

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, Wednesday and Thursday, August 14, 15 and 16, 1984, in the State Capitol, Des Moines, Iowa.

Place of Meeting: Senate Committee Rooms 24 and 22.

Members Present: Senator Berl Priebe, Chairman; Representative Laverne Schroeder, Vice Chairman; Senators Donald Doyle and Dale Tieden; Representatives Ned Chiodo and James D. O'Kane.
Also present: Joseph Royce, Committee Counsel; Kathryn Graf, Governor's Coordinator; Phyllis Barry, Deputy Code Editor, and Vivian Haag, Administrative Assistant.

Meeting Convened Chairman Priebe called the meeting to order in Senate Committee room 24 at 10:15 a.m.

SOIL CONSERVATION Kenneth R. Tow appeared on behalf of Soil Conservation to review:

SOIL CONSERVATION DEPARTMENT[780]

Financial incentives program for soil erosion, 5.41, 5.41(1), 5.41(3), 5.41(6), 5.51(1)"f," filed emergency ARC 4871. *FE* 8.1 84

The amendments are the final version of the Department's effort to incorporate appropriations for the 1984 Cost Share Program into their program--no changes were made since Notice. Their intent to file emergency was noted in the May 23, 1984 Iowa Administrative Bulletin, ARC 4674.

According to Tow, the term "their original allocation" was used because rules will be in effect for approximately three years. No questions.

CONSERVATION Richard Bishop, John Beamer, Gregory Jones, Bernice Hostetter were present to review the following agenda for Conservation Commission:

CONSERVATION COMMISSION[290]

Crow season, 101.1 ARC 47607 1 84
Rabbit and squirrel seasons, 102.1 to 102.3 ARC 47617 1 84
Mink, muskrat, raccoon, badger, fox, beaver, etc., seasons, 104.1 to 104.4 ARC 47627 1 84
Common snipe, Virginia rail, sora, woodcock, and ruffed grouse hunting seasons, 109.1 to 109.4 ARC 47637 1 84
Sand and gravel, permit for removal, ch 77 ARC 47687 4 84
Endangered or threatened plants and animals, 19.1, 19.2 ARC 48528 1 84

ch 101

In review of 101.1(109), Tieden noted a substantial change in the crow season. Bishop indicated the public had requested a longer season to comply with federal guidelines--there is interest in restricting crow population. General discussion.

ch 102

No questions re 102.1 to 102.3.

CONSERVATION
Continued
ch 104

Bishop stated there had been considerable input on amendments to chapter 104--furbearers. The Department had proposed to change the time from 8:00 a.m. to midnight but because of strong opposition, reversed their position. Priebe wondered whether or not fox population was diminishing. Bishop said that Conservation officials believe there is a limited supply of food and den sites for fox--a complex matter. The Department strives to balance hunter and trapper demands.

Graf noted that the time of "midnight" was not specified in the rules and recommended that a specified time of day be included. Bishop said that, unless otherwise indicated, it has been understood that midnight was the closing time. Priebe referenced a brucellosis problem in Decatur County. He had been told that coyote, fox and even deer were possible carriers of the disease. Bishop reasoned there were insufficient numbers of fox in the area to create problems and he had never heard that coyotes were carriers. The Department had conducted a study on brucellosis in deer and found no evidence of it. He opined that the expanding deer population would seem to substantiate that. After discussion, Bishop agreed to supply vials of blood from deer to ensure that they are not carriers and to check on coyotes.

ch 109
ch 77

No questions re chapter 109. John Beamer said the intent of chapter 77 was to provide procedures for removal of sand and gravel from meandered streams. In response to Tieden, Beamer agreed that DWAWM and the Army Corps of Engineers also issue permits. Conservation does not have complete authority. Tieden wanted assurance that people involved would have knowledge of the "three bureaucracies." Beamer agreed the rules should reflect that fact.

In re 77.6, Tieden was told that the definition of "director" would allow for a designee to act on behalf of the director.

19.1,
19.2

Discussion of 19.1 and 19.2 which enumerated endangered species. Bishop pointed out that several species on the list would be almost impossible to identify and may be removed from the list before rules are adopted. He continued there were many changes made in the lists and a great deal of pertinent input had been received.

Doyle raised the point as to severity of penalties; in particular, he asked if Iowa laws were sufficient to address the incident of a pet snake escaping from its box and suffocating a young child. Bishop responded that was not within the Department's jurisdiction.

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CONSERVATION
Continued
19.2

Bishop was doubtful the Conservation Commission would be responsible for enforcement of a law with respect to exotic animals. Bishop spoke in support of the bobcat and added that a definite interest in protecting endangered species prevails. Federal regulations govern in some cases. Chiodo reasoned that "nature should be allowed to take its course."

AUDITOR OF
STATE

Warren Jenkins represented the Auditor for the following:

AUDITOR OF STATE[130]
County audits by CPA's, ch 20 ARC 4752, also filed emergency ARC 4751 N. F. F. 7/1/84

ch 20

Priebe brought up the matter of auditors failing to uncover the fact that counties did not take bids for drainage district work exceeding \$2500. Jenkins replied that would show up in some audits, but not every transaction is checked. He agreed to alert auditors and was willing to investigate any isolated cases.

Chiodo referred to Form AOS-RFP-1 and noted lack of criteria for evaluation. He cited differing factors in various size counties. Graf also favored inclusion of the criteria. Jenkins said a grading scale was used as a subjective determination of the county. They have listed a number of items that should be considered, but point evaluation has not been assigned. Chiodo preferred that guidelines in the form be set out in the rules. He was advised that a large county audit would take several hundred hours to complete and that it was important to know the size of a firm to determine availability of trained personnel. Jenkins assured Chiodo there was no intent to infer bigger accounting firms would be acceptable. Graf suggested "adequate staff hours" might be preferable to size of firm. Jenkins said the rules were adopted from national standards and follow a "middle ground approach."

Tieden was told that if the Auditor's office were petitioned to perform an audit, the state would do the auditing in lieu of a CPA firm. Jenkins continued that the board of supervisors has power to check qualifications within the guidelines. Chiodo questioned authority for the auditor to negate a contract or penalize a county that has not done that. Jenkins referenced citizen petition under Code section 11.18 or possibly Chapter 721.

Royce reviewed the statute--H.F.48--which clearly states the contract must be pursuant to administrative rules, but is vague on specific direction to the Department.

Discussion among Chiodo, Tieden and Jenkins as to whether or not the Auditor has power to disapprove a contract for a CPA.

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AUDITOR OF
STATE
Continued

Jenkins' response was that if the contract were not entered into in accordance with rules, the Auditor would have the same power as any agency. Jenkins added that the Auditor is regulating procedures, but inherent in that, the same remedies in any other rules would be available. Chiodo insisted the Code did not give that authority.

O'Kane recalled that H.F.48 granted general authority and the state Auditor has tightened the procedure; ISAC wants that narrowed somewhat. He was comfortable with the rules. Jenkins assured Tieden that the Auditor would not negate a contract without consultation with the Attorney General. He expressed a willingness to modify the rules if experience dictates the need within the next year. No formal action.

VOTER
REGISTRATION

Doug Lovitt, Assistant Director; Dale Nelson, Comptroller's Office; Louise Whitcome, Secretary of State's office were present to review:

VOTER REGISTRATION COMMISSION[845]
Voter registration forms, ch 2 ARC 4829

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ch 2

According to Lovitt, chapter 2 was rewritten for clarity. Priebe thought 2.1(1) to be very broad and Lovitt agreed to modify it. Priebe asked if post card size registration forms in 2.1(5)(6) and (7) were statutory. Lovitt's response was in the negative, but he said they were striving for uniformity throughout the state. Also, filing cabinets purchased by many counties since implementation of post card registration could be utilized. It is a minimum requirement by U.S. Postal service.

Discussion of multilingual applications not addressed by law--2.3. It was noted that the social security number is never specifically required -- federal law prevails. Consensus was that this fact should be stated on the form.

PLANNING AND
PROGRAMMING

Melanie Johnson and Phil Smith appeared on behalf of the Department. Also present were: Lee Gaudineer, Norman Jesse, Polk County Attorney's office, Curt L. Sytsma, Attorney for Iowa Comprehensive Manpower Services, Inc. for the following:

PLANNING AND PROGRAMMING[630]

Job training partnership program, ch 19 amendments ARC 3840 terminated and renotified, ARC 4839 ~~TERMINATED~~ 7/18/84
Community cultural grants program, 18.3, 18.5, 18.6, 18.7, 18.9, 18.10, 18.11, 18.12, filed emergency ARC 4855 ~~FILED~~ 8/1/84

ch 19

Johnson commented that substantial changes had been made since the first Notice last June. Terms have been clarified and responsibilities defined. Two areas precipitated at the August 7 public hearing -- Paragraph 19.10(1) will be changed; opponents of 19.10(5) contended it would alter the balance of power at the local level and the provision will be withdrawn. Final decision will be made at local level.

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PLANNING AND
PROGRAMMING
Continued
19.10

Doyle questioned definition of "adult" -- and was advised that federal law took precedence for this program--19.3. Jesse agreed with Department action to withdraw language in rule 19.10. He reasoned with legislative history of JTPA, in giving plan approval to the government, Congress did not intend this kind of power. Jesse stated it was the position of Polk county that these decisions must be controlled at the county level in the event the programs run "into a snag" and there is no state funding. Jesse suspected that OPP, in relation to the consortium, has attempted to enlarge the powers of JTPA to the disadvantage of the member governments. He spoke of the liability being faced by entities and he could foresee the dissolution of consortiums of local governments "that have to pay the freight."

Smith stressed it was not their intent to create additional liability for local agencies that administer the program. They have a responsibility to prevent conflict of interest situations. Chiodo declared that interest in these rules extended beyond Polk county. He was hopeful the Department was not "power grabbing." Smith explained that "central Iowa is somewhat different in that local elected officials serve as grant recipient" thus, they accept liability -- the liability follows the money. Sytsma commented that as service provider, Manpower Services is directly affected by this. He concurred with Jesse that, regardless of intent, "there has been usurping of local powers." O'Kane took the position that another Notice should be published to reflect changes before the rules are adopted. OPP was advised that if the controversial subrules were withdrawn, the remaining rules could be filed.

ch 18

Discussion of amendments to chapter 18. The Jobs Commission will use the criteria to determine recipients of \$300,000 available funds for which there were 42 applicants. It was noted that the explanation for the emergency filing after Notice was somewhat deficient. Priebe interpreted 18.7(2) as "strong control." No formal action taken.

Schroeder arrived.

HOUSING
FINANCE
AUTHORITY

Larry Tuel represented the Department and reviewed the following:

HOUSING FINANCE AUTHORITY(495)
Definitions relative to housing stock and small business loans. 1.8(5). 1.8(11)"c." "d." 5.10(6). 5.22(3)"b" ARC 4826.
also filed emergency ARC 4825.....N. S. F. 7.18 84

No questions were posed on the amendments which implement 1984 Iowa Acts, S.F. 2332.

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BOARD OF
PHARMACY

Norman Johnson, Executive Secretary; Margo L. Underwood, Vice Chair of the Board, were present. Also present was Allen Zarley of the Iowa Pharmacy Association.

PHARMACY EXAMINERS, BOARD OF [620] F 8 1 84
 Informal procedure, 9.23(b), "c" ARC 4872 FE 8 1 84
 Medical assistance act participation, rescind 6.10, filed emergency ARC 4865 FE 8 1 84
 Unethical conduct, 6.5(3) ARC 4816 F 7 18 84
 Prescriptions, legal status, 6.11 ARC 4834 N 7 18 84

Brief explanation of amendments to chapter 9 -- no questions.

6.10

6.5(3)

Johnson stated that 6.10 was rescinded to comply with legislative directive. Seven physician-owned pharmacies will be "grandfathered in" under subrule 6.5(3). Tieden was told that the Pharmacy Board had no knowledge of physician-owned hospitals. He failed to understand the importance of this rule and Underwood commented that the rule was promulgated with public welfare in mind. The intent is to prevent any conflict of interest with the pharmacist working with the physician-owned pharmacy. Underwood commented she had voted against the grandfather clause. Tieden was not supportive of the rule. Royce reviewed background of the provision and pondered whether this amendment would fall within the category of medical standards. An earlier version had been opposed by the committee and this was a compromise. Johnson stated that rule 6.11 answers a question raised frequently on the legal status of prescriptions when a physician dies, retires or moves out of the area. Tieden suspected there was opportunity for abuse by a patient. General discussion, with Johnson indicating Code authority pertaining to controlled substances. It was committee consensus that rule 6.12 should be reworded before it is adopted. Doyle opined the Board had exceeded the scope of Code §155.33 and that possible revision of the law was needed. Johnson agreed to follow up and contact Royce.

6.11

Contact
Royce

Recess

Chairman Priebe recessed the committee for lunch at 12:15 p.m. to be reconvened at 1:45 p.m.

Reconvened at 2:00 p.m.

HEALTH
DEPARTMENT

Peter Fox, Mike Guely and Gloria Piatt, Health Department; Harriett Miller, Chiropractic Examiners; Jim Krusor, Board of Medical Examiners were present.

The following agenda was before ARRC:

HEALTH DEPARTMENT [470]
 Mortuary science examiners, communicable disease "AIDS," fees, 146.1(3), 147.1(1), 147.2(2) ARC 4867 F 8 1 84
 Renal disease patients, financial assistance, 111.6(2), 111.9(7), filed emergency ARC 4856 FE 8 1 84
 Physician's assistant, 136.5(1), 136.5(1)"g," "j," "k," "l," "m," "n," 136.5(2), 136.5(3), 136.5(4)"d," 136.5(5)"a," 136.5(5)"b," (2), (3), 136.5(5)"c," "d," 136.5(6), 136.6, 136.6(1) to 136.6(5), 136.7, 136.7(1) to 136.7(7) ARC 4873 N 8 1 84
 Physical and occupational therapy examiners, 137.6(1) ARC 4774 N 7 4 84
 Physical and occupational therapy examiners, 138.112(7)"c," "d," "e" ARC 4818 N 7 18 84
 Chiropractic examiners, 141.2(1), 141.38, 141.39 ARC 4750 N 7 4 84

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HEALTH
DEPARTMENT
Continued
ch 111

No questions re amendments to chapters 146 and 147.

Guely explained that emergency amendments to ch 111 were necessary because the 1984 legislature mandated that renal disease program expenditures remain within the program's appropriation. Various unacceptable options were considered before an across-the-board cut was made for all seven types of assistance. Priebe voiced support of the program. The location and importance of dialysis centers were discussed. Schroeder had heard complaints from those who questioned why the renal disease program was cut when ADC payments were not affected. Guely pointed to the statute which stated...."will provide assistance, if funds are available." No recommendations.

ch 136

According to Krusor, amendments to ch 136 had been in the planning stage for approximately one year and had been extensively reviewed by several groups. O'Kane questioned Krusor with respect to definition of "gross negligence" in 136.6(3)r. Krusor answered that it would probably be a willful departure from what is normally expected or it would be defined under negligence in Black's Law Dictionary, or other legal authority. In response to Schroeder, Krusor did not interpret 136.7(3) to dictate to BCI as to how they should conduct an investigation. Also, in 136.7(5), Schroeder wondered if the peer review committee were being given a false sense of security. Krusor quoted from Iowa Code section 258A.2 and agreed to research further. O'Kane recommended that a definition for "gross negligence" be included in the rule.

136.7(3)
136.7(5)

136.6(1)

Discussion of 136.6(1). Fox indicated the examination fee to practice physical therapy would ultimately be uniform.

138.112(7)
c, d and e

No questions re 138.112(7)c, d and e.

ch 141

Miller informed the Committee that 141.26(1) eliminates the mandatory establishment of the peer review committee. O'Kane questioned the statutory authority for that action and requested the Department to review the matter. Fox pointed out there is no statutory authority for the peer review committee. O'Kane requested background on rule 141.38, which defined "Chiropractic insurance consultant." Miller said the Board took the position this was peer review, in a sense, and should be governed. Priebe asked if both factions of chiropractors were in agreement on the consultant issue. It seemed more like an insurance department responsibility to him. Miller indicated they had received two comments on the proposal.

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HEALTH
DEPARTMENT
Continued

Schroeder viewed it as a form of "kickback," and wondered who would serve as consultants. Miller assured him there was no fee -- the consultant would review insurance claims. O'Kane suspected a "speciality" was being created. Doyle pointed out that insurance sales were not involved. Priebe asked about reciprocity with other states and Miller's response was that would be instituted. If that were the case, Priebe opined -- it would be necessary to revise b. Doyle recommended removal of "in the state of Iowa" in 141.38(2)b and that neighboring states be contacted on the matter of reciprocity.

141.38(2)b

O'Kane questioned why an applicant would refuse to utilize "adjunctive procedures." Fox explained "adjunctive procedures in 141.39 as differentiating one disease from another." Tieden questioned that provision since chiropractors are not qualified to diagnose diseases. It was Committee consensus that more information was needed before they could accept the rules.

NURSING HOME
ADMINISTRATORS

The following amendments were presented by Peter Fox:

NURSING HOME ADMINISTRATORS BOARD OF EXAMINERS[600]
Hearings, 2.6(8)"a" ARC 4869 F...8 1 84
Long-term health care, 2.7(1)"d" ARC 4868 F...8 1 84

2.6(8)

Fox said that amendment to 2.6(8)a would eliminate the requirement for a decision to be rendered within 30 days following a hearing. There was Committee concern that the process could become too lengthy. After discussion, Fox was requested to amend the paragraph by allowing sixty days for a decision and was authorized to file the amendment under emergency provisions of chapter 17A.

2.7

2.7(1)d--Fox noted that the Board had added "administration" after health care. Curriculum will now include health care administration or long-term health care administration, or both. General discussion. O'Kane thought the rule was adequate even though he opined that owners should be prohibited from being administrators. It was noted that a recommendation to the Board of Examiners had been rejected as being too restrictive. (See also July minutes)

HIGH
TECHNOLOGY
COUNCIL

Doug Getter, Group Mgr. Research and Fran Fleck, Small Business Division, appeared on behalf of the Council for the following:

HIGH TECHNOLOGY COUNCIL, IOWA[485]
General description, ch 1: organization and operation, ch 2: grants program, ch 3: technology transfer, ch 4 ARC 4860 F...8 1 84

Getter said recommendations by ARRC had been incorporated which included revision of a weighting system, addition of a conflict of interest provision and quorum requirements. There was brief discussion of 1.3(4) as to

1.3(4)

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HIGH
TECHNOLOGY
COUNCIL
Continued

whether "right to audit" was sufficient.
The Committee concurred that words "at the conclusion of each meeting" in 2.4(6) should be clarified when the rules are amended in the future. Getter was amenable. Schroeder was advised that costs for reproducing minutes had not been a problem.

CORRECTIONS
DEPARTMENT
and
PAROLE BOARD

The following rules were before the Committee:

CORRECTIONS, DEPARTMENT OF [291]
Inmate interviews by board of parole, 20.13 ARC 4754, also filed emergency, ARC 4753, NYFE 7/1/84
PAROLE BOARD [615]
Initial interview, 3.6(2) ARC 4864 F. # 184

Those present included: Hal Farrier, Director; Paul Grossheim, Deputy Director for Institutions, Department of Corrections; Gordon E. Allen, Attorney General's Office; Richard E. George, Board of Parole; Clarence Key, Jr. and Doreen Willard, Citizens Aide Office; Joseph Thornton, Attorney, Des Moines Register.

ch 20

Changes in Corrections had been made in response to comments by ARRC at the previous meeting. Grossheim distributed drafts reflecting revisions to chapter 20 since it was published in 7/4/84 IAB as well as changes made since their last appearance before the ARRC. Doyle observed that ex-felons were still excluded from attending Board of Parole interviews -- 20.13(2)g. There was discussion that the prison ombudsman position might very well be filled by an ex-felon. Grossheim indicated an exception would be made in that case. Doyle requested the Department to review the issue. Doyle was of the opinion the media should have some input in the hearings. Thornton viewed the first-come, first-served approach as being fair.

The possibility of moving to a larger room for some hearings was discussed.

In response to criticism of the filed emergency rules, Grossheim pointed out there were approximately three weeks between consent decree and next scheduled parole hearing.

20.13(1)

Thornton favored a time frame of less than 15 days for submission of application to attend a parole interview-- 20.13(1). Doyle was told that the institution makes the investigation--not the Parole Board.

The Committee was advised that Parole Board rules will be noticed through the regular rulemaking process. They will address conduct at the hearing and also disturbances. Once an individual is excluded from

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CORRECTIONS DEPARTMENT and PAROLE BOARD Continued interviews for disturbing the meeting, then it becomes a problem for the institution. Corrections security personnel would serve in that instance. Doyle noted restriction on sunglasses in corrections rule 20.13(3)e. Department officials pointed out the importance of being able to see the eyes. No further discussion.

October Mtg. October meeting was rescheduled for Wednesday to Friday--10th to 12th.

Recess Recessed at 3:25 p.m.

RECONVENED WEDNESDAY August 15 The meeting was reconvened in Room 22 by Chairman Priebe, 9:10 a.m. Quorum was present.

HUMAN SERVICES The Human Services Department was represented by Mary Ann Walker, Don Bice, Dan McKeever, Don Kearney, Harold Poore, and Rosemary Eaton. Also present: Mike McDaniel and Jeannie Robbins representing Coopers and Lybrand.

The following rules were considered:

HUMAN SERVICES DEPARTMENT[498]	
Institutional food program, ch 74 ARC 4858	F 8/184
Granting assistance, 41.7(1)h(2), <u>filed emergency</u> ARC 4857	FE 8/184
Family and group day care homes, 110.5(8)f "a" to "f," 110.5(9), 110.5(10), 110.5(11), 110.5(3)"a" to "d" ARC 4859	N 8/184
Federal surplus food program, 73.4(3)"b" ARC 4779	F 7/184
Medical and remedial services, 78.1(18), 78.0, 78.5; providers of medical and remedial care, 79.1(8) ARC 4780	F 7/184
Eligibility factors for services, 130.3(1) ARC 4781	F 7/184
Child care financial assistance, 151.3(1) ARC 4782	F 7/184
Foster care payments, 156.8 ARC 4783	F 7/184
Food stamp program, 65.3, 65.19(4), 65.19(9), 65.19(14), 65.19(19) ARC 4755, also <u>filed emergency</u> ARC 4788	N & FE 7/184
Providers of medical and remedial care, fees, 79.1(9) ARC 4831	N 7/184
Child support assistance and nonassistance, 95.1, 95.2, 95.5(1), 95.10, 95.11, 96.7, 96.8 ARC 4832	N 7/184
Purchase of service, family and adult programs, 150.1, 150.3(3), 150.3(5), 150.5(4) ARC 4777	N 7/184

ch 74 Walker explained that the program outlined in chapter 74 had been federally funded for many years, but rules were adopted for the first time. No one attended the public hearing. The school lunch program is not included.

According to Walker, 41.7(1)h(2) was filed emergency to conform procedure to the process. There will be a computer cross match on August 1 and the term "written notice" needed to be deleted before that time.

ch 110 Discussion focused on 110.5(8)f which would require "a list signed by parent or guardian which names persons authorized to pick up the child." Priebe, for the record, questioned statutory authority for the "list" since legislation on the subject did not pass. Poore said the Department relied on Code section 237A.12, which pertains to protection of children.

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HUMAN
SERVICES
Continued

He added that they had received no adverse comments and the same requirement exists for child day care centers. Priebe had constituents who opposed the legislation and he cautioned that an objection was possible if the provision in paragraph f is adopted. Doyle asked Royce to provide copies of the proposed rule to appropriate legislative chairpersons. The Committee emphasized that philosophically they were not opposed to the concept. No other discussion.

No questions re 73.4(3)b, amendments to chapter 78, 130.3(1), 154.3(1), 156.8, 65.3 to 65.19, 79.1(8).

150.3

Subrule 150.3(5), pertaining to related party costs, was taken out of order. Walker and Bice reported there was much opposition to the proposal. The Departments will look at the actual cost. Some contend there should be an actual charge without getting into what that charge entails. Care providers will be treated with the same consistency. O'Kane was informed that the proposal would not necessarily save money.

79.1
Chs. 95, 96

No questions were posed for 79.1(9), which was directed by S.F. 2351. Amendments to 95 and 96 were intended to implement two changes in the child support recovery law. In response to Tieden, Walker said there were reciprocal agreements for instances when a spouse has left the state. She agreed to obtain information on situations when a spouse is out of the country. O'Kane raised question re administrative process and according to Walker, collection figures were revised with an anticipated increase. Doyle recalled an error in the law and indicated a bill is being prepared to include a reference to other jurisdictions. He suggested that the Department work with David Lyons of Legislative Service staff. O'Kane urged the Department to ensure the rule is consistent with the legislation. Walker provided an example for 95.11(1)b -- a couple separates, when the mother is receiving ADC, and the father owes child support. If the father resumes care of the child, then he no longer owes child support for that period of time. Doyle brought up a possible problem with applications to go in under garnishments. He asked if the Department were exempt from the \$60.00 filing fee and Walker was uncertain but agreed to pursue the matter.

SECRETARY
OF STATE

UCC Forms

Michael Burdette appeared on behalf of the Secretary of State for the following:

SECRETARY OF STATE[750]

U.C.C. forms, lien statements and copy fees, 1.3(1)"f," 1.4, 1.5(1), 1.6, 1.7, 4.5, 7.3, 7.4 ARC 4851, also filed emergency ~~FFA~~ 8-1 84
ARC 4850

He presented a brief overview of amendments intended to

SECRETARY
OF STATE
Continued

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1.5(1)

implement 1984 Iowa Acts, S.F. 510. Chiodo raised question re 1.5(1), which allows the state to bill the requesting party for information and copies. Chiodo was reluctant to sanction state charge accounts. O'Kane supported the concept. Priebe saw it as precedent-setting and was interested in the fiscal impact. Burdette was willing to prepare information for the Committee. Burdette said the Industrial Commissioner's office bills for certain types of documents. Also, the state is permitted to charge interest.

7.3(3)

Chiodo called attention to the fact that the rule did not address outstanding bills. Burdette anticipated monthly billing, but other factors had not been worked out. He emphasized that the rules would be limited to the Uniform Commercial Code Division -- banks, cooperatives, etc. with recurring requests. If successful, the program would be extended to their Corporations Division. Royce asked if fees included cost of providing the service and was told that some fees are set by statute; e.g. \$4.00 search fee. The \$1 per page is not statutory, but the public records Act allows "reasonable costs." Tieden recommended a time limit in 7.3(3) and Doyle suggested "delinquent after thirty days."

There was discussion of lien search and Doyle was informed that the state had never had a contract with Iowa Public Records. Burdette stated that prior to July 1, the company leased space within the Secretary of State's Office for 18 years. Effective July 1, micro-filming is being utilized with more supervisory control over records. Doyle was told that the Secretary of State's Office is the official depository for records. He was interested in the whole process and wanted assurance there was no competition with private industry. Schroeder preferred that the state make the microfilm and charge Iowa Public Records for the service. Burdette explained that the system is set up to have the searcher make the microfilm. Training requires only a few seconds. Doyle asked if copies of rules had been sent to small "town" banks and Burdette responded that notices are sent when the financial statement is returned to bank. Priebe suggested the material be sent to Tom Huston, State Banking Superintendent, with a request to circulate it in the banking newsletter. O'Kane asked that the matter be placed on the ARRC November agenda for a progress report.

November
Agenda

LIVESTOCK
HEALTH
ADVISORY
COUNCIL

Mark Truesdell, Attorney, represented the Council to review disease research, recommendations, chapter 1, ARC 4827, filed IAB 7/18/84. He said the rule, which was adopted June 27, contains recommendations for the \$300,000 appropriation. The Council agreed to abide by ARRC request to publish specific amount in future Notices. Tieden asked that consideration be given to allocating funds for Johne's disease, which is prevalent

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LIVESTOCK
HEALTH
ADVISORY
COUNCIL
Cont.

in so-called colored breeds of dairy herds. O'Kane expressed appreciation for cooperation of the Council with respect to combining funds for pseudorabies research--an ARRC recommendation. No action taken.

ENGINEERING
EXAMINERS

Tom Hanson, Attorney, and Gene Hales, Board member, were present for Board of Engineering Examiners to consider:

ENGINEERING EXAMINERS[390]

Administration, property surveys, professional development and discipline, professional conduct, amendments to

Chs 1 to 4 ARC 4838

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1.2(114)

Long-standing confusion in land surveying fields with respect to registration will be clarified. Hales referenced the major changes resulting from 1984 Acts, S.F. 2276. Board name was changed to Iowa State Board of Engineering and Land Surveyors Examiners which ensures that a land surveyor will serve on the Board. A temporary permit to practice engineering, not to exceed one year, will be allowed under the proposed rules -- "temporary registration"--not a temporary engineer. Graf challenged the use of "professional" before "land surveyor" in 1.2(114) as being beyond the statute. Hales agreed to review the law and the rule. In Hales' opinion, the use of "or" covered the area.

1.2

Hanson explained the reason for adding "under oath" in 1.2 was to avoid phony application. Doyle asked him to check a law change where it can be certified. There is reciprocity with all other states. Hales spoke in support of two years of formal land surveying experience, and education requirements. Tieden referenced a cave-in problem in his area and there was discussion of responsibility and liability. Action is taken when a complaint is filed.

1.2(1)

Doyle questioned deletion of language in 1.2(1) relative to fees. Royce cited 17A.2(7)g and advised that the information should be included in the rules and updated when necessary. Doyle asked if there were a time limit on continuing education by comity. Answer was in the affirmative. Hales referenced problem in the legislation when "biannual" was used instead of "biennial." The board had intended every two years.

1.9

Discussion of 1.9--cutoff dates. Change was made because of lead time in getting exams from national headquarters. Setting date dates will have no impact since all examinations are subject to the applicants being certified from their college.

Recess

Recessed at 10:30 a.m. and reconvened at 10:45 a.m.

PUBLIC
SAFETY

Connie White, Public Safety and Mike Rehberg and Ron Gustafson, Criminal Investigation, were present for the following agenda:

PUBLIC SAFETY DEPARTMENT[680]

Blood testing for alcohol or drug content, 7.2, 7.3, 7.4, 7.5 ARC 4770

Criminal history data to youth service agencies, 11.2, 11.12 to 11.15 ARC 4820, also filed emergency ARC 4819

Fire marshal, rules generally, 5.850, filed emergency ARC 4861

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PUBLIC
SAFETY
Continued

7.2(3)
7.3

Rehberg said the rules are essentially housekeeping to coincide with the new OWI amendments regarding alcohol concentration in the blood or urine. The method of breath testing involving collection of samples at one place and analysis at another has been discontinued. He indicated that additional amendments will be necessary in 7.2(3), line 3, and 7.3, second column. Rehberg had spoken with some of Doyle's constituents and thought they understood the formula under the new law. He added that the education process will continue.

According to Rehberg, in instances where a urine specimen was deliberately spilled to avoid prosecution, each case would be considered on its own merits. He added that urine samples are the least used in OWI cases. It was noted that under the law, the subject could demand that a urine sample be kept for his or her doctor. Courts have ruled that it is not incumbent upon the state to save a sample. Committee members were reminded that the Code provides that second breath tests may be requested.

ch 11

In review of chapter 11 amendments, Chiodo asked if a school would be considered a youth service agency. Gustafson was of the opinion it would be. He added that the amendments were intended to implement H.F. 2380. Big Brothers and Sisters organizations were the prime backers of the bill.

11.12(5)

Schroeder noted that use of "sufficient postage" in 11.12(5) would precipitate "a guessing game." He also voiced opposition to the last sentence in 11.13 and asked, "Do you want to be in a position of 'You believe they are in violation'?" Department officials said the Council would weigh information submitted by the Department with or without the sentence. Doyle considered Schroeder's point well taken. White reported that a public hearing on the rules was scheduled for August 8, but no one attended and no comments were forthcoming. Doyle recommended that 11.13 be amended before it is filed as an adopted rule. White was amenable.

5.850

No questions re 5.850.

PUBLIC
INSTRUCTION
DEPARTMENT

Paul L. Spurlock, Assistant Director, Instruction Curriculum Division; Ray Morley, Consultant and Larry Bartlett, Legal Counsel, presented the following:

PUBLIC INSTRUCTION DEPARTMENT(870)
Area education media centers, 40.5(4)d, ARC 4828 N 7/18/84
Dropouts, prevention programs, 58.1(1), 58.1(2), 58.5(8), 58.5(10) ARC 4802 N 7/18/84

Also present: Ione R. Dilley, Timothy McCarthy.

40.5(4)d

Spurlock said that 40.5(4)d was in response to HCR 38, 1983 Session, which directed that rules be adopted to prevent unfair competition by area agency printing services. A hearing was scheduled for August 17.

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PUBLIC
INSTRUCTION
DEPARTMENT
Continued

It was Chiodo's understanding that the legislation was directed at printing of nonschool materials, but he argued that the rule goes beyond that intent. Bartlett thought the basic problem addressed by the legislation was unauthorized or unfair printing in response to complaints by outside printers. The Department rationalized that if the legislature had authorized AEA to do certain things, then it could not be called unfair competition. Department took the reverse and said, "If it is not authorized to AEAs then it is, arguably, unfair competition." Code sections including those in chapters 273 and 442 were perused to determine greatest extent authorized by statute and that was incorporated into the rule. He continued that the Department has never said "nonpublic schools should not have this--what this rule is saying is that the Department cannot find any legal authority for AEAs to do that printing." Regional area libraries have complained they have been provided services in the past by AEA which this rule will stop. "That strictly is not true." He concluded, "neither can this rule, that expressly says AEAs can provide printing services to nonpublic schools, legally authorize it if the legislature has not."

Chiodo declared the Department had created an ambiguous situation in that "printing ... shall be provided for students ... and approved nonpublic schools ..." and that services now being provided probably will be curtailed. Bartlett agreed with the latter statement, but emphasized those services now may not be authorized. Bartlett contended the rule provided that if it were a curriculum item--something for instruction--it would be for the student.

Discussion continued with Chiodo maintaining the Department was overreacting. Schroeder recalled a draft by Public Instruction staff, private school and AEA officials. He indicated he would petition for that version and if a compromise were not reached, he would move to delay the rules 45 days into the next General Assembly. Discussion of significant differences, if any, between the two drafts. Bartlett could foresee the same results with either version and felt a simple solution would be legislative clarification by adding authority in chapter 273.

Priebe asked the Department to delay filing of the final rule until ARRC meets in September. Bartlett was willing to cooperate. O'Kane suggested Bartlett might want to peruse chapter 553, the anti-competition statute which was expanded by the last General Assembly.

ch 58

Amendments to chapter 58. Morley explained that the 1984 Acts, S.F. 2168, provide for programs for potential

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PUBLIC
INSTRUCTION
DEPT.
Continued

dropouts by using additional allowable growth. No one attended the public hearing on rules for the dropout prevention program.

Schroeder referred to 58.5(8) which included "frequent tardiness" as one criterion for determining that a student "is poorly adjusted in school." He pointed out that many times tardiness results because of late school buses. Morley responded that was an instance when it would not be considered. School districts are asked to consider multiple criteria when identifying dropouts.

General discussion. Chiodo was told that the Department of Public Instruction collects data annually from districts having significant dropout problems. Those districts would be the primary ones applying for aid. Districts with a program for dropouts, must also implement a prevention program. Morley felt comfortable that no school districts would accumulate large amounts of money. No action was taken.

DEPARTMENT
OF
TRANSPORTA-
TION

Al Chrystal, Director, Driver Services and Norris Davis, Executive Assistant, were present. The following agenda was considered:

TRANSPORTATION, DEPARTMENT OF [820]
Nonhighway fuel use, tax payment or refund - computation, 7.44("a"(1) to (4) ARC 4853 F. 8/1/84
OWI and implied consent, (07.C) 11.2 to 11.9, filed emergency ARC 4813 FE 7/18/84
Nonoperator's identification, (07.C) 12.3(2), 12.3(3), filed emergency ARC 4814 FE 7/18/84
Drivers' licenses, (07.C) 13.5(1)"d," 13.5(3)"d," "e," "f," 13.5(5)"b," "c," 13.5(6)"e," 13.5(7)"d," "f,"
filed emergency ARC 4815 FE 7/18/84

No recommendations by the Committee.

Recess

The Committee recessed for lunch at 12:00 noon.

Reconvened

Reconvened at 1:45 with quorum present.

AGRICULTURE
DEPARTMENT

Thatcher Johnson, Deputy, reviewed registration of Iowa-foaled horses and whelped dogs, chapter 14, ARC 4870, Notice, IAB 8/1/84. Also present: Representative Jack Woods, Des Moines.

Johnson stated the Department has incorporated major portions of the law with the rules as a convenience to those in the horse industry. He distributed copies of changes to be made which are supported by the industry. Priebe thought there could be some problems as to the ownership of the dog. It was noted that national registration is out of Abilene, Kansas. Woods commented that some states have similar laws. Johnson briefly reviewed rules pertaining to standard-bred and quarter horses.

14.33(5)

Brief discussion of 14.33(5). No formal action.

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INSURANCE
DEPARTMENT

Denise Horner, Deputy, and Kim O'Hara, Legal Counsel,
were present to review the following:

INSURANCE DEPARTMENT(510)
Insurance agents, licensing, ch 10 ARC 4830N..... 7,18 84
Insurance agents, continuing education, ch 11 ARC 4809N..... 7 184
Nonprofit health service corporations, 34.7(2), 34.7(3)"d," 34.7(3)"e," 34.7(4) to 34.7(6), 34.2 ARC 4811.
also filed emergency ARC 4810N. P. FE..... 7 184
HMO, governing body, 40.4 ARC 4863N..... 8 184

Also present was Brice Oakley, Blue Cross/ Blue Shield.

- ch 10 There was brief discussion of chapter 10, but no
 recommendations were offered.
- ch 11 O'Hara said that chapter 11 clarified guidelines for the
 continuing education program. No questions.
 In answer to Doyle as to continuing education credit
 for other licensed professions, O'Hara said law was the
 only one allowed. Many community colleges and insurance
 companies conduct continuing education programs. The
 program is monitored by the Department.
- ch 34 Horner indicated that matter addressed in amendments to
 chapter 34 would likely be subject of litigation soon.
 Oakley commented that neither IPSC nor Blue Cross of
 Western Iowa and South Dakota will join them in litigation;
 Delta dental has not made a decision. Schroeder favored
 a six-month expiration date on the emergency rules.
 Horner indicated that any changes can be incorporated
 into the Noticed rules. Public hearing has been held,
 but no comment was offered. Horner was confident that the
 Department's position was correct. No questions posed on
40.4 40.4.
- BOARD OF Charles Wright and Deborah Hunt appeared on behalf of
REGENTS Board of Regents for adopted subrule 2.2(5) pertaining
 to University of Iowa parietal requirements--ARC 4821,
 7/18/84, IAB.
- Laverne Schroeder reiterated his opposition to the
 Board's suspension of the rule. He argued that it
 should be rescinded and reinstated by rulemaking when
 needed.
- Motion to Schroeder moved to object to Regents subrule 2.2(5)
Object and that the issue be brought to the attention of the
2.2(5) appropriate legislative standing committees in an
 attempt to end the "flagrant practice established by
 Regents in manner by which they are circumventing
 the rulemaking process." Doyle seconded the motion.
 Wright emphasized that the existence of the rule is
 a boost to bond sales by the University. After brief
Vote discussion, motion carried. The following language
 was drafted by Royce:

BOARD OF
REGENTS
Continued

At it's August 15th, 1984 meeting the administrative rules review committee objected to the promulgation of 720 IAC 2.2 (5), on the grounds that it is unreasonable to constantly waive the requirements of a "permanent" rule as an alternative to rescinding that rule and repromulgating it if ever needed. This subrule is adopted as ARC 4821, published in VII IAB 2 (7-18-84).

This subrule, renewed every two years since 1979, waives on a temporary basis the so-called "parietal rule". This permanent rule, generally speaking, requires freshmen and sophomore students at the University of Iowa to live in university dormitories, fraternities or sororities. The parietal rule will automatically go into effect whenever the Board of Regents allows the waiver to expire.

The system of a permanent rule coupled with temporary suspension allows the controversial permanent rule to be implemented without the public comment, criticism or controversy that might accompany a rule-making procedure. It is the committee's opinion this is unreasonable and is calculated to avoid the opportunities for public comment that are provided by Chapter 17A, Iowa Code.

This objection may be rescinded if the Board of Regents agrees to precede any enforcement of the parietal rule with a rule-making process providing notice and an opportunity for public comment.

WATER, AIR
AND WASTE
MANAGEMENT

Mike Murphy, George Welsh, Mark Landa, Patty Allen, and Chris Spackman appeared for the Water, Air and Waste Management Department agenda as follows:

WATER, AIR AND WASTE MANAGEMENT[900]
Municipal wastewater treatment, construction grants, 90.1: grants-criteria, 91.1 ARC 4849...F..... 7/18/84
Hazardous wastes, scope of title, 140.1, hazardous waste treatment facilities, ch 150 ARC 4848...F..... 7/18/84
Emission standards for contaminants, 23.1(2), 23.1(3) ARC 4823...N..... 7/18/84
Water quality, 61.2(5); effluent and pretreatment standards, 62.8(2) ARC 4847...N..... 7/18/84
Hazardous waste, 141.1(1), 141.2, 141.3, 141.6, 141.14 ARC 4824...N..... 7/18/84

chs 90, 91

Schroeder opined that 91.8(3), grant increases, was quite broad in scope. Priebe referenced pending legislation by Congressman Neal Smith to provide more funding for grants and he asked Allen about the matter. Allen was unfamiliar with the legislation. Preston indicated that the Department of Water, Air and Waste Management would seek public comment for FY 1986, as they do each year. Tieden referenced a cave-in at Garnavillo and asked if they could obtain assistance under this program. Preston indicated they could apply for a grant increase--state and federal share. Liability was discussed and the fact as to whether or not it could have been foreseen by the engineer. Murphy assured Schroeder that the Water, Air and Waste Management Department would monitor an industrial problem in a Crescent alcohol plant. Priebe raised question re state priority list in 91.2(3) and wanted assurance that someone would not benefit every year from a position on the list or, conversely, be delegated to a lower position and be unable to move up on the priority list. Murphy recalled that comment received on hazardous waste rules was basically supportive. Lower fees for smaller facilities had been requested, but this would be difficult to evaluate. Spackman said Congress was to work on a bill that would approve the state's contract for a waste site.

91.2(3)

chs 140, 150

23.1

Landa said that federal emission standards will be adopted by reference -- new source categories will be included; notices have been sent to affected companies. No one appeared at the August 7 hearing. Schroeder was told this would not affect bulk gas stations.

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WATER, AIR
AND WASTE
MANAGEMENT
DEPARTMENT
Continued

In re amendments to ch 141, Landa said they were proposing adoption of new hazardous waste rules. A final package has been submitted to the Environmental Protection Agency for the state program which must remain equivalent to the federal program. In re 141.6, Doyle called attention to an incorrect date which should read "November 22, 1983."

61.2
62.8

Discussion of water quality amendments to 61.2 and 62.8. Murphy would update procedure for setting discharge limits for wastewater facilities to discharge into protected streams--based on study conducted by EPA. Communities would still be bound by industrial or municipal standards. Priebe asked how much Des Moines had been fined for running sewage into the Des Moines River. Murphy was not aware of any fines. Priebe made the point that farmers are fined, with Murphy admitting that the court, in one instance, had assessed an \$18,000 penalty. Priebe knew of no law giving cities a privilege over the county. Murphy knew of no such law. No other questions.

COMMERCE
COMMISSION

Commerce Commission rules before the Committee were as follows:

COMMERCE COMMISSION[250]

Electrical supply lines, 11.1(1), 11.3(2), 11.5	ARC 4844N	7/18/84
Gas or electricity, disconnection moratorium, 19.4(10), 19.4(15)"h" and "i," 19.4(17), 20.4(11), 20.4(15)"h" and "i,"			
20.11(7)	ARC 4845N	7/18/84
Water utilities, service, ch 21	ARC 4846N	7/18/84
Uniform extension policies, hearing scheduled	ARC 4804N	7/4/84

Ray Vawter, Jr., Twila Morris, Shane Bock and Maureen Scott represented the Commission. Also Present: Cindi Schulte, IPALCO and John Lewis, Iowa Utilities.

ch 11

Amendments to chapter 11 -- No questions re chapter 11. Re gas or electricity disconnection moratorium--Morris told the Committee that the resident head of a household, who has been certified by a local community action agency as eligible to receive low-income energy assistance, will not be subject to disconnection of service from November 1 to April 1. O'Kane said it would be a lot simpler if disconnection were not possible. Morris was unable to provide numbers of those whose service was disconnected. Lewis interjected number of actual disconnects was low compared to number of notices. He contended the rule would place additional burden on the companies, but the impact will not be known for a year or two. Utilities are concerned that a moratorium will allow unpaid balance to build up for five months making it virtually impossible for the customer to pay.

ch 21

According to Vawter, chapter 21 was rewritten to simplify the rules and to conform with emissions rules on electric and gas. Three water companies are rate regulated.

In response to Doyle, Vawter said there is no periodic replacement of water meters. There was discussion of whether or not customers are charged for meter replacement. Vawter did not believe so. He said gas meters are required to be replaced. O'Kane had had a complaint

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COMMERCE
COMMISSION
Continued

re charge for replacement of a meter.

NO AGENCY
REPRESENTA-
TIVES

No agency representatives were requested to appear for the following:

COLLEGE AID COMMISSION[245]
Guaranteed student loan program, ch 10 ARC 4767 ... *N* 7/4/84

COMPTROLLER[270]
Insurance deductions, ch 6 ARC 4835 ... *F* 7/18/84

CREDIT UNION DEPARTMENT[295]
Contested case proceedings, ch 14 ARC 4833 ... *N* 7/18/84

EMPLOYMENT SECURITY[370]
IPERS, 8.1(2)"a," 8.4(3)"a," 8.5(1)"a,"(24), 8.6(9)"d," 8.8(1)"a," 8.10(8), 8.10(9), 8.11(3), 8.13(2)"c,"
8.13(8)"a," 8.13(10) ARC 4756 ... *N* 7/4/84

INDUSTRIAL COMMISSIONER[500]
Substantive and interpretive rules, payroll taxes, 8.8, filed emergency ARC 4817 *FE* 7/18/84

LABOR, BUREAU OF[530]
Occupational safety and health for general industry, e.g., noise exposure, 10.20 ARC 4866 *F* 8/1/84

MERIT EMPLOYMENT DEPARTMENT[570]
Pay plan, 1.5(15), separations, disciplinary actions and reduction in force, 11.1(1), vacation and leave, 14.10 ARC 4837,
also filed emergency ARC 4838 ... *N & FE* 7/18/84

REGENTS, BOARD OF[720]
Institutions, reduction in force, 3.104(4) ARC 4801 ... *N* 7/4/84
Insurance deductions, 8.7 ARC 4822 ... *F* 7/18/84

ARRC requested that Beer and Liquor Control Department be called to appear Thursday morning.

November
Meeting

November meeting was scheduled for the 13th and 14th and tentatively, the 15th. Chiodo reported, that if he is elected to Polk County Auditor, he may resign early in November.

Minutes

Doyle moved approval of the July minutes. Motion carried.

Recess

Recessed at 4:00 p.m.

8/16/84

Reconvened Chairman Priebe reconvened the Committee at 8:55 a.m. in Room 22. All members and staff were present.

BEER & LIQUOR CONTROL DEPT. Bill Armstrong and Dennis Mitcham were present for Beer and Liquor Control to discuss the following:

BEER AND LIQUOR CONTROL DEPARTMENT[150]
Native wines, hours of sale, 5.1(3) ARC 4854N.....8/1/84
Gift certificates, sale in liquor stores, 4.32 renumbered as 13.1, new 13.2 ARC 4765N.....7/4/84

Attention was focused on a proposal to offer gift certificates in all state liquor stores. Armstrong said that "two other control states offer certificates." He emphasized the rule was not intended to promote sales, but "as a convenience to the customers." Schroeder saw no need for this service since any unwanted item can be returned. Schroeder indicated he would recommend that an adopted rule on the subject be referred to the General Assembly. It was his opinion that border cities could experience problems. Mitcham said the proposal was the result of many requests from customers. Priebe could foresee the possibility of a customer returning the certificate for a less expensive bottle and receiving cash refund for the difference. Mitcham pointed out that full refund is an option now.

O'Kane concurred with Schroeder that the proposal amounts to further promotion of beer and liquor--a question best decided by the general assembly. Tieden viewed the certificate to be a promotion and called attention to the fact that the Department is called "Beer & Liquor Control." Priebe asked if a liquor sale could be limited and Armstrong replied that it could if an individual were intoxicated and trying to buy beer or liquor.

In conclusion, Armstrong said an Assistant Attorney General, in an informal opinion, had advised that a rule was unnecessary since there was statutory authority for the proposal. However, the Department chose the rulemaking process.

REVENUE DEPARTMENT

The following agenda was before the Committee:

REVENUE DEPARTMENT[730]
Taxable sales, 16.50 ARC 4805N.....7/4/84
Determination of net income, 40.22, 40.23, 41.4(1); assessments and refunds, 43.4(1), 43.4(2) ARC 4806N.....7/4/84
Estimated tax for corporations, 56.6, estimated tax for financial institutions, 61.6 ARC 4807N.....7/1/84
Taxable sales, 16.27, 16.30; taxable and exempt sales, 18.34(1)"b," 18.34(2)"c," 18.34(3)"g," 18.36(2), 18.36(5); services tax, 26.16, 26.18, 26.38 ARC 4840N.....7/18/84
Bingo, exception to limitation 94.10(4) ARC 4842, also filed emergency ARC 4843N.F.E.....7/18/84
Administration of gambling laws, 91.2, 91.4 to 91.8; amusement concessions, 92.3, 92.8; gambling where beer and liquor sold, 93.1, 93.2, 93.6; qualified organization, 94.1 to 94.5, 94.7, 94.8, 94.10, 94.11; gambling in public places, 95.2, 95.6; annual game night, 96.3 ARC 4842N.....7/18/84

Carl A. Castelda, Deputy; Gene Eich, Deputy, Property Tax, John Christensen, Clair R. Cramer, Ed Henderson, Brian Bruner, Richard Stradley, Darwin D. Clupper, and Ron Nath were present on behalf of the Department. Also present: George Carpenter, General Manager, WHO stations; Nolan Quam, General Manager, KCCI; Jack Shelley, Ames Executive Secretary, Iowa Broadcasters Association. Charles Taylor, Iowa Motion Pictures Exhibitors Association;


REVENUE
DEPARTMENT

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Ric Hirsch, Motion Picture Association of America; James L. Hall, Iowa Broadcaster's Association, Cedar Rapids; Rick Phillips, Iowa Taxpayers Association; Trent Davis, 20th Century Fox Film Corp; Arthur Stein, Jr., Central States Theater Corp; Carl Hoffman, Dubinsky Theatres; Richard Thornton, Attorney; George Wilson, Iowa Cable TV Association; James M. Boose, Senate Republican Staff; Reginald Harrington, Legislative Fiscal Bureau; Fred Moore, an interested person and Joseph Van Lint, National Federation of the Blind; Dewayne Nystrom, Federation of Handicapped.

16.50 Castelda, responding to Schroeder's question re 16.50, was unaware of auditing problems. In response to petition, the rule was designed to clarify that particular issue. Castelda continued that amendments to chapters 40, 41 and 43 were intended to implement 1984 Acts, H.F. 2274 and S.F. 2330 and reflect changes in income tax statutes relating to individual income tax.

chs 40, 41,
& 43
56.6, 61.6 Rules 56.6 and 61.6 relate to payment of estimated tax by corporate taxpayers. Castelda referenced a U.S. Supreme Court decision which provided guidelines on overpayment of estimated taxes, refunds and interest accrual--federal structure was adopted.



chs 16, 18
& 26
Castelda noted that changes in the law made by 1984 Acts, S.F. 2330 and S.F. 475, were implemented in amendments to chapters 16, 18 and 26. Two specific areas were electronic installation and repair and rental of tangible personal property. The Department has interpreted the statute to require the tax to be levied against movie theaters that rent films; and radio and TV stations that rent syndicated programming. Comments had been received as well as requests for concise statements and regulatory flexibility analysis. Castelda summarized the proposals, item by item.

16.27 Amendments to 16.27 eliminate tax on gross receipts from commercial amusement enterprises. There is no statutory definition and the tax was not being administered equitably.

26.16 Discussion of 26.16 on imposition of tax on electronic installation and repair. The Department has received complaints that the tax was unfair but the law has not changed. Ambiguities relating to cable TV will be clarified. The industry has argued that imposition of a tax on installation of cable is inconsistent with legislative intent. However, the Department believes it falls within the scope of tax on electrical installation.

26.38 Castelda noted that rule 26.38, pertaining to tax on services of a search agency, had been amended as suggested by the ARRC. Castelda alluded to an error, which was not discovered until after the bill was signed--a semicolon was used instead of a comma after "executive search agencies." Schroeder requested the Department to draft corrective legislation.

REVENUE
DEPARTMENT
Continued

26.18

Discussion focused on rule 26.18, an area of controversy, for which a public hearing had been held August 7. Castelda stated that nonsubstantive changes would be made before the rules were adopted. He continued that the Department has defined tangible personal property as "any property, other than real property, which may be seen, weighed, measured, felt, touched or is in any other manner perceptible by the senses, but does not include television signals or other electromagnetic waves." Castelda explained that they had overlooked some cases that supported definition to include anything that can be "touched and handled as opposed to that perceived by the senses." Castelda reviewed issues that had been raised at the hearing and reiterated the Department's position.

In their "rational" interpretation of the statute, they relied on majority positions in most recent court cases. He emphasized the agency cannot make new law, impose new tax, create exemption that does not exist or ignore the statute." Castelda reviewed arguments of opponents of the rule and contended that, based on a Minneapolis Star Tribune case, so long as all industry is treated the same, there is no violation of the first amendment to the U.S. Constitution; there is little distinction between live performance and someone showing a movie; the Department cannot interpret rules in favor of the economy; tax always impacts someone and the Department cannot draw a line--this must be legislative decision.

Castelda was willing to assist in drafting a proposal for the General Assembly if it is deemed necessary. Castelda stressed that the Department lacks authority to make a determination that the tax should not be collected.

Doyle brought up the matter of pagers and was advised they probably would be the rental of equipment and also rental of tangible personal property. Calls may be taxable as a communication service--that has not been specifically addressed.

26.18(1)c

After brief explanation of 26.18(1)c, Castelda commented this was another area for which the Department would be receptive to legislation. Hall introduced members of the Iowa Broadcasters Association, who voiced opposition to rule 26.18. He referenced the KTVO decision and presumed that the statutory change would not affect that decision. Hall argued the law is unclear and urged the Committee to delay implementation of the rule until the legislature can consider the issue.

Carpenter discussed specifics of broadcasting and the impact of the proposed rule. They purchase programs by tape, film, video and satellite. Those on satellite would not be subject to tax--by film, they would be. He pointed out cable was not being taxed--many of those programs are carried on cable from other outside markets.

REVENUE
DEPARTMENT
Continued

He also had concerns re the border markets.

Quam spoke of his frustration in being unaware of the legislation until late in the session and then presuming they would be unaffected because of the KTVO case. He could foresee hardship for new industry.

Shelly spoke of the adverse affect on small radio stations, many of which are in deep economic trouble. Hall distributed copy of written statement presented at the hearing.

Castelda clarified that if cable TV rents syndicated programs, they will be taxed in same manner for the material. He admitted to Carpenter that if the cable TV does not rent the property, then it would not fall under the statute.

Discussion of 26.18(2)d which provides further definition of a rental of tangible personal property to include royalties, copyrights, license fees--concept being, if you pay to use the tape, it would be taxable. Castelda said when the KTVO case was decided, the Department had authority to tax equipment--the RAMCO case was different. Castelda explained the policy of the Department on interpretative rules such as these has been to delay auditing activities until issue is resolved through the courts or by legislation. However, when taxpayers ask if the tax should be collected, the Department is obliged to respond in the affirmative--some permits have been issued.

26.18(2)d

Doyle and Priebe suggested that 26.18(2)d be divided into subparagraphs so areas of noncontroversy would be separated from the controversial material. O'Kane brought up the fact that a distinction had been made between syndicated programming coming into a TV station by satellite or through UPS in form of a video tape. If the station received a syndicated show and then taped it for later viewing, would the tax status change? Castelda reasoned that "sales tax is a transaction tax and when something comes in by signal and same thing comes in a different type of package, those would be different transactions." He preferred referring the question to a staff attorney.

Taylor indicated that detailed legal memorandums had been submitted on behalf of the Iowa Motion Picture Exhibitors Association. He disagreed with the Department's ruling that they would not be entitled to a regulatory flexibility analysis to determine the impact of the tax on small businesses. [84 Acts, SF 475] Taylor declared the "tax will devastate small town enterprises." The provisions will tax lease of film from distributor to theater owner and he contended "it violates legislative policy and is clearly unwarranted."

REVENUE
DEPARTMENT
Continued

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He anticipated the typical theater owner would be forced to raise admissions by 10 percent.

Hirsch also took the position that the rule misinterprets the statute--"double tax is unwarranted and the Department should not wait for the General Assembly to provide exemption." He continued that film rental is not rental of tangible personal property. They had reviewed tax laws of the 50 states and with one exception, Iowa was the only state treating tax as a double burden. Three other states impose any tax on film rentals and of the three, only Connecticut imposes additional tax on admissions. Thornton theorized that the "Department has imposed its own intent in place of legislative intent and created a monster." He had talked with legislators and intent was not there.

Stein labeled the situation as "onerous for theater owners". He, too, referenced the fact that many legislators are opposed to the Department's interpretation. He urged that collection of the tax be held in abeyance until the next legislature. Chairman Priebe suggested that the tax be collected and held for the short time the rules would be in effect before the convening of the General Assembly. He defended the Department's right to "adopt rules as they see them." Castelda indicated that July 1, 1984 would be the retroactive date for imposition of the tax if the legislature does not change the law. He was amenable to drafting legislation to clear up the matter.

Motion

Priebe suggested the ARRC could draft a bill. After further discussion, Schroeder moved that the Department be instructed to prepare a bill to address the problem of the theater industry and submit it to the Committee for their review at a subsequent meeting. O'Kane voiced objection, taking the position that the Committee should not risk prejudicing possible litigation. After discussion, Committee consensus was to wait until after rules were adopted to take Schroeder's approach. Schroeder withdrew his motion. Priebe instructed Castelda to draft a bill under his name for the 1985 session. In conclusion, Castelda took exception to charges made by Thornton. He said that leadership, as well as the Governor's office, was given an interpretation of the statutory language last March.

Motion
Withdrawn

71.12(1)a

Chairman Priebe announced that the equalized valuation of agricultural realty, productivity--71.12(1)a--would be reviewed in the afternoon.

Recessed
Reconvened

Committee recessed at 11:00 a.m. and reconvened at 11:10 a.m.

REVENUE
DEPARTMENT
Continued

Bingo

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Castelda provided background on bingo laws and rules. At the request of the governor, a Task Force was formed from representatives of the Department of Revenue, Public Safety, Attorney General's Office and Polk County Attorney's Office to investigate adverse publicity re enforcement of bingo operations around the state. Based on the findings, the Department was asked to make certain changes to the law--S.F. 2015. Every rule associated with gambling was also reviewed. Two areas of question surfaced, one being a new provision in the rule which gives the director discretionary authority to revoke licenses up to two years. The Department wanted clarification of that and there was a possibility of petition to the General Assembly for legislative change. The Department is rewriting a gambling information booklet. A newsletter was issued to every licensee highlighting major changes in the law. Castelda reviewed changes suggested at public hearing which pertained to operation of concession stands by the handicapped; compensation for privileges of operating concession stands; definition of "premise" in relationship to the one used in the sale of liquor and conduct of bingo games. Other remarks dealt with restrictions set by law.

Responding to Schroeder's question, Castelda said statute is clear that if a location has had a gambling or liquor license revoked within the last few years, it cannot be used for gambling; there is no definition of "premise." Schroeder suggested legislation in this area. Castelda reasoned that one way to control gambling was to prohibit organization which lost its license, from forming another organization and moving back into the same location.

Discussion of the fact that raffles on fairgrounds may be managed only by the fair. Priebe asked the Department to draft legislation to relax that law to allow worthwhile organizations to operate raffles under control of the fair. It was Castelda's personal preference never to use "shall" in the rules. Discussion of definition and use of "must" and "shall." Nath, in discussing raffles, said these can be conducted by fairs under their gambling license. In item 9, Department has defined when a raffle begins and ends. Priebe was advised that the law does not limit the number. Castelda told Tieden that 92.8 will be clarified. Responding to question by Doyle, Castelda explained a change in the law which is reflected in rule 94.1. Prior to July 1, the 4 percent was part of the 25 percent; as far as allowable expenditures, now, the 4 percent is not included.

92.8

94.3

Discussion of 94.3. Castelda explained that identification is required to ensure that players are not employees of the organization conducting the games. The I.D. could also be used for tax purposes.

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REVENUE
DEPT.
Continued
94.5

Tieden was told that the organization is required to use the checking account for all funds derived from bingo.

In re 94.5(99B), Castelda reminded ARRC that the Code prohibits bingo games in liquor establishments unless the liquor licensee is a "qualified organization." The Department questions the legality since there is a strict interpretation of new language.

Schroeder raised question of small communities, under 2000, that might have only one dance hall where bingo could be held one night a week. Castelda discussed their limitations under the new law--more than one licensee can conduct bingo but the game cannot, in any way, be connected with a liquor establishment. In an attempt to make a reasonable interpretation, the Department spent much time in discussing this provision and the privilege of selling merchandise. A Des Moines organization for the handicapped was concerned as to the impact of the rules. The Department feels it is possible for a qualified organization to have an employee operate a concession stand and pay a salary from the concession profits but not out of bingo activities. Bingo proceeds cannot go to the benefit of any one individual.

Representative Jack Woods had raised question as to status of a Boy Scout group that was allowed to hold bingo games in a bar. Castelda was seeking specific information from Woods but it appears this may no longer be legal.

Nystrom, a volunteer representative of the Federation of Handicapped, spoke on their behalf. The Federation supports the elimination of exploitation of the handicapped by commercial bingo operators. He posed questions with respect to operating expenses and building rental. Nystrom indicated that workers for the federation donate their time. He commented on the difficulty of running a bingo game. Most of their recipients are people who have been refused help by state agencies.

Castelda recognized the Department's responsibility in trying to interpret the statute. They have, on numerous occasions, requested that facts and suggestions be submitted to the Department in writing so an opinion can be issued. Castelda clarified that minimum wage for those associated with any type of gambling has been illegal since the inception of bingo laws.

Castelda agreed to work with Nystrom.

Castelda apprised the Committee of an invalid request they had received today for a regulatory flexibility statement re bingo. He provided the Committee with copies and indicated they could not honor the request.
Chairman Priebe recessed the meeting at 12:15 p.m.

Recess

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REVENUE Chairman Priebe reconvened the meeting at 1:30 p.m. All
DEPARTMENT members and staff present.
Continued

Eich represented the Department for the following agenda:

REVENUE DEPARTMENT[730]

Equalized valuation of agricultural realty, productivity, 71.12(1)a" ARC 4732 N 6/20/84
Assessment practices and equalization, 71.22, 71.23, ARC 4709 terminated ARC 4841 M 7/18/84
Assessment practices and equalization; 71.1; property tax credit and exemptions, 80.9 ARC 4808 M 7/4/84

Also present: Randy Ewing, Attorney, representing south-west Iowa delegation; Jerry Shipley, Ted Yanacek, Iowa Farm Bureau; and the following county assessors: Linda Campbell, Cass; Robert Hastings, Pottawattamie; Alice Shipley, Mills; Lowell Kerr, Montgomery; Richard Bailiff, Adams; Leonard Bartles, Taylor; Otha Wearin, Rollin Bass, and Dick DeLashmutt, farmers.

Eich summarized amendments to 71.22, 71.23, 71.1 and 80.9. No questions.

Productivity

Discussion centered on proposed amendment re equalized valuation of agricultural land. Chairman Priebe informed the group that informational meetings on the proposal were being scheduled in Ida County, Council Bluffs, Durant and Britt. He emphasized that the official public hearing would be held in Des Moines.

Eich distributed the handout which would also be available at the other meetings. He summarized that the rule was the exact procedure followed by the Department in equalizing the land in 1983. However, 1983 Acts, chapter 202, section 22, mandated that the "productivity" formula be adopted in full by rule.

Eich said that initially a state average income per acre is computed from actual five-year productivity data, including crop acres, production, prices and expenses. This average is adjusted to determine net income of each county based on facts and conditions of a particular county. Consideration is given to a county's actual row cropping intensity, corn suitability rating (C.S.R.), crop price conditions and actual agricultural property tax liability. Actual production facts and production capacity are measured. Iowa State University, the U. S. Agriculture Stability Conservation Service, Iowa Crop and Livestock Reporty Service, U. S. Census of Agriculture and County Auditors are sources of agricultural equalization data.

Chiodo questioned page 5 of the handout relative to landlord share basis. Eich indicated that landlord share was preferred since cash rent information was difficult to obtain. He added that it was easier to estimate expense of the landlord than the owner/operator.

Discussion of use of constants and multipliers in the formula and Chairman Priebe questioned statutory authority. Schroeder reasoned there should be a simplified formula.

REVENUE
DEPARTMENT
Continued

Eich responded that the necessary steps are complex to obtain the fairly simple net income per acre.

Eich reviewed the history of the formula, noting that actual production was utilized until 1978 when the Corn Suitability Utilization Rating (CSUR) approach was used. The multiplier and constant were added to the calculation--the two best numbers used to compare the CSR and row cropping. In response to Priebe, Eich thought the results would be similar with either formula. He said the CSR, CSUR, and row cropping were methods of "getting it out to jurisdictions vs going from a county-by-county basis" with the same overall dollar amount. The main reason this approach was utilized and equalization hearings were held was criticism from assessors because the Department did not use CSR. Priebe recalled farmers, last year, who proved their yield was higher than others, would not be so assessed. He thought the assessor should take that into consideration.

Schroeder wondered if southwest Iowa farmers should plow up fields with hopes of surviving. Eich stressed that the formula utilizing CSUR should promote conservation. Farmers who continue to plow up the land ultimately increase its value.

Priebe was interested in comparison figures with both formulas for Kossuth, Winnebago and Hancock counties. Officials at the U. S. ASCS were contacted for information on the subject and the Committee learned that there are 65 published surveys. Once a survey has been assigned to a county, it is permanent unless a variable can be pointed out--yields may change. There are CSRs for every soil mapped in Iowa.

Ewing spoke on behalf of seven southwest Iowa counties. He referenced the complex formula and challenged anyone to understand it. He highlighted material which had been mailed to the ARRC. Ewing continued that the formula was developed using statistical data based on the years 1972 to 1976. He pointed out "a new formula has not been developed." Instead, the old one has been updated every two years based on state average net income. Ewing interpreted the Code to make sure that the assessed valuations of agricultural property are adjusted to taxable value--which is supposed to be based on productivity and net earnings--not fair market value.

Ewing referenced a budget worksheet the Department had used prior to 1979, Howell method, and the fact that the delegation does not believe the formula reflects statutory requirements. Experts had been consulted re the formula including an Iowa State University soil scientist who told them CSR was never developed for equalization purposes. Vast differences in regions of the state are not reflected and southwest Iowa farmers are being penalized by the unfair formula.

REVENUE
DEPARTMENT
Continued

Ewing reiterated the formula assumes that the changes which occur on a statewide basis are proportional among counties. He thought that was unlikely and insisted, "by using '72-'76 data base, we are dependent upon those years." Ewing concluded, "CSUR does not take into consideration small grains." He highlighted problem areas of the seven counties and distributed information. Ewing understood another party was conducting a study in addition to the southwest Iowa group.

Each assessor was introduced and given an opportunity to comment. In Hastings' opinion, formula being applied was not statutory. He preferred application of the "cap rate" uniformly throughout the state. He called attention to the fact that farm prices were at the lowest point in the last four years.

Doyle was told that Pottawattamie county residential property taxes had not increased as much as agriculture. But Hastings had conducted a reappraisal and had not received the equalization order. He admitted that residential increases had been substantial because of the increased market. Chiodo reminded Hastings that assessors had testified just the opposite when the productivity formula was passed by the legislature--reason being that market values were high and that was used to implement productivity. Hastings preferred the worksheet method and nothing else. He opposed using all 99 counties to obtain a state average.

Bailiff said that, in the first year, 1978, productivity formula was used, Adams county had no increase; in 1979, Dr. Murray's formula caused a 31 percent increase; and in 1981, average per acre income increased 19 percent. Since 1978, production has not gone up, prices haven't gone up that much, expenses have increased some and yet, since 1978, Adams county assessed value has increased 61 percent. In Bailiff's opinion, value of agriculture is supposed to be based on income, capitalized at 70 percent.

The other assessors made brief comments about their individual situations--generally in support of statements made by the previous speakers.

Wearin commented that although his taxes had increased 43 percent, his income had not--he could not continue under this program of valuations. He has lived on the farm, which has been in his family 100 years, all of his life.

DeLashmutt and Bass spoke of the high assessed value and problems faced by farmers in recent years. DeLashmutt declared, "farmers cannot stand additional taxation and need a decrease."

Priebe commented that the CSR is done when soil survey is completed and there is no change. Priebe, in defense of the Department, reminded opponents that the formula was developed at Iowa State.

REVENUE There was discussion of school valuation with respect to
DEPARTMENT property tax. Assessors gave information re assessed
Continued values in their counties.

Recess Chair called for a ten-minute recess. Chiodo and O'Kane
 were excused.

Discussion resumed with Eich responding to questions that had been raised. He thought the assessor's bulletin should be read with respect to CSR and he declared CSR is capacity to produce corn. Eich reminded the group that the former budget worksheets were not on a single county basis--prices and expenses were based on state averages. He continued, "CSRs do take weather into account" but it was not known if stress days were considered. Iowa State Climatology Department did a study, which is available. It was Eich's opinion there never was intent to correlate between market and productivity--then or now.

In response to the statement there had been no objections to budget worksheets, Eich said he had been in many hearings in the 1970's where there were objections raised. A major complaint was that two counties, with similar CSRs, would have different valuations--sometimes \$100 to \$200 an acre.

Eich challenged agricultural assessments as presented by the southwest Iowa delegation. He reviewed the Department's statistics which were based on taxable value per acre under productivity from 1977. There were definite differences and Eich was confident the Department's calculations were within the statute. He concluded, "The rules are unchanged from 1983 equalization procedures--multiplier is the same today, but it will be adjusted by these rules." In 1981, the Department's procedures were upheld by the State Board of Tax Review. The 1983 ruling has not been issued.

There was discussion of ARRC seeking advice from the attorney general as to legality of use of multipliers. Mention was made of possible testimony by the professor who had developed the formula. It was pointed out a conflict of interest would make such an action unlawful. Ewing did not concur with that interpretation. Schroeder thought the "Fifth Amendment" clause would take precedence. Tieden commented on his visit with farmers and assessors. Time frame for filing rules was reviewed by Royce.

Shipley said the Farm Bureau would make a statement at the final hearing. The Bureau supports productivity concept and does not advocate return to market value. He admitted there were some problems with the complex system and would support a less complicated formula. Shipley noted that the formula does not take into consideration ponds, roads, wasteland or land that is nonproductive.

Yanacek commented the Bureau was concerned with the interest factor. Eich contended that no interest expense

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REVENUE was included and interest on land is not included as an
DEPARTMENT expense. He added, "No assessor is going to use interest
Concluded on a piece of property as an expense against a piece of
land--it amounts to devaluating property."

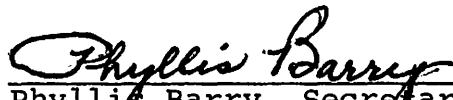
Responding to Yanacek about operational expense, Eich said that was used only to the point that the landlord would have some interest expense. Yanacek suggested the Department might consider listing those expenses.

Motion Schroeder moved that the ARRC request an AG's opinion on "authority for moving factor." Motion adopted. Royce and Eich were directed to work together.

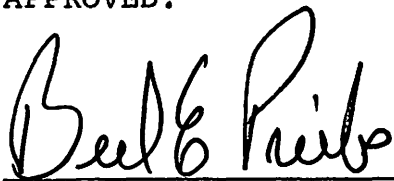
Adjourned Chairman Priebe adjourned the meeting at 4:40 p.m.

Next Meeting The next regular meeting will be Tuesday and Wednesday, September 11 and 12, 1984.

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Vivian Haag and
Bonnie King

APPROVED:



CHAIRMAN