She noted it would be for nonprofit.

Schroeder was told there were no solar projects in multi-family housing units at this time--only furnace replacements. There was discussion of minimum standards in order to comply for the program. Median area income is established by federal guidelines for each of the 99 counties on basis of census information--ranging from 20,000 to 34,000. Tieden failed to understand why the money had not been utilized all of the time. Bury responded that HUD interim rules had been published May 31, 1983. They included the 7-year payback requirement. They have now determined a more realistic 25-year payback for all energy conservation measures. There is an increased interest with the start of the heating system and more financial institutions are participating--113 active contracts in the state.

Parker was told that applications for the alternate energy program will be taken when the rules are in place. No other questions.

LABOR BUREAU  
ATHLETICS  
COMMISSIONER

Walter Johnson appeared to explain the following:

LABOR, BUREAU OF[530]

Asbestos control procedures, licensing of business entities, licensing of training courses, and worker certification. chs 81 and 82 ARC 5080 ~~N.~~ 11/7/84

ATHLETICS COMMISSIONER[110]

Amateur boxing, ch 4 ARC 5108 ~~N.~~ 11/21/84

ch 4

Johnson gave a brief overview of the rules re amateur boxing, chapter 4. He referenced forms for which there will be no fees or penalties associated with completion.

chs 81, 82

Johnson reported there were three hours of comment at the public hearing re asbestos rules and the rules were rewritten. Contractors are concerned. He anticipated an enormous amount of work in preparing the regulatory flexibility analysis in two parts--asbestos control procedures and licensing of business entity and certification of workers. He lacks staff.



12/4/84

LABOR  
BUREAU  
Continued

Johnson stated that 81.3 was the main part of the rules. The Department has attempted to intermingle OSHA and EPA rules as directed by statute. Johnson enumerated penalties: \$20,000 for first offense willful violation; simple misdemeanor for second offense; subsequent offense, \$25,000, plus jail term. For willful violators, the Department can suspend, revoke or refuse to reissue a certificate authorization. According to Johnson, the penalty would be imposed on the contractor, not the worker.

O'Kane wondered if there were any recourse for amateur asbestos removal. Johnson admitted, at this point, there was nothing even though asbestos has been proven to be a health hazard. After the rules go into effect, willful violators can be penalized. No one is licensed until the rules become effective. General discussion.

Schroeder could foresee prohibitive costs for small operators. Johnson indicated that approved training courses would be conducted.

Beverly Venturini, representing the Sheet Metal Contractors of Iowa, Inc., submitted a written request to appear at the next ARRC meeting when the asbestos rules will be considered. Johnson reiterated his frustration with attempting to comply with the flexibility statement. The matter was set for review at the February meeting.

Johnson told Doyle that foam insulation creates a problem when, in its decomposed form, formaldehyde is emitted.

Barry  
Honored

Barry was presented a beautiful Iowa walnut plaque, designed in the shape of the state and containing a clock. This was in honor of her twenty years of service to the Departmental Rules and Administrative Rules Review Committees.

Recess  
Reconvened

Recessed at 11:30 a.m.  
The meeting was reconvened at 1:30 p.m. by Chairman Priebe. A quorum was present.

Minutes

Schroeder moved approval of the November minutes. Carried.

HUMAN  
SERVICES

The following Human Services agenda was before the ARRC:

HUMAN SERVICES DEPARTMENT[498]  
Overpayments, ch 11 ARC 5098 ..... 11/21/84  
Amount, duration and scope of medical and remedial services, abortions, 78.1(17) ARC 5099 ..... 11/21/84  
Intermediate care facilities, 81.6(11)"h"(4) ARC 5100 ..... 11/21/84  
ADC, ineligibility for expenses and disregards, 41.7(2)"d"(2), filed emergency ARC 5102..N..... 11/21/84  
ADC, payments, 45.4(2)"c" ARC 5079 .....N..... 11/7/84  
Food stamp program, administration, 65.26 ARC 5104, also filed emergency ARC 5103 ..N.F.F.E..... 772 11/21/84  
Reimbursement of providers of medical and health services, 79.1(9), filed emergency after notice ARC 5101 ..N.F.F.E..... 11/21/84  
Medically needy, ch 86 ARC 5106, also filed emergency ARC 5105 ..N.F.F.E..... 11/21/84  
Exempt resources, ch 75.....IAC

Present for the discussion were Mary Ann Walker, Sherry Hopkins, Steve Rendall, Don Keany, Dan McKeever, Will Miller, Stephen Gies, Bette Murray and Kathi Kellen.

ch 11

No questions re chapter 11.

HUMAN SERVICES Continued  
 78.1  
 81.6  
 41.7  
 45.4

Amendment to 78.1(17) requires physicians to report the medical basis for abortion. Schroeder was told that some hospitals refuse to perform abortions. Walker said that 81.6(11)h(4) raises allowable amount of compensation to an ICF administrator by the Department. She described 41.7(2)d(2) re sanction dates. There seemed to be few problems with the computer. Amendment to 45.4 removes the 12-month time limit when the state makes a corrective payment to client. There would be no extra cost to the state.

65.26 Under 65.26, child support will be counted retrospectively. Monthly reporting status will not be affected and a report need not be sent because it is on tape.

79.1(9) Walker said that new language in 79.1(9) provides a three percent increase in optometrist fees, effective November 1, 1984. A proposed three percent increase to psychologists was not supported by the Council and was deleted before the amendment was filed. Letters from Senator Bruner and Representative Carl were sent to the Council requesting reconsideration of their position.

ch 86  
 ch 75

No questions re chapter 86. Selective review of chapter 75 was deferred to the January meeting.

MEDICAL EXAMINERS Delay

Schroeder moved a 70-day delay on rules 135.206 to 135.208, Peer Review Committee, considered by the ARRC Monday, December 3, 1984, for further study in conjunction with physicians assistants rules. Motion carried. [See also page 3217 herein].

WATER, AIR & WASTE MANAGEMENT

Michael Murphy, attorney, was present for Department of Water, Air and Waste Management. The following was before the Committee:

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900]  
 Water quality standards, effluent limitations, 61.2(5), 62.8(2) ARC 5085 ..... 11/7/84  
 Wastewater construction and operation permits, 64.1(5), 64.1(6), 64.3(1)"a" to "l," 64.3(2), 64.3(5), 64.6(5)"l" ARC 5084 X.. 11/7/84

61.2,  
 62.8

According to Murphy, chapters 61 and 62 were modified relative to wastewater discharge limits in streams that require extra protection. Tieden was informed that "intermittent or low flow streams" would be those with one or two cubic feet per second. Murphy explained that it would be difficult to define for all situations.

ch 64

Amendments to chapter 64 are intended to implement 1984 Iowa Acts, SF 2212. Tieden asked if mobile home parks down the hill from lagoons would be affected. Murphy needed to know particulars but indicated a permit is needed for discharging. An oversize lagoon with no discharge would not need a permit, but the construction must be approved. Schroeder requested inclusion of a date certain where federal references appeared in chapter 64. Murphy was amenable. Murphy clarified that the amendments apply only to discharges into streams.

12/4/84

WATER, AIR &  
WASTE MANAGE-  
MENT DEPT.

He added that the amendments provide exemptions from DWAWM permit requirements. Exemptions are also made in cases where regulation is by another authority.

In response to Doyle, Murphy said DWAWM regulates discharge of waste into ox bows but the proposed amendments have no impact in the Port Neal area mentioned by Doyle.

Priebe suspected some farmers would be unhappy because of 64.3(1)e but Murphy pointed out that "dredged or filled" was not deleted and there would be no impact. Doyle referred to a dredging operation planned for Blue Lake. Murphy advised there should be no problem if the appropriate permits are obtained.

Drinking  
Water rules

Murphy informed the Committee that drinking water rules would be submitted to the DWAWM Commission in January. Royce will be provided a summary of the comments next week.

AGRICULTURE  
DEPARTMENT

Brucellosis  
Eradication

The following Agriculture officials were in attendance for special review of rules on brucellosis eradication-- chapters 16 to 18: Merle H. Lang, State Veterinarian; Elizabeth Duncan, Legal Counsel; L. M. Schmole and D. J. Otto, USDA.

Priebe called on Dr. Lang to explain state and federal requirements. Lang referenced the Uniform Methods Manual published in July 1984 but not received by the Agriculture Department until mid-October. The Department is in the process of reviewing the IAC to be consistent with federal rules. Prior to this, they used a 1981 publication.

Priebe and Lang disagreed as to the timeliness of the adoption of amendments since 1979. Royce interjected that provisions from the federal manual were adopted as Iowa rules. Lang indicated that new reduced dose vaccine will be the only available product after January 1, 1985. The terms "certified free" and "modified certified free states" have not been used for two years. Those in the marketing system must comply with the government manual.

Lang recalled that, in the past, adoption by reference had been frowned upon by ARRC. He was amenable to adopting the Uniform Methods and Rules as of a date certain. With respect to disposition of old vaccine, Lang stated that notice had been sent to all certified veterinarians. Commercial producers will remove it from shelves as of January 1, 1985.

Duncan interceded to point out that the Department will need time to study the federal material before adopting it. General discussion of vaccine dosage for brucellosis and testing and quarantine of cattle

12/4/84

AGRICULTURE  
DEPARTMENT  
Concluded

with the disease. The Committee questioned Lang at length on the subject. Tieden was told that reduced dose vaccine had been legal in Iowa for about 18 months. Lang described the difference between the old and new vaccines and emphasized that reduced dosage was as effective with reduced reaction. Equal immunity is realized when vaccination is administered between the ages of 4 and 10 months.

There was discussion of "quarantined" pasture which is not defined in Iowa law. It was noted that only a few states have provisions in this area. Lange took the position that caution should be exercised in having a "wide-open" pasture. He thought "approved premises" should be defined.

Schroeder had concern as to registered brands but Lang said checks had been made many times in all states and he could envision no problems. Schroeder requested a report in January on states that do not have federal standards.


Lang planned to submit areas in which Iowa should be more stringent than federal requirements.

Chairman Priebe alluded to problems he had personally encountered relative to quarantine of his herds. He was hopeful that his \$20,000 indemnification would be forthcoming.

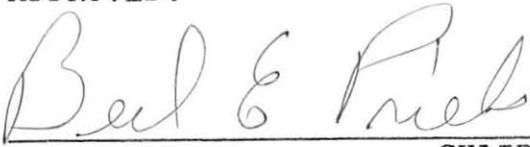
Adjourned

Chairman Priebe adjourned the meeting at 3:10 p.m. Next regular meeting scheduled for January 8 and 9, 1985.

Respectfully submitted,

  
Phyllis Barry  
Assisted by Vivian Haag

APPROVED:

  
CHAIRMAN