

MINUTES OF SPECIAL MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of  
Meeting

A special meeting of the Administrative Rules Review Committee was held Thursday, March 28, 1991, Senate Committee Room 24, State Capitol, Des Moines, Iowa.

Members  
Present

Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senator Donald V. Doyle; Representatives David Schrader and Ruhl Maulsby. Senator Dale L. Tieden excused to attend another meeting.

Staff present: Joseph A. Royce, Counsel; Alice Gossett, Administrative Assistant.

Also present for the Department of Public Safety were Eugene Meyer, Plans, Training and Research Bureau and Betsy Dittmore.

Convened

PUBLIC  
SAFETY  
Impounded  
Vehicles--  
Inventories

Chairman Priebe convened the committee at 8:05 a.m. and announced the purpose of the meeting was to discuss the procedure governing inventories of impounded vehicles. It was noted that the Department of Public Safety had adopted emergency revision of their rules on the subject--6.4(2)d. The provision had been adopted under the normal process as well. At their March meeting the ARRC, voted an objection to the emergency filing and delayed for 70 days the other version.

A proposed amendment to Code Chapter 808 was before the committee for consideration as a possible resolution to the matter.

Priebe had questions from the sheriff and police chief in his area as to the impact of the committee action.

Doyle discussed the Wells Case which required setting out the policy for opening of closed containers found during inventories of impounded vehicles.

Chairman Priebe recognized Meyer who stated that he previously worked in the Division of Criminal Investigation for 19 years and during the last seven years, served as Assistant Director responsible for all criminal investigations in the state.

Meyer commented that although the proposed amendment to Chapter 808 was prepared with best intentions, it created concern. Meyer had conferred with law enforcement officials who believe that the proposal would automatically place a pure administrative procedure in the criminal courts. He added that an inventory of the contents of a vehicle is administrative in nature and is not done as a part of criminal investigation. The inventory procedure was established by

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the courts for three very specific reasons: (1) Protection of the owners' property; (2) Protection of the police against claims or disputes over lost or stolen property and (3) Protection of the police from potential danger.

Meyer questioned how enforcement could meet the very standards that have been set and allowed by the courts in an inventory search if they must obtain a search warrant. He declared that the mere finding of the closed container or locked container in a vehicle could never rise above simple suspicion--a long way from probable cause needed to obtain a search warrant. Meyer cited potential safety problem for the officer responsible for the containers in their evidence and property rooms if contents is unknown. He stressed that remedies exist to address intentional use of a legitimate vehicle inventory to sidestep the warrant requirements of the Iowa laws--the exclusionary rule.

Doyle opined that the Wells Case went beyond saying that what was found in the container could be used as evidence. Meyer responded that the law has very clearly stated that if during the administrative procedure contraband has been found by law enforcement agencies, that contraband can be admissible in court. The Court views totality of the circumstances and reasonableness and if they determine that both of those standards have been met, it would be admissible. Meyer stressed that the proposed legislation which would require a search warrant to look in any locked container would not allow either one of those standards to be considered.

Doyle cited an example of an individual who would have to abandon his vehicle and be rushed to the hospital where he would be confined for several days. He agreed the vehicle should be impounded and he commended good inventories to protect property. Doyle's concern was invasion of privacy, e.g., a locked briefcase might contain client-attorney information and he saw no reason to open that briefcase. Clothing could be tagged and placed on a shelf since there would be no reasonable grounds to assume there was anything injurious, guns or whatever in it. Meyer agreed there was insufficient evidence for a search warrant but the officers would still have a container that they could not open.

Doyle commented on his research on search and seizure from common law on and he pointed out that exceptions exist for motor vehicles for obvious reasons but he saw the need to protect personal property.

Meyer reiterated his concern for the safety of officers. Doyle spoke of the "chain of evidence" and Meyer disagreed contending it was "an inventory." Meyer declared that the entire law enforcement community disagrees

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with the proposed legislation. He added that the Department of Public Safety was involved with every law enforcement agency in the state and any rule or law more restrictive on the Department would be unworkable.

Doyle cited the Wells Case. Meyer interpreted the case as expanding the South Dakota Opperman Case by saying that, in order to look in closed locked containers, an established procedure had to be in place. The administrative rule was the Department's attempt to formalize a procedure of an ongoing practice. Doyle agreed that a policy was necessary, the question being can it be done by rule or should the House and Senate determine the policy. He concluded that ever since Iowa became a state, policies such as Chapter 808 have been set. Meyer responded that the chapter deals with search and seizure, not with administrative search.

It was Schrader's understanding that the Wells case did mandate that policies be developed but did not specifically state what those policies must be. He recalled that the emergency rule was filed some months after the Wells Case had been decided and his concern was procedural to some degree. There had been no input from persons outside of the Department and the ARRC had not been included in the rule making process. Schrader reasoned that it was appropriate to allow an opportunity for the entire legislature to debate the issue.

Meyer reiterated that the Wells Case called for an established procedure, not a law. The policy could have been included in a Procedures Manual to satisfy the intent of the case. However, the legal counsel for the Department at that time chose to follow the rules process.

Doyle pointed out that internal rules or policies of a state agency that affect the public should be included in administrative rules.

Royce offered background on the rule-making process for 661--6.4(2)d.

Schrader distributed copies of his proposed amendment to Iowa Code chapter 808 which was similar to the one sponsored by the Judiciary Committee. However, in his opinion, that bill was flawed in that it spoke to "inventory searches of locked containers" which only confused the issue. He continued that inventory and search are not the same, although, it might be impossible to determine the difference without knowing the motives of the person who was conducting the inventory for search.

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The Schrader proposal:

808.15: Inventories of locked containers in impounded vehicles. In conducting an inventory of the contents of an impounded vehicle, a peace officer shall not open a locked container or a locked compartment unless otherwise authorized to do so under the law of search and seizure.

Priebe wondered if persons other than peace officers could open that locked container. Meyer could think of no one, adding that anyone with a badge would be considered a peace officer. He suggested review of the proposal by legal counsel.

Meyer emphasized that law enforcement agencies have been operating under this policy for some time and the Wells Case required that a policy be adopted. He was hopeful that the Department could work through the rules process in developing that policy.

General discussion followed with it being noted that the emergency rule would sunset in six months as provided in Iowa Code section 17A.4(2) and if no further Committee action was taken, the version of the rule adopted under normal rule making would become effective at the end of the 70-day delay.

Motion

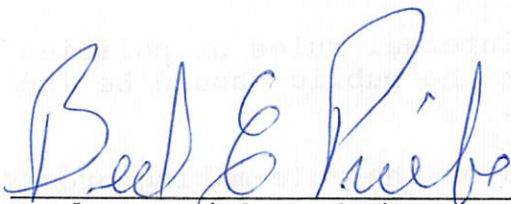
Schrader moved the Committee adopt the proposed amendment to Chapter 808 to be sponsored by the ARRC and that it be referred to the appropriate committee.

Motion carried.

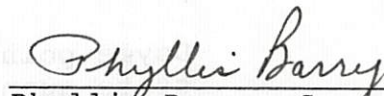
Adjourned

Chairman Priebe adjourned the meeting at 8:25 a.m.

Respectfully submitted,



Berl E. Priebe, Chairman



Phyllis Barry, Secretary  
Alice Gossett, Admin. Asst.

Date