

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, June 8, 1976 at 10:25 a.m.

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

Members Present: Representative W. R. Monroe, Jr., Vice Chairman,
Representatives Donald V. Doyle and Laverne Schroeder;
Senators Minnette F. Doderer and E. Kevin Kelly.
Senator Berl E. Priebe was not present, having notified
the Committee in May that he would be vacationing.
Also present: Wayne A. Faupel, Code Editor
David Charles, Research Assistant

Minutes: Moved by Kelly to dispense with reading of minutes of
the Special meeting held May 18 and that they stand approved.
Carried viva voce.

ARTS COUNCIL
2.1(5)

Dwight Keller, Fiscal Officer, represented the Arts Council
for review of subrule 2.1(5) "d", "e" and "f", published
in IAC Supplement 5/17/76, which sets out guidelines for
a new grant program being initiated.

Doderer questioned Keller as to what was intended by the
requirement of "professional administrative staff" in para-
graph f (5). Keller explained this would be a "full-time
paid staff" as recommended by the Council.

Discussion of f (6) which provided: "The arts organization
must demonstrate program development over the past five
years." In response to question by Doderer, Keller said
that any group in existence for five years would have
demonstrated growth and active leadership.

In re funding, Schroeder thought subparagraphs (2), (5) and
(6) of paragraph f were possibly discriminatory.

The Committee expressed some concern regarding the require-
ment in f (3) that "The arts organization must be independ-
ently operated and not attached to an accredited educational
institution."

No formal objections were offered.

BEER AND LIQUOR Robert Finnell, Liquor Licensing Division, and Gordon Brantma
 Dram Shop Ins. Insurance Department, were present for review of emergency
 8.1(1), in regard to dram shop liability insurance, published
 in 5/31/76 IAC Supplement.

Kelly raised question as to the justification for filing the
 rule as an emergency one.

Finnell told the Committee that all licensees are required
 to carry dram shop insurance. However, many Iowa companies
 are discontinuing this type of coverage. The rule would
 permit "unadmitted insurance companies" to write coverage.

In response to question by Kelly, Finnell indicated a problem
 had existed for the last year but had become "critical" in
 the last four or five weeks.

No objections were voiced.

Motion Moved by Schroeder to proceed to the next item of business.
 No objections.

BONUS BOARD John Brokens, Administrator, represented the Bonus Board for
 Oral review of filed rule 3.3 (new) --published 5/31/76--which
 Presentation would provide for oral presentations. Existing rules 3.3 t
 3.5 were renumbered accordingly.

Doderer thought there was a conflict between the last sentence
 of 3.3(5) and 3.3(3), 3.3(8). Charles could see no problem,
 however.

Kelly raised question concerning 3.3(1) as to what is a
 separate "request" for "each proposed rule." It was his
 opinion the provision was vague and he recommended that the
 following sentence be substituted: "A request shall be
 made for each proposal."

Other Committee members concurred and the Board agreed to
 make the change by emergency rule.

CAMPAIGN FINANCE Barbara Snethen, Executive Director, Campaign Finance Dis-
 DISCLOSURE closure, and her successor, effective August 1976, Richard
 Checkoff Conley, were present to explain filed rules 2.2, 2.3 and 2.8
 published 5/17/76 IAC.
 Said amendments were for clarification of income tax checkoff
 procedures.
 No objections were voiced.

EMPLOYMENT
SECURITY

Harold Keenan, Legal Counsel, Employment Security Commission, appeared before the Committee for review of the following rules:

Administration, 1.1(4)"a", 1.6(2)"e", 1.7	5/17/76
Employer's contribution and charges, Ch 3	5/17/76
Claims and benefits, Ch 4	5/17/76
Appeals, procedure, 6.6, 6.8(3), 6.8(4)	5/17/76
Job orders and related areas, 7.3(6), 7.3(7), 7.4(1)	5/17/76
Forms, Ch 10	5/17/76

Keenan said many of the amendments were merely "cleanup". In re supplemental employee benefits, they simply adopted by-rule prerequisites of the Attorney General which they had been using. The procedure for filing declaratory rulings was also revised.

Brief discussion of Chapter 4. It was noted that after July 1 all Employment Security rules would need revision. Doyle raised question concerning availability disqualifications with respect to claimants who are imprisoned [4.23(12)]. However that matter was not officially before the Committee and no recommendations were made.

LANDSCAPE
ARCHITECTS

The Landscape Architectural Examiners Board was represented by Marjorie Miller, Executive Secretary, who explained filed subrule 2.2(2)--evidence, published in IAC 5/31/76. Evidence required to be submitted with an application could be returned to the applicant at their expense under the new subrule.

Discussion of the apprenticeship program [not before the Committee]. Schroeder recommended that the Board initiate legislation to eliminate the program.

MERIT
EMPLOYMENT

Ray Pratt, Personnel, represented the Merit Employment Department for review of filed rule published in IAC Supplement 5/17/76. Rule 14.8(19A) was amended by striking the second paragraph which read: "If it is found necessary to fill the position during the interim of leave, the new employee shall vacate the position upon the return of the classified employee on leave subject to layoff, transfer or demotion rights earned under these rules."

Pratt said the deletion would remove a redundancy since the subject was covered in the first paragraph of the rule.

Discussion followed and the Committee took the position it would be preferable to leave the rule intact for clarity. Schroeder anticipated that some departments would extend the probationary period. No recommendations were made, however.

6-8-76

NURSING BOARD The Board of Nursing Examiners was represented by Staff Member, Chs. 1,3,4 Sylvia Moore, and Nellie Osterlund, Board Member. The following amendments published in IAC Supplement 5/17/76 were before the Committee: Description and organization, accreditation--1.1, 1.3(3); Licenses, registered nurse--3.1, 3.4; Licenses for practical nurses--4.1, 4.2, 4.4.

Discussion centered on 3.1(5) which was rewritten to comply with an opinion of the Attorney General which ruled that the statute does not allow for partialⁿ examination for licensure. An A. G. opinion was originally issued October 11, 1957. A second opinion which was requested by the Board this year concurred with the '57 one. Committee members reviewed sections 147.141 and 147.81 of the Code.

Deferred Schroeder asked and received unanimous consent to defer the matter until the afternoon session.

REGENTS Emergency and funeral leave--3.148 and Traffic and parking at Iowa State University--4.29, 4.31, 4.50, published 5/17/76 and 5/31/76, respectively, were before the Committee.

Donald Volm, Merit Division, explained 3.148 intended to provide emergency and funeral leave chargeable to sick leave not to exceed five days in one year.

Question was raised as to the five-day limitation.

Les Chisholm, representing Local 12, University of Iowa, spoke regarding the rule. They favored retention of the present funeral leave policy and addition of emergency leave provisions. Another approach would be to increase the number of days allowable to be charged against sick leave and per incident usage could be limited to three to five days.

Motion Schroeder moved that the Committee object to 3.148 as being arbitrary since it did not apply uniformly to the persons affected. The objection could be overcome by striking from the end the words "but in no event shall they exceed five days chargeable to sick leave in any calendar year".

Schroeder made reference to §79.1 of the Code and suggested that "circumstances of each case be determining factor."

Doderer was doubtful that charging funeral leave to sick leave was permissible under the Code.

Volm pointed out the rule coincides with the Merit Employment Department Rule 14.4 and he was sure any variance in the Regents rule would be opposed by the Merit Employment Department.

REGENTS
Cont'd

Doderer asked for unanimous consent to defer the vote on the Schroeder motion to object to 3.148. No objections.
Motion deferred.

Parking
ISU

Dwight Wolf, Regents, and William Whitman, Director of Physical Plant at ISU, explained the amendments to traffic and parking rules at ISU. Essentially, the rules eliminated redundancies, updated certain areas and increased some parking fines.

In response to question by Schroeder, Whitman said fines applied only to cars and motorcycles and not bicycles. Students were apprised of the changes through the student newspaper and a public hearing. Approximately \$250,000 revenue is derived from the fees and fines. Said revenue provides no profit but merely covers expenses for maintenance and staff.

No recommendations made at this time. [See p. 155]

12:00 p.m. Doderer excused.

SECRETARY OF
STATE

Herman Schweiker, Deputy Secretary, explained the following rules which were published in IAC Supplement 5/17/76: Chapter 4 concerning ballots for the president and vice president was rescinded as being obsolete. Chapter 11 regarding election forms was amended to remove obsolete forms dealing with registration. As a result of passage of HF 1011 this procedure will be the responsibility of the newly created Registration Commission[845].

Rules governing agricultural reports [Chapter 12] were filed following a Notice of Intended Action and the emergency status of said rules was removed.

TRANSPORTA-
TION DEPT.
Aeronautics

William Armstrong, Program Administrator, Aeronautics Division, Dan Frammel, Railroad Division, and Dorothy Habenschuss, Management Review, represented the Department of Transportation for review of Procurement, equipment services [01,B], Chapter 2 and Catwalks and handrails [10,E], Chapter 9, both sets published in IAC Supplement 5/17/76.

Armstrong said that 01,B, Chapter 2 sets up the framework for the entire procurement operation--negotiated selection of consultants and contractors through competitive bidding and prequalification procedure for engineering consultants. As a result of comments and objections from industry substantial revision was made in the rules before they were filed.

Kelly raised question in re 2.8(2)--suspension or revocation of acceptability--as to the meaning of "good cause" since it was not defined in the rule.

TRANSPORTATION Armstrong indicated the Department would decide, within the
 Cont'd hearing process, each case on its own merits.
 Kelly asked if the Department would be willing to record the hearing and publish this record to apprise others of example of "good cause." Armstrong answered in the affirmative.

Defer Schroeder asked for unanimous consent to defer the discussion until the afternoon session.

Noon Recess Chairman Monroe recessed the meeting at 12:20 p.m. to be reconvened at 1:30 p.m.

Reconvened Meeting was reconvened by Chairman Monroe at 2:00 p.m. Doderer out of the room.

TRANSPORTATION Discussion of Transportation rules resumed.

Motion Kelly moved the following objection:

Objection The Committee objects to 820--[01,B], subrule 2.8(2)
 01,B 2.8(2) regarding suspension or revocation of acceptability in that it is beyond the power of the Department to promulgate a rule that effectively deprives an individual of due process. The subrule provides only for "good cause." It does not give an individual notice of what causes the Department would consider sufficient.

The objection can be overcome by offering after "good cause" the following: "including but not limited to omission or misstatements of a material fact that could affect the statement of acceptability,".

Kelly conceded it is a difficult question but he preferred to place the burden of proof on the Department rather than on the individual to show that the rule is reasonable.

Motion to object carried.

Discussion of 10,E 9.1(474) requiring catwalks and handrails.

Schroeder raised objection to 9.1(1) which provided: "... transportation may require catwalks and handrails to be constructed on both sides of such bridge or trestle." It was his opinion that to require "both sides" exceeded the statute.

Monroe pointed out the law provides "at least one side" which is the minimum requirement.

Kelly was inclined to agree with Schroeder.

2:15 p.m. Doderer returned.

TRANSPORTATION Schroeder called attention to the lack of a date certain
 Cont'd with respect to the references to standards set forth by
 the American Railway Engineering Association in 9.2(1) and
 9.3. The Department was willing to supply a date and the
 Committee agreed to withhold objection.

Motion Schroeder moved the following objection:

The Committee objects to 820--[10,E] 9.1(474), subrule
 9.1(1), regarding catwalks and handrails, as going
 beyond the authority of the Department. Since 66 GA,
 Chapter 230, requires that railroads place catwalks
 or handrails on one side only, the agency by requiring
 two sides goes beyond their authority.

The objection could be overcome by substituting the
 word "recommend" or "request" for the word "require"
 in line 2.

Motion carried.

Schroeder commented that the construction standard for a cat-
 walk seemed excessive [constructed to bear its dead weight
 and a live weight of 100 pounds per lineal foot]. There were
 no recommendations.

NURSING BOARD
 3.1(5)

Discussion of 3.1(5) resumed.
 Charles reported that he had spoken with Larry Blumberg,
 Assistant Attorney General, who prepared the opinion concerning
 partial examination for nurse candidates. Blumberg took the
 position the legislature should be more specific for authority
 of the Board to administer partial examination. Section
 147.41 refers to partial examination after a portion of the
 course is completed and does not appear to apply to a case
 where an individual failed. Blumberg thought the Board had
 an option to go either way in re partial examination.

Charles pointed out it would be difficult to formulate an
 objection to the rule.

Moore stated that the Board had experienced no problems with
 the procedure followed to this time.

Doyle recommended that the appropriate Committees of both
 Houses be apprised of the problem and that clarifying language
 be addressed to all professional practices.

Schroeder moved that the following petition be forwarded to
 the Board of Nursing:

*Legislature
 Notified*

NURSING BOARD
Cont'd
Petition

The Administrative Rules Review Committee petitions the Nursing Board as follows:

1. While the Code requires the taking of "an examination", it does not specifically require that the examination be taken at one sitting. Therefore, the several parts of "an examination" could be taken at different times and still constitute but a single examination. An applicant passing all parts of the examination will have passed "an examination" made up of several parts passed at different times.

2. The Opinion from Assistant Attorney General Blumberg dated April 12, 1976, requires unwarranted caution on the part of the Board.

3. It was not the intent of the Legislature to force an applicant to retake part of an examination that had already been passed.

4. The Administrative Rules Review Committee requests that the Board rescind 3.1(5)"a" of their present rules, and

5. That the Board refile its prior rule 3.1(5)"a" which would allow an applicant to retake only those portions of the examination that had been failed.

6. This procedure will allow the Board to measure the qualification of its applicants adequately, while not requiring applicants to duplicate successful efforts on earlier examinations.

Motion to petition carried.

REGENTS BOARD
3.148

Discussion of the Schroeder motion to object to 3.148 [p. 50].

Objection
Failed

Schroeder reiterated that the rule could not be applied uniformly. In some instances more than five days might be needed in one year and no time in another year.

Volm contended some control and limitation was necessary.

Vote on the motion to object: Doyle "pass"; Kelly not voting. Chairman Monroe ruled that the motion failed.

Discussion of parking at ISU continued. Emphasis on 4.29(9) which provided: "Multiple violation citations may be issued for each hour or fraction thereof that a violation continues to exist."

Doyle and Schroeder concurred that the fine should not exceed \$10 in one day.

Motion

Doderer moved to object to 4.29(9) as follows:

REGENTS
Cont'd

Objection

The Committee objects to subrule 4.29(9) as being arbitrary since the last phrase "or fraction thereof" is not limited. Therefore, in some cases a multiviolation could be given for a five-minute violation and in other cases, fifteen minutes and so on, at the discretion of the officer.

The objection could be cured by either defining "fraction" or placing a period after "hour" in line one.

Roll call on the motion showed 4 ayes. Kelly out of the room and not voting.

Schroeder asked for unanimous consent to petition the Board of Regents to file uniform parking regulations for all universities and institutions under the Board.

Doderer suggested that the Board be asked to appear before the Committee to explain why their policy is not uniform.

Schroeder repeated his request. Doderer objected.

Discussion followed. It was recommended that a schedule as provided in 4.7(2), in re violations at the University of Iowa, be prepared for the three universities.

SOCIAL
SERVICES

The following rules of Social Services were before the Committee:

Departmental organization, 1.3	5/17/76
Oral presentation, Ch 3, Emergency	5/17/76
Hearings and appeals, 7.5, 7.6	5/17/76
Obscene material, penal institutions, 17.1, 18.1, 19.1, 20.1, 21.1	5/17/76
Parole and probation, 26.2, 26.11(1)	5/17/76
Residents' rights for mentally retarded, 28.10	5/17/76
Mental health institutes, Ch 29	5/17/76
State hospital-schools, Ch 30	5/17/76
Work and training programs, Ch 55	5/17/76
Medical assistance, 78.1, 78.3	5/17/76
Juvenile Home, obscene materials, 101.1(3)	5/17/76
Training school for boys, obscene materials, 103.1(3)	5/17/76
Foster family homes, Ch 106	5/17/76
Social Security Act—Title XX implemented, Ch 131	5/17/76
Abuse of children, 135.3, 135.7	5/17/76
Interstate compact, placement of children, Ch 142	5/17/76
Interstate compact on juveniles, Ch 143	5/17/76

Representing the Department were: Judith Welp, Procedures Administrator; Jack Harvey, Division of Community Services; Rosemary Casey, Division of Mental Health Resources; and Darlene Clark, Foster Care Specialist.

Welp explained the amendment to 1.3--organization at state level--was intended to transfer the duties of the Bureau of Correctional Services to the Division of Adult Corrections.

No recommendations by Committee.

SOCIAL
SERVICES
Cont'd

Discussion of 3.1(1) concerning request for oral presentation. Department officials were willing to rewrite the provision to read: "A request shall be made for each proposal."

Monroe voiced opposition to 3.2 as to location for oral presentations being limited to Des Moines unless the commissioner of the department finds for "good cause" that another location should be named.

The following objection was moved by Schroeder:

The Committee objects to 3.2 in re location of oral presentation on the ground that it exceeds the power of the Department. Section 17A.4 of the Code requires that all persons be given a reasonable opportunity to make an oral presentation and holding all meetings in Des Moines effectively precludes some persons from being afforded such an opportunity.

Motion carried.

Discussion of 3.4(3) providing for a time limit for each presentation to five minutes and the total time to three hours. No recommendations were made, however.

In re hearings and appeals, Kelly raised question in 7.5(1)a as to whether ten days would be "timely" in terms of mailing of notice prior to date action would become effective. He thought twenty days might be more reasonable. No recommendations.

Kelly pointed out that 26.11(1) and (2) should be restructured grammatically for clarity.

Amendments to Chapters 17, to 21 were acceptable as filed.

Brief discussion of 28.10 but no recommendations were made.

Monroe suggested that subrule 29.1(3) be stricken since the matter was covered in 29.1(4). Casey concurred.

Schroeder suggested that the words "not related" be deleted from 29.1(4).

Monroe called attention to use of the word "disruptive behavior" in 29.1(2). Committee members concurred the provision was unclear.

SOCIAL
SERVICES
Cont'd

The department officials agreed to rewrite 29.1(2) as well as the third sentence of 29.1(1) for clarification.

Chapter 30 was acceptable as filed.

Discussion of amendments to Chapter 55 pertaining to work and training programs.

In re 55.2(10) providing that "No plan shall be approved by the department when tuition rates exceed those of the area vocational community college in the respective area." Schroeder suggested that private schools and universities be included also.

Kelly noted that 55.2(5) provided payment for dependent children up to age 20. He recommended that the Department seek a declaratory ruling from the Supreme Court and initiate change in Iowa statute to conform with the federal requirement of age 21.

Welp explained that rules 78.1 and 78.3 pertaining to medical assistance would be rescinded before they become effective as a result of passage of Senate File 1314 which provided that the level of services not be reduced until the Department has received instructions from the joint appropriations subcommittee.

Amendments to 101.1(3) and 103.1(3) included suggestions offered by the Committee in re the definition of obscene materials. No further recommendations were made.

Foster
Family
Homes

A printing error in line 1 of 106.4(2) was noted.

Discussion of 106.4(4) relating to grouping of foster children in sleeping rooms. Doyle recommended that the following words be added at the end: "except for illness when close supervision is warranted". Department officials were agreeable to the proposal.

Schroeder questioned Clark as to what is "safe outdoor space for play". No recommendations were made.

With respect to personal characteristics of foster parents, Committee members voiced opposition to requirements that they be "physically able" and of "reputable character."

Clark recognized the problem of vague language and agreed to review the matter for alternative and discretionary substitute.

Monroe disagreed with provision in 106.7(5), last sentence, which provided "tasks shall not be assigned as punishment..." It was his opinion that assignment of household chores such as washing dishes was a very effective and humane means of punishment.

SOCIAL
SERVICES
Cont'd

Schroeder urged that provision also be made whereby foster children would be allowed the same privileges as other children in a family with respect to operation of certain machinery, e.g., farm tractors.

The Department agreed to consider revision of the subrule.

Doyle raised question concerning records which foster families are required to maintain--106.12(4). The Department agreed to place all necessary forms in a notebook for the foster parents.

Review of Chapter 131 concerning the proposed plan for implementing the Social Security Act--Title XX. Monroe wondered if the federal regulations required publication of the entire plan or a summary thereof. He doubted the need for publication in the sixteen districts.

Harvey responded that they are required to publish a description of the proposal in a newspaper of wide circulation in each of the sixteen districts for three days. The ad must be at least one half page in size, also. He was willing to insert the words "a summary of" before "the proposed plan".

The Committee made no recommendations for Chapters 135 and 142.

CRIME
COMMISSION

Chapters 1 and 2 describing organization and procedures of the Crime Commission were before the Committee. Said rules, published in IAC Supplement 5/31/76, would replace those filed under emergency provisions 10/20/75.

Charles noted that 2.2(3) in re quorum of the Commission was in conflict with Chapter 17A of the Code.

Objection Doderer moved the following objection:

We object to 2.2(3) in regard to a quorum because it is in direct contradiction with section 17A.2(1) of the Code which would require no less than two-thirds of the members act in the name of the Crime Commission. It is beyond the power of the agency to reduce this requirement as they have done in the subrule.

Motion carried.

Discussion of membership of the Commission--2.1.

Objection Doderer moved the following objection:

6-8-76

CRIME COMMISSION

Cont'd

We object to 2.1(66GA,SF303) relating to membership of the Commission in that it is beyond the authority of the Commission to delegate to the governor the right to appoint a chairperson and vice chairperson. The Commission itself should select those officers.

The motion carried.

ADJOURNMENT

Schroeder moved adjournment at 5:40 p.m.
No objections.

Next regular meeting will be held Tuesday, July 13, 1976, 9:00 a.m., Room 24.

Respectfully submitted,

Phyllis Barry
(Mrs.) Phyllis Barry
Secretary

APPROVED

Chairman
DATE _____