

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, March 9, 1976, 7:15 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman; Senators E. Kevin Kelly and Minnette Doderer; Representative W. R. (Bill) Monroe, Jr., Vice Chairman, Representative Donald V. Doyle.
Not present: Representative Laverne Schroeder.
Also present: Wayne A. Faupel, Code Editor.
David Charles and Charles Reikena,
Senate Research Assistants.

COMMERCE

Chs. 1 to 4

Gary Stewart, Michael May, Commerce Counsel, appeared before the Committee for review of filed rules of the Commerce Commission relating to organization, forms, rule-making, declaratory rulings, practice and procedure, being Chapters 1, 2, 3, 4, 6 and 7. Said rules were published in full in 3/8/76 IAC Supplement.

Stewart explained that Chapters 6 and 7 were revised before filing to conform with Chapters 1 to 4 with respect to the various forms.

Committee made no recommendations concerning the rules.

CONSERVATION
Ch 70

Stanley Kuhn, Accountant, and John Stokes, Lands and Waters Administration, represented the Conservation Commission for review of filed rules.

Kuhn pointed out that Chapter 70 in re conservation and outdoor recreation employment for senior citizens had been filed under emergency as well as normal rule-making procedures. The rules were modified to allow the payment of travel expenses to a senior citizen hired under CORESC for the purpose of co-ordinating and evaluating the program.

Ch 47

Stokes explained rules 47.1 and 47.2 pursuant to authority of section 107.24 and intended to implement section 111.41 of the Code as amended by 66 GA, chapter 114. Said rules were filed under emergency provisions and permit the gathering of mushrooms and nuts on lands under the jurisdiction of the Conservation Commission, except for state preserves. However, 47.2 would allow the Commission to post signs prohibiting taking of nuts.

Doyle raised question as to when the signs would be posted and Stokes responded that nut gathering is prohibited in

CONSERVATION
Cont'd

certain areas in the spring while the department collects black walnuts for the state parks nursery.

Monroe suggested that this fact be spelled out in the rule. He also doubted the necessity for taking the emergency route in promulgating the rules.

LANDSCAPE
ARCHITECTURAL
EXAMINERS

Filed rules of the Landscape Architectural Examiners which were published 2/9/76 IAC Supplement were acceptable to the Committee.

7:30 a.m.

Doyle excused to attend another meeting.

MERIT EMPLOY-
MENT DEPT.
Vacation
14.2(8)

Filed subrule 14.2(8), published in IAC Supplement 2/9/76, was before the Committee. Said subrule provided, "A classified employee who is discharged for good cause, or for other reasons set forth in these rules, shall be paid for vacation leave earned."

At the December 10 meeting of this Committee questions were raised as to how the provision would affect an employ who retired. Charles was requested to research the matter and Keating indicated he would seek advise from the attorney general.

On December 16, Keating wrote Chairman Priebe that an oral opinion, without research, of Solicitor General Haesemeyer indicated the rule [implementing §79.1 of the Code] would not affect the payment of vacation pay to persons who retire differently from those who are discharged or voluntarily terminate.

In a two-page memorandum, Charles analyzed the statute regarding accumulated vacation pay for state employees. Said statute was amended by 66 GA, H.F. 351 but Charles was of the opinion that the law leaves some questions unanswered. "First, from what source should the funds be drawn to comply with the law? Second, could an individual simply be kept on the payroll until the accrued time is exhausted?" He concluded that the new law probably does not significantly change the method of dealing with accrued vacation time of a state employee who retires. It was his opinion the old law was clearer and that the problems noted should be addressed by the legislature so that a retiree can be paid a sum of money representing accrued vacation time.

No action was taken by the Committee.

PUBLIC
INSTRUCTION
Teacher
Certifica-
tion

Dr. Orrin Nearhoof, Teacher Certification, and Dr. Donald Cox, Associate Superintendent, were present for review of filed rules of the Public Instruction department, being Chapters 13 to 21, published in IAC Supplement 2/23/76 relating to teacher certification.

Nearhoof pointed out that the rules were modified as a result of written comments, public hearings and action by the State Board.

Discussion of 13.8(257) relating to preparation requirements for an original certificate which read as follows:

670—13.8(257) Recency of preparation. Any applicant who meets the preparation requirements for an original certificate but who had less than eight months' teaching experience during the five-year period immediately preceding the date of application for such certificate, shall have completed at least six additional semester hours of credit in a recognized institution within the said five-year period. Such credit is to be in addition to meeting the specific requirements for the type of certificate desired.

Where recent credits are required, they shall be taken in professional education or in the applicants area of field of specialization.

When an applicant qualifies for the certificate desired with the exception of having recent preparation as defined herein, a temporary certificate, valid for one year, will be issued.

Nearhoof indicated there was no negative reaction to the rule at the hearings.

Doderer objected to 13.8 as being discriminatory since it would affect women teachers who had been away from teaching to stay with their children a few years.

Nearhoof pointed out the rule would apply only to those who have never applied for an Iowa certificate--not to those who have certificate. He commented that the education process is changing rapidly and the Department took the position that teachers should return to the field within the five-year period. He cited §257.10(11) as authority for the rule.

In response to question by Kelly, Nearhoof said they have defined "one year of teaching to be based on eight months."

Motion
Objection

Doderer moved the following objection:

"The Committee objects to 13.8(257), relating to the preparation requirements for an original certificate, as the rule discriminates against women teachers of child-bearing age since they will be unable to maintain their certificates for the five-year period. Therefore, the Committee objects on the ground that the rule is arbitrary and further, that it is beyond the department's authority to promulgate a discriminatory rule. The objection can be overcome by rewriting the rule based on a ten-year period."

Motion carried viva voce.

PUBLIC
INSTRUCTION
Cont'd

Discussion of 13.11 which was intended to broaden recognition of out-of-state institutions.

Monroe raised question in 13.11(2) as to what was "appropriate state agency." He took the position this should be spelled out in the rule, otherwise it defeats the purpose of the APA. Priebe concurred.

Nearhoof responded that it would be necessary to list all the agencies in the various states.

In re 13.13 relating to foreign institutions, Monroe suggested that "foreign" be defined as being outside of the United States. Department representatives agreed to make the change when it is necessary to update the rules at a future time.

Nearhoof pointed out that 13.18 pertaining to human relations requirements had been modified to provide more flexibility. Also, the deadline for completing the requirements was moved from 1978 to 1980.

Discussion of the composition of the advisory committee to assist in development of human relations programs. Question was raised concerning the last sentence of 13.20 which provided: "The advisory committee shall consist of equal representation of various minority and majority groups."

After some discussion, Charles suggested the following substitute language: "The advisory committee shall represent as nearly as possible the ethnic breakdown of the community." Department representatives wanted to review the matter further and Charles agreed to work them in preparing an acceptable amendment.

Ch 14 Nearhoof told the Committee that all classes of certification had been grouped into a single chapter, being Chapter 14. No changes were made, however.

Ch 15 Review of Chapter 15 relating to endorsements to perform a specific type of service, e.g. teaching, administration or supervision at a particular grade level.

Nearhoof said that "the basic change in the rules was the designation of grades 13 and 14. In the past the endorsement was for grades 8 to 14 or 7 to 14. Since 1965 and after the establishment of area vocational and area community colleges, they have had a system of certification for postsecondary education which did not really fit that pattern so they merely eliminated grades 13 and 14 from the top end of the certificate but this would not in any way change the method of receiving postsecondary endorsement.

PUBLIC
INSTRUCTION
Cont'd

Monroe questioned Nearhoof concerning special subject teacher endorsement without practice teaching at both levels. Nearhoof pointed to 15.7--the general secondary endorsement provision. He added that it is common practice for teachers to practice at both levels, particularly in music or math fields. Rules regarding this matter were not changed from those used for several years.

Nearhoof referred to all new additions to Chapter 15, being 15.29 (health endorsement), 15.31 (middle school), 15.33 (instructor, community college arts and sciences), 15.34 (director, area vocational school or community college), 15.35 (counselor, area vocational school or community college), 15.36 (librarian/learning resource specialist).

Discussion of 15.31. Nearhoof responded to question by Doderer by explaining that UNI offers the only program for four-year middle school teacher education. A middle school consists of grades 4, 5, 6, 7, 8 and 9. Eagle Grove, Algona, Burlington are some of the cities in Iowa with middle school systems.

"Grandfather provisions" appear in §294.2 of the Code.

Doderer expressed opposition to the middle school concept as being unnecessary. Charles pointed out their authority is "broadly based in Chapter 257 of the Code. Nearhoof added that anyone holding a current elementary certificate could teach in a middle school. Monroe thought the rules should have provided that anyone with a secondary endorsement would also be allowed to teach in the middle school. Committee members concurred that some reference to chapter 294 should be in the rules, also.

Ch 16

Nearhoof told the Committee that Chapter 16--Approvals--was new and he explained the process by which they arrived at the levels set out for recommending a teacher for certain subject matter areas. They determined a minimum standard and worked with the Business Education Association of Iowa, the Speech Communication Association of Iowa and the Social Studies Council. The only reaction to the rules was from librarians who asked that the teacher-librarian provision be deleted. Committee made no recommendations.

Ch 17

In re Chapter 17--Conversion and renewal of certificates--Nearhoof said that a major change in the rules was that they would accept "approved in-service credits" in the renewal process. Previously, only college credit was acceptable.

Ch 19

Chapter 19, relating to approval of institutions and teacher education programs, was rescinded by the Department effective March 5, 1976. Nearhoof explained that after their hearing, objections were raised by the Board of Regents who contended that DPI had exceeded their authority in some areas. DPI officials wanted time to study the matter before promulgating the rules.

PUBLIC
INSTRUCTION
Cont'd

Chapter 21 entitled "Proper expenditure of improvement of instruction funds" was acceptable as filed.

No recommendations were made concerning the filed amendment to 23.5(13) pertaining to transportation of the handicapped. Said amendment was published in IAC Supplement 2/9/76.

REVENUE
Assessors
Ch 72

Rules of the Revenue Department relating to examination and certification of assessors and deputy assessors were before the Committee. Said rules, being Chapter 72, were filed under emergency provisions as well as the normal rulemaking procedure and published 2/9/76. Michael L. Cox, Administrator of Property Tax Division, appeared as representative of the Revenue Department.

H. Ernest Lund, Washington County Assessor, addressed the Committee with reference to 72.4(441)--appraisal related experience. He urged that said rule be amended to include the designation of "ICA" Iowa Certified Assessor. This designation is earned by persons actively working in the assessment field.

Cox indicated the Department would be unwilling to include the designation in question as it could invite unwarranted criticism regarding favoritism toward persons already in the assessment field.

Monroe objected to recognizing professional societies. It was his opinion that the legislature intended for the department to set the standards.

Motion

Monroe moved the following objection:

"The Committee objects to 72.4--appraisal-related experience--on the basis that it goes beyond the authority of the department to delegate the determination of professional competence to professional societies. Even if it were within their authority to do so, the rule, as written, is unreasonable as it does not include all such societies, e.g., Iowa Certified Assessor (I.C.A.). The objection can be overcome by amending 72.4(441) to strike all of the rule following "property." in line 4."
Motion carried unanimously.

The Department was willing to delete the objectionable language.

In re examinations in 72.2, Priebe thought that answers to examination questions should be made available to persons who have completed the test. Cox referred to 72.2(3) which allows an individual to review his or her examination in the office of the property tax division. He concluded that the procedure used by the Department is a "measure to maintain integrity of the examination."

SOCIAL SERVICES The following persons represented the Social Services Department for review of the following filed rules which were published 2/9/76:

SOCIAL SERVICES DEPARTMENT[770]

Medical assistance, medical institution, 75.1, Emergency	2/9/76
Medical assistance, medical institution, 75.1, Above action rescinded	2/9/76
Medical assistance, hospitals, 78.3, Emergency	2/9/76
Medical assistance, hospitals, 78.3, Above action rescinded	2/9/76
Mentally retarded, medical assistance, Ch 82, Emergency	2/9/76

Judith Welp, Income Maintenance, Linda Cooper, Manager of Long-term Care, Wilford Miller, Administrative Assistant, Long-term Care, Nicholas Gruncweig, Acting Director of Bureau of Mental Health Resources.

Discussion of Chapter 82 which was filed as emergency rules without notice and adopted handbooks of the Department of Social Services Department relevant to intermediate care facilities for the mentally retarded.

Priebe voiced opposition to the emergency procedure followed by the Department. It was his opinion they were circumventing the Administrative Procedures Act.

Motion

The following motion was made by Senator Kelly:

"The Administrative Rules Review Committee objects to Chapter 82, relating to intermediate care facilities for the mentally retarded, of rules of Social Services on the grounds that the Department exceeded their authority under Chapter 17A of the Code in promulgating Chapter 82 under the emergency provisions of Chapter 17A.

In particular, it is the sense of the Committee that public participation in the rule-making process is very important when rules of this nature are promulgated. Since its first meeting in July, the Committee has repeatedly asked the Department to promulgate its handbooks as rules. On every occasion the Department has responded that the rules were 'in process'. The emergency procedures utilized substantially preclude public participation in the rule-making process and violate the Committee's understanding that the Department would use the normal procedures.

The Committee is of the opinion that the Department's finding that public participation is unnecessary represents an attempt to avoid public scrutiny of the rules. Further, the Committee is of the opinion that rules of this nature are not the type the legislature envisioned would be promulgated under 17A.4(2) of the Code. It is difficult to understand why unnecessary delay in the delivery of services would result from a use of the normal procedures. The Department has been operating in violation of Chapter 17A since July 1, 1975, by using the handbooks. The additional time needed for the normal procedures would be well spent as the public would be given an opportunity to comment on the rules as intended by Chapter 17A.

SOCIAL SERVICES
Cont'd

Second, the Committee does not believe that 17A.5(2)b(2) is properly relied on by the Department. The handbook, in addition to conferring benefits, places restrictions on the public, their rights and their ability to use the facilities involved. Therefore, the Committee objects to the rules on the ground that utilization of this provision with these particular rules is beyond the authority of the Department. Therefore, the rules are not properly made effective immediately.

The objection can be overcome by promulgating the rules under the normal rule-making procedure."

The motion carried unanimously.

Cooper pointed out the handbooks govern only Woodward and Glenwood institutions. She emphasized there was no intent to violate the law. According to Cooper, copies of the manuals in question had been mailed to all Committee members about four weeks prior to today's meeting.

The Committee suggested a July 1976 target date for the Department to prepare rules under the normal rulemaking procedure for publication in the IAC.

Doderer asked that the Department of Social Services give consideration to holding the hearings in regard to ADC in other cities outside of Des Moines. Department officials cited the additional expense involved as one reason this would not be feasible.

ENGINEERING
EXAMINERS

It was noted that a minor correction was needed in Chapter 1 of the rules of the Engineering Examiners which were published 1/12/76. Committee members agreed to permit the Code Editor to correct Chapter 1, page 3, "4-Year Engineering (Non-ECPD)" by inserting after "Engineering" the word "Technology". When the rules were typed, the word had been inadvertently omitted by the Department.

ADJOURNMENT

Chairman Priebe adjourned the meeting at 9:50 a.m. to be reconvened Tuesday, April 13, 1976 at 7:00 a.m.

Respectfully submitted,

Phyllis Barry
(Mrs.) Phyllis Barry, Sec.

APPROVED

Chairman

DATE _____