

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, January 13, 1976, 9:15 a.m.

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

Members Present: All six members were present--Senator Berl E. Priebe, Chairman, Senators E. Kevin Kelly and Minnette F. Doderer; Representative W. R. Monroe, Jr., Vice Chairman and Representatives Donald V. Doyle and Laverne Schroeder. Also present: Wayne A. Faupel, Code Editor.
David Charles, Senate Research Assistant.
Charles Riekema, Senate Research Assistant.

REGENTS

Chs 3 and 15

Wayne Richey, Executive Secretary, and Donald Volm, Merit, represented the Board of Regents for review of proposed new rules relating to the Braille and Sight-saving School, being Chapter 15, published in IAC Supplement 12/29/75 and two sets of filed rules which amended Chapter 3 relating to the Regents merit system.

There was brief discussion of Chapter 3.

Doderer pointed out use of the word "his" in 3.127, line 4. Richey explained that the amendment to 3.148 makes minor changes in the funeral leave policy by extending such leave to include the day after the funeral. Also, "grandparents and grandchildren" are included in the definition of members of the "immediate family." He added that this rule would be replaced in the future with one which "ties in more closely with the state program."

Richey stated that Chapter 15 merely sets out in rule form the policies which have been in effect for many years.

Monroe questioned whether 15.8(1) would be too restrictive with respect to "political activity."

Richey indicated the matter would be reviewed at the next Board meeting.

ENVIROMENTAL
QUALITY

Chapters 50 to 54 of rules of the Department of Environmental Quality were before the Committee. No recommendations were made concerning the filed rules which were published in 12/15/75 IAC Supplement.

AMERICAN REVOLUTION No recommendations were made concerning filed rules of BICENTENNIAL COMM. the American Revolution Bicentennial Commission which were published 12/15/75 IAC Supplement.

TRANSPORTATION
03,E; 06,Q

William Armstrong, Management Review, was present for review of filed rules of the Transportation Department which were published in IAC Supplement 12/15/75--[03,E] Ch 1; [06,Q] Ch 17. Armstrong reiterated that the rules were basically procedural ones. Committee made no recommendations.

Armstrong distributed copies of the revised 07,E 1.3 defining mud and snow tire. It was explained that the rule would be published in 1/26/76 IAC Supplement. Armstrong urged the Committee to point out any problem areas before the rule is filed.

Schroeder raised question regarding the labeling of the tire by using the letters MS to indicate that the tire is designed for mud and snow. No recommendations were made, however,

Recess

Chairman Priebe recessed the meeting at 9:55 a.m. to enable the Committee to attend the Governor's State of the State Address.

Reconvened

Chairman Priebe reconvened the meeting at 1:08 p.m. Monroe out of the room.

CONSERVATION
COMMISSION
Ch 70
Green Thumb
Program

Lester Fleming, Superintendent of Grants and Aids, appeared before the Committee to explain rules relating to a conservation and outdoor recreation employment program for senior citizens. Said rules were published under Notice of Intended Action and also emergency provisions of the statute in IAC Supplement 12/15/75. The rules, being 70.1 to 70.9, are pursuant to authority of 66GA, Chapter 110.

Doderer raised question in 70.5 as to whether applicants for the program might have to travel a distance to take advantage of the program.

In response to Kelly, Fleming said that a verbal opinion from the Attorney General interpreted the law to require county conservation boards to match funds received from the CORESC program.

No recommendations were made by the Committee.

SOCIAL
SERVICES

Judith Welp, Administrator, Office of Procedures, represented the Social Services Department for review of the following:

SOCIAL SERVICES DEPARTMENT[770]

Case records, Ch 9
Parole and probation, Ch 26
Aid, dependent children, amend. 41.1(5)"g"
Aid, Indians, amendments to 64.1, 64.2(4, 6-9)
Medical care, transportation, amend. 78.13
Boarding homes, 106.8 rescinded
Reimbursement, Ch 136 rescinded

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SOCIAL
SERVICES
Cont'd
Ch 9

Discussion of filed emergency rule 9.1(217) in re records of an applicant or recipient of assistance. Charles questioned Welp concerning the "third party" provisions. He noted no provision was made for appeal from the hearing officer's decision on "third party information."

Kelly could not see no problem with the rule as drafted.

Welp explained that the "third party" could be a caseworker, neighbor or other person reporting information concerning a recipient in cases involving reduction in benefits.

Charles questioned whether confidentiality was an issue since the third party is taking initiative in providing information to the department. He quoted from the confidentiality statute and wondered how it would apply to this situation.

It was pointed out that third party information could not be used unless the recipient was aware of it.

No recommendations were made by the Committee.

78.13

Discussion of transportation expenses related to medical care--filed rule 78.13.

Objection
stands

Schroeder pointed out that the Committee objection filed relating to 78.13 had not been overcome. Committee members agreed the objection should stand.

Kelly commented that a logical approach would be to base the expense allowed on the distance traveled by a recipient.

Ambulance
Service

While on the subject of medical assistance, the Committee asked Welp if consideration had been given to utilization of a van-type vehicle equipped for transporting wheelchair patients for medical treatment.

Welp reported that the Department follows Medicare guidelines which allow payment of ambulance service only when it is medically necessary. A person physically able to be transported by a wheelchair service would not be covered. Welp emphasized that none of their services will be expanded due to inadequate funding.

Under the provisions of section 17A.8(7), there was unanimous consent of Committee members present that the matter of transportation expense, including the wheelchair issue, be referred to the Speaker of the House and President of the Senate. In addition, they directed under Committee rules of procedure that the secretary refer the issue to the Chairmen of the Committees on Human Resources.

SOCIAL
SERVICES

Doyle called attention to some areas in Chapter 26 wherein the Committee had asked the Department to consider revision-- 26.8(2)d, the word "excessive" in reference to use of alcohol or drugs; 26.11(2)d, the word "abuse"; 26.11(2)e, the word "Restitution".

Faupel pointed out that "settlement" should be used in lieu of "reservation" after the word "Indian" in Chapter 64.

1:55 p.m.
CITIZENS'
AIDE

Monroe returned.

Thomas Mayer, Citizens' Aide, was present to answer questions concerning filed rules [Chs. 1 to 6] which were published 12/29/75 IAC Supplement. Mayer indicated that recommendations of the Committee had been incorporated before the rules were filed.

Priebe out of the room. Monroe in the Chair.

SECRETARY OF
STATE

Hermann Schweiker, Deputy, represented the Secretary of State. Discussion of correspondence from Stanley Zegel, General Manager, Iowa Data wherein question was raised as to whether the public was afforded a reasonable opportunity to comment on certain rules of the Secretary of State.

Schweiker defended the department's action in filing of Chapter 12--Agricultural reports--since there was a time limit under the law. He reiterated that many factions were involved in the drafting of the rules and forms.

Doderer pointed out that although knowledgeable persons offered assistance, these were selected by the Department and in her opinion Iowa Data was justified in their objection since no published date for hearing was provided.

Charles indicated he had conferred with Professor Arthur Bonfield on the matter of sufficient notice and the Professor had suggested the Committee could amend their Rules of Procedure to require an agency to allow a minimum of twenty days after publication of notice for public participation.

Motion
Rule of
Procedure

The following motion was moved by Doderer and seconded by Kelly: "The Committee will object to any filed rule of an agency which hold the public hearing less than twenty days after the first publication of Notice of Intended Action."
Carried viva voce.

AGING, COM-
MISSION ON

Robert J. Rhudy, Consultant to the Commission on the Aging, distributed tentative drafts of revised rules of the Commission. The Committee had noted numerous areas in existing rules which were not acceptable and set a January deadline for the Commission to submit revisions. Rhudy reported that Notice of Intended Action concerning the new rules which will supersede those filed previously was published in IAC Supplement 12/29/75.

AGING
Cont'd

In response to question by Kelly, Rhudy indicated area agencies offered suggestions for the rules. Kelly recommended that the Commission also contact persons who would have an interest in the rules to determine if a public hearing is needed since the Notice did not provide for one.

Doderer expressed an interest in receiving copies of the manuals referred to in the rules.

LANDSCAPE
ARCHITECTS

Thomas A. Barton, ISU Professor and Board Member, and Marjorie Miller, Executive Secretary, represented the Board of Architectural Examiners for review of proposed rules [Chs 1,2] published in IAC Supplement 12/29/75.

In re 2.3--procedure for processing applications--Monroe recommended that the first line of the third paragraph be amended by inserting the word "Willful" before "Failure to supply additional evidence ..."

Responding to a question by Charles, Barton thought an examinee, while inspecting his graded examination, could have access to answers to questions unless they were of a judgment nature.

2:40 p.m. Priebe returned.

AGRICULTURE
Licensing

James Harlan, Hearing Officer, reported that the Agriculture Department was preparing an amendment to 1.2(2)--licensing--to overcome the Committee objection filed December 8, 1975.

Pesticides

Harlan asked for deferment of review of amendments to Chapter 10 of their rules relating to pesticides. The rules will be redrafted as a result of the public hearing held January 7. No objection.

Veterinarians

Discussion of proposed Chapter 19--duties incident to the practice of veterinarian medicine wherein the Department attempted to clarify the statute by providing a definition.

Priebe took the position that 19.1(3) was too restrictive and would prevent a farmer from performing simple animal husbandry procedures.

Monroe quoted from the veterinarian lay assistant bill [66GA, ch 128] and could foresee problems with the rule.

Committee members concurred that the problem was one for the legislature to resolve.

Motion

Schroeder moved that the Department of Agriculture advise

AGRICULTURE
Cont'd

the Agriculture Committees of the House and Senate that the statute lacks an adequate definition of veterinarian medicine and corrective legislation should be enacted.
Motion carried.

Charles advised the Committee that an objection might be more effective at this time.

Motion

Schroeder moved the following objection:

"We object to Chapter 19 of rules entitled 'Veterinarians', appearing in December 15, 1975 Iowa Administrative Code Supplement, on the basis that rules therein exceed the statutory authority delegated to the agency."

Motion carried with 6 ayes.

Priebe took the Chair.

ENVIRONMENTAL
QUALITY
Air Quality
Commission

David Bach, Hearing Officer, and Douglas True, Permit Section, represented the Air Quality Commission of DEQ for review of proposed changes in their rules pertaining to limitations on emission of sulfur dioxide from liquid and solid fuel-burning units, being 4.3(3) published in IAC Supplement 12/15.

Bach pointed out that two public hearings would be held concerning the rule and greatest impact would be on four Iowa cities--Clinton, Waterloo, Dubuque and Muscatine--where there is high concentration of sulphur dioxide.

Schroeder was concerned about enforcement of the rule when individual stack emission limitation is met but in the aggregate there could be a violation.
No recommendations were made by the Committee.

INSURANCE

William Huff III, Insurance Commissioner, and Tony Schrader, Policy Analyst, were present for review of the following rules published in 12/15/75 IAC Supplement:

Accident and health advertising--15.13 to 15.30, Filed
Life insurance advertising--15.40 to 15.49, Filed
Sex discrimination--15.50 to 15.54, revised, under Notice

In response to question by Monroe, Huff cited §507B.4(3) as their authority for 15.23 in regard to disparaging comparisons and statements.

Discussion centered on 15.53 c as to the availability of maternity coverage. The original draft would have required carriers to offer maternity coverage for single females. However, the cost of such coverage would be prohibitive and

INSURANCE
Cont'd

the rule was revised to require that a family contract be offered to a single female. With such a contract, her child would be covered from birth.

Huff said they concluded it would be unfair to mandate maternity coverage on all single contracts.

Schroeder asked if a child covered under a family plan would be insured if born with a birth defect even though maternity benefits were not in effect. Huff could not give a definite answer.

Doderer took the position that 15.52(2) was too broad but indicated she would not oppose a limitation on the basis of sex. Said subrule provided: "This regulation shall not affect the right of fraternal benefit societies to determine eligibility requirements for membership." Huff agreed to study the matter.

Discussion of 15.54, the last sentence which read: "All rates shall be based on sound actuarial principles or a valid classification system and actual experience statistics."

Huff commented that statistical data is not always available, e.g., homemakers. Doderer questioned use of the word "and" when both are not available. Huff replied that rate setting could be a matter of judgment in instances where no data is available.

Schroeder recommended adding the words "if available" at the end of 15.54.

LABOR BUREAU Walter Johnson, Deputy Labor Commissioner, represented the Bureau of Labor. The following filed rules were before the Committee:

| | |
|----------------------------|----------|
| Organization, Ch 1 | 12/29/75 |
| IOSH division, Ch 2 | 12/29/75 |
| IOSH forms, 3.12, 4.16 | 12/29/75 |
| Rulemaking procedure, Ch 7 | 12/29/75 |
| Elevator safety, Chs 71-76 | 12/29/75 |

Johnson pointed out that public hearings had not been held on their proposed amendments to 10.21, 26.1, 28.1 published in IAC Supplement 12/29/76. The Committee preferred to wait until the rules were filed to review them.

PUBLIC
INSTRUCTION

Proposed amendment to Chapter 23 of rules of Public Instruction was before the Committee. A new subrule 23.5(13), relating to specifications for vehicles used for transportation of the handicapped, was published in IAC 12/29/75 Supplement. The Committee made no recommendations.

PUBLIC
INSTRUCTION
Data
Processing

Dean Crocker, Director of Management Information, appeared before the Committee to answer questions concerning filed rules of Public Instruction relating to educational data processing. Said rules, being Chapter 55, were filed 11/21/75 and published in IAC Supplement 12/15/75.

Schroeder expressed opposition to 55.5 as to the responsibility of the local school district to provide information to the AEA Administrator. He was especially concerned that the rule mandated to the district a cost over which they would have no control.

Priebe could see a possible conflict between 55.5(1) and 55.5(2).

Schroeder moved the following objection:

The Committee objects to 55.5(257) as exceeding the statutory authority delegated to the agency.
The objection can be overcome by striking from line 1 the word "shall"; by inserting at the beginning of 55.5(1) the word "May" and by inserting at the beginning of 55.5(2) the word "Shall".

Motion carried.

Discussion of 55.6--merged area school corporation responsibility.

Motion

Monroe moved the following objection:

The Committee objects to 55.6(257) as exceeding the statutory authority delegated to the agency.
The objection can be overcome as follows:
Amend 55.6(1), line 2, by substituting the word "any" for "the".
Amend 55.6(2), line 1, by substituting the word "any" for "its".

Motion carried.

Motion

In re definitions of "administrative application" and "instructional application" the following objection was moved by Schroeder:

The Committee objects to 55.3(1) and 55.3(2) as exceeding the statutory authority delegated to the agency.
The objection can be overcome as follows:
Strike from the end of each subrule the words "These services may include, but are not to be limited to the following:". Further, strike paragraphs "a" to "f" from 55.3(1) and paragraphs "a" to "e" from 55.3(2).

Schroeder motion carried unanimously.

MINUTES

Moved by Schroeder to dispense with reading of minutes of the December 9 and 10 meetings and that they stand approved.
Carried viva voce.

CIVIL RIGHTS
COMMISSION

No recommendations were made concerning proposed amendment to 3.5 of rules of the Civil Rights Commission relating to complaint procedure. Said rule was published 12/29/75.

There was brief discussion of format of the Committee agenda with suggestions being made to improve its usefulness.

Senators Priebe and Doderer asked to be excused so that they could attend another meeting. Monroe took the Chair.

NURSING BOARD Lynne Illes, Executive Director, Board of Nursing Examiners, was present to answer questions concerning proposed amendments to Chapter 3 as follows:

| | |
|--|----------|
| License, examination, registered nurse, 3.1(2) | 12/29/75 |
| Work permit, practice nursing 3.1(4) | 12/29/75 |
| Nurses educated in another country, 3.1(6) | 12/29/75 |
| License renewal, registered nursing 3.3(1) | 12/29/75 |
| License examination, practical nurse, 4.1(2) | 12/29/75 |
| License renewal, practical nursing, 4.3(1) | 12/29/75 |

Before leaving, Doderer asked the Committee to note 3.1(6)a which included a provision that an applicant for licensing examination shall understand the English language. Also, the requirement for a marriage certificate in 3.1(6)d(2) appeared to be discriminatory, in her opinion.

Illes pointed out the importance of a candidate being able to comprehend English as foreign nurses are practicing ten months prior to taking the examination. She added that the marriage certificates are helpful in verifying the official legal names of foreign nurse candidates since many last names are identical. Illes concluded if the matter was an issue, they would attempt to develop another means of supplemental name verification.

Monroe suggested the Board could require any other previous names used.

In response to question by Monroe as to birth certificate requirements, Illes said it is another means of legal name verification. They have 70,000 licensees and this helps to ensure that only eligible persons are licensed. She emphasized that it is not their intent to be discriminatory in any way.

Monroe suggested a possible standard identification number to be used on all correspondence. It should also be provided, however, that failure to include the number would not be deemed an error.

**BANKING
DEPARTMENT
8.7**

Filed Rule 8.7 of the Banking Department which was published 12/15/75 TAC Supplement was acceptable to the Committee.

INDUSTRIAL
COMMISSIONER

Attention was called to typographical errors which occurred in commutation tables of the Industrial Commissioner rules which were published 12/15/75 IAC Supplement. The Committee had no objections to the Code Editor making revised pages to correct the errors.

Discussion of possible review of existing rules of the Commission for the Blind since many inconsistencies had been noted by Committee members.

Recess

There being lack of a quorum, Chairman Monroe recessed the meeting at 5:10 p.m. to be reconvened in the Code Editor's office at 11:30 a.m., January 14, 1976.

Reconvened

Chairman Priebe reconvened the recessed meeting at 11:50 a.m. January 14, 1976, Code Editor's office. All members were present.

BLIND
COMMISSION

The secretary was directed to request Dr. Kenneth Jernigan, Director of the Commission for the Blind, to appear before this Committee at 8:30 a.m., February 10, 1976, for the purpose of setting up a time for complete perusal of existing rules of the Commission.

Priebe asked that the secretary request the Department of Social Services to submit for review all rules governing foster care.

ADJOURNMENT

The meeting was adjourned at 12:05 p.m. Next regular meeting to be held Tuesday, February 10, 1976, 7:00 a.m., Senate Committee Room 24.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry
Secretary

APPROVED

Chairman

DATE _____